

11592

MTC 365-1561

Vol. 76 Page

3979

WHEN RECORDED MAIL TO
EQUITABLE SAVINGS AND LOAN ASSOCIATION
Address 212 South Sixth Street
City Klamath Falls
State Oregon 97601

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST

THIS DEED OF TRUST, made this 12th day of MARCH, 1976, between SAM W. CARTER, SR.
AND VIRGINIA A. CARTER, husband and wife

(GRANTOR).

and TRANS-AMERICA TITLE INSURANCE COMPANY

(TRUSTEE)

and EQUITABLE SAVINGS AND LOAN ASSOCIATION, an Oregon corporation, (BENEFICIARY).

Grantor irrevocably GRANTS, BARGAINS, SELLS AND CONVEYS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the real property in the County of KLAMATH State of OREGON described as follows: The North 97 feet of Lot 7 in Block 5 of THIRD ADDITION TO KETTERMAN ACRES, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

which has the address of 4060 AUSTIN, KLAMATH FALLS
(Street) (City)

OREGON 97601 (Property Address):
(State and Zip Code)

together with (1) all interests, easements, rights and privileges now or hereafter belonging to or used in connection with this property and with all improvements, fixtures, furnishings, flora, appliances and apparatus of any nature now or hereafter attached to, adapted to, located on or used in connection with this property, (2) all interests Grantor may hereafter acquire, and (3) the rents and income thereof. All of the foregoing shall constitute the Trust Property.

This conveyance is to secure payment of all the following: (1) Sums due under a certain promissory note of the same date, executed by Grantor in the sum of SEVENTEEN THOUSAND FIVE HUNDRED FIFTY AND NO/100 Dollars (\$17,550.00), payable in 300 monthly payments with the final payment due on the 1st day of APRIL

2001, which is the maturity date of this Deed of Trust, (2) all further sums which may be loaned or advanced by Beneficiary to Grantor, or any of them, and (3) any additional sums which may become payable to Beneficiary under the provisions of this Deed of Trust or other security instruments securing this loan.

Unless otherwise provided, all additional sums becoming payable to Beneficiary under this Deed of Trust shall be due immediately and shall bear interest until paid at 10% per annum or the rate provided above, whichever is higher.

Each Grantor, jointly and severally, covenants and agrees as follows:

1. **Covenant of Title.** Grantor is the owner in fee simple (or, if it has so advised Beneficiary in writing, the lessee) of the Trust Property and entitled to possession of it. Grantor has the right to convey the Trust Property and it is free from encumbrances, except those previously accepted by Beneficiary in writing. Grantor will keep the Trust Property free from all encumbrances and will warrant and defend it forever against all claims and demands.

2. **Payment.** Grantor will pay when due all secured sums described above.

3. **Representation as to Trust Property.**

a. If located in Idaho, the Trust Property either is not more than twenty acres in area or is located within an incorporated city or village.

b. If located in Washington, the Trust Property is not used principally for agricultural or farming purposes.

c. If located in Oregon, the Trust Property is not now used for agricultural, timber or grazing purposes.

4. Preservation, Repair and Use of Trust Property. Grantor will keep the Trust Property in good condition and repair and will not remove, alter or demolish any structure on it without the written consent of Beneficiary. Grantor will complete all structures now or hereafter under construction on the Trust Property within the time allowed by the Construction Loan Agreement or six months, whichever is greater, and will completely repair and reconstruct any structure on the Trust Property which may be damaged or destroyed. Grantor will pay when due all claims for labor performed and materials furnished. Grantor will comply with all laws, ordinances, codes, orders, declarations, by-laws, rules, regulations and restrictions affecting the Trust Property and will not commit or permit waste of the Trust Property. Grantor will not use the Trust Property for any unlawful purpose.

5. Insurance, Taxes and Reserves.

a. The Trust Property shall be covered by fire insurance with extended coverage, mortgage insurance and such liability insurance as Beneficiary may require, and, flood insurance is required by law, in amounts as may be required by Beneficiary. The insurance companies and policies must be satisfactory to Beneficiary with loss payable to Beneficiary.

b. Unless this covenant is prohibited by law or waived in writing by Beneficiary, Grantor will pay Beneficiary each month a sum equal to one-twelfth of the annual taxes, assessments, insurance premiums and similar charges as estimated by Beneficiary. Beneficiary will apply such sums to payments of those items when due. Sums paid by Grantor under this provision shall not earn interest and may be co-mingled with other funds of Beneficiary. If Beneficiary is required by law to pay interest on these sums, Beneficiary may, unless prohibited by law, impose a charge for holding and disbursing such funds.

c. If Beneficiary waives the preceding covenant to prepay taxes, insurance premiums, assessments or similar charges, or if Grantor does not make prepayments sufficient for Beneficiary to pay such charges, then Grantor shall pay such charges when due and upon demand provide Beneficiary satisfactory evidence of payment and coverage. This obligation is additional to, and not an alternative to, the covenant to prepay such charges to Beneficiary.

d. In case of loss by any hazard, casualty, or contingency insured against, or in case of any condemnation proceedings, Grantor shall give immediate notice thereof to Beneficiary and Beneficiary may either (1) direct Grantor to collect the proceeds or award, in which case Grantor shall do so with due diligence, or (2) collect the proceeds or award itself, in which case Grantor shall cooperate as directed by Beneficiary. In either case, the proceeds or award shall be paid to Beneficiary (and all insurers or condemning authorities are herewith authorized to make such payment), and Beneficiary is authorized at its option, after reimbursing from such proceeds or award any expenses incurred in the collection or handling of the funds, to hold all or part of the net proceeds or award for payment of costs of restoration or repair of the property damaged, destroyed or condemned, and/or to apply all or part of the net proceeds as a credit on any portion of the secured debt selected by Beneficiary, whether then matured or to mature in the future, or on any deficiency judgment. Beneficiary shall not be responsible for any failure to collect any proceeds or award, regardless of the cause of such failure. The foregoing power and authority is irrevocable and coupled with an interest, and nothing done under this paragraph shall in any way waive any default or affect the security of this Deed of Trust or any liability of Grantor. Foreclosure hereof by sale or otherwise shall not affect or impair the above granted powers and authority.

6. Delinquent Payments. Grantor agrees to pay any expenses, including attorney's fees, incurred by Beneficiary or Trustee in collecting delinquent payments or in curing any default under this Deed of Trust.

7. Leasehold Provisions. Grantor will not default on any leases on the Trust Property to which Grantor is or may become a party, or materially modify any such lease without Beneficiary's written consent. Where Grantor is Lessor, Grantor will diligently enforce its rights and exercise its best efforts to continue any such lease in effect.

8. Protection of Beneficiary's Security, Attorney's Fees and Expenses.

a. Should Grantor fail to make any payment or to do any act as herein provided, Beneficiary without notice to Grantor and without releasing Grantor from any obligation hereof, may make or do the same in such manner and to such extent as it may deem necessary to protect the security of this Deed of Trust. Beneficiary is authorized to enter upon the Trust Property for such purposes. The Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien which in its judgment appears to be prior or superior to the lien of this Deed of Trust.

b. In any suit to foreclose this Deed of Trust, or in any suit or proceedings in which it may be necessary for Beneficiary to appear in order to protect Beneficiary's security interest or in the event of any measures taken in connection with a sale or intended sale pursuant to the power granted hereunder, Grantor agrees to pay to Beneficiary all costs and expenses and a reasonable sum as attorney's fees, including fees on appeal, and further agrees to pay the costs of title search incurred in the foregoing.

c. Any expenses, attorney's fees and costs incurred under section 8 shall bear interest as provided in this Deed of Trust from the date of expenditure until paid and, at Beneficiary's option, may be billed directly to Grantor, which billing shall be immediately due and payable, or may be added to the principal amount secured hereby.

9. Assignment of Rents; Receiver; Operation.

a. As additional security, Grantor assigns to Beneficiary all rents and income from the Trust Property and assigns to Beneficiary any leases now or hereafter in effect upon the Trust Property or any part thereof, and Grantor gives to Beneficiary the authority, upon default, to collect the rents and income from the Trust Property. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, take possession of the Trust Property or any part thereof, and any personal property securing the indebtedness, may lease or rent all or part of the Trust Property, may repair and maintain the Trust Property, may pay all operating expenses, may retain the customary charges for managing property, may hire a management service or manager to manage the Trust Property, may pay taxes, assessments, insurance premiums and similar charges, all as it deems appropriate, and may collect the rent and income, including those past due and unpaid, and apply the same, less all costs and expenses of operation, management, repair and collection, including reasonable attorney's fees, upon any indebtedness secured hereby in such order as Beneficiary may determine.

b. Grantor agrees that a receiver may be appointed by a court without regard to the adequacy of the security for the indebtedness or the solvency of Grantor or the presence of waste or danger of loss or destruction of the Trust Property, to possess, manage and control the Trust Property and any personal property in which Beneficiary has a security interest as additional security for this loan and to collect the rent and income thereof and to exercise those rights set forth in section 9 or otherwise allowed by law.

10. Relevant Financial Information. Upon demand, Grantor will provide Beneficiary with operating statement and other financial information relevant to the use, operation and income of the Trust Property, including access to the books and records.

11. Transfer of Property; Assumption; Conditions.

a. This loan is personal to Grantor and not assignable. In making it, Beneficiary has relied on Grantor's credit. Grantor's interest in the Trust Property, and financial market conditions at the time this loan is made. If Grantor transfers or contracts to transfer title to or possession of all or part of the Trust Property, by deed, contract of sale, lease or similar agreement, Beneficiary may declare the entire balance of this loan immediately due and payable.

b. Beneficiary will waive its right under subparagraph 11.a. if the following conditions are met: (1) The credit of the third party is satisfactory to Beneficiary; and (2) the third party shall assume full personal liability for payment and performance of the note, Deed of Trust and other security instruments; and (3) a charge for administrative costs is paid to Beneficiary; and (4) if required by Beneficiary, either the interest rate on the secured loan is increased by not more than two (2%) percent, or Beneficiary is paid a lump sum compensation not to exceed two (2%) percent of the loan balance at the time of assumption.

c. Any increase in the interest rate shall entitle Beneficiary to increase the monthly payments so the secured debt will be paid in full by the maturity date of this Deed of Trust.

d. Assumption does not release Grantor or any successor in interest from personal liability for payment and performance of the terms and conditions of this loan.

12. Default; Acceleration; Remedies.

a. Time is material and of the essence hereof. If Grantor does not pay the secured indebtedness as provided, or if Grantor does not comply with the terms and conditions of this Deed of Trust, or if a proceeding under any bankruptcy, receivership or insolvency law be instituted by or against any of the Grantors, or if any of the Grantors make an assignment for the benefit of creditors, or if state laws are changed hereafter to impose what Beneficiary may deem to be a substantial tax upon Beneficiary by reason of its interest in this Deed of Trust (unless Grantor may lawfully pay such tax and does so), this Deed of Trust shall be in default. Any default under this Deed of Trust shall constitute a default under the note which it secures and under all other security instruments securing the note. Any default under such other security instruments shall constitute a default under this Deed of Trust. In the event of default, Beneficiary may declare all sums secured hereby immediately due and payable, and this Deed of Trust may be foreclosed and the Trust Property sold in any manner allowed by law, including without limitation, by advertisement and sale under exercise of power of sale, or as a mortgage on real property. Proceeds of a sale pursuant to exercise of the power of sale shall be applied to (1) the expenses of sale, including Trustee's and attorney's fees, and (2) obligations secured hereby. The surplus, if any, shall be paid to persons entitled there to by law.

b. In the event this Deed of Trust is foreclosed as a mortgage on real property, Grantor, and each of them, consents to a personal deficiency judgment for any part of the debt hereby secured which shall not be paid by the sale of the Trust Property, unless such judgment is prohibited by law, and in case of foreclosure, expressly waives (1) any claim of homestead and (2) all rights to possession of the premises during the period allowed by law for redemption.

c. Beneficiary is not obligated to take any action which this Deed of Trust provides it "may" take. Any power given Beneficiary by this Deed of Trust may also be exercised by such agents as Beneficiary may designate, including Trustee.

13. **Reconveyance Upon Payment.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Deed of Trust and the secured note to Trustee for cancellation and retention and payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

14. **Substitute Trustee.** In the event of dissolution or resignation of the Trustee, Beneficiary may substitute a trustee(s) to execute the trust hereby created, and the new trustee(s) shall succeed to all of the powers and duties of prior trustee(s).

15. **Non-Waiver Provisions.** Neither forbearance by Beneficiary in exercising any right or remedy hereunder or remedy afforded by law, nor any exercise by Beneficiary or those acting in its interest of any right or remedy, shall cure or waive any default or notice of default, nor shall any of the foregoing be a waiver of or preclude the exercise of any right or remedy. All remedies provided in this Deed of Trust are distinct and cumulative to each other and to all other rights or remedies, and may be exercised concurrently, independently or successively.

16. **Waiver by Non-Obligated Persons.** Notwithstanding any other provision of this Deed of Trust, any person who executes this Deed of Trust, but not the note secured hereby, shall have no personal liability on the note or for any deficiency judgment which may be obtained upon foreclosure of this Deed of Trust. Such persons jointly and severally waive presentment, demand, protest and all notices and agree that Beneficiary, without notice to them or their consent, and upon such terms as Beneficiary may deem advisable, and without affecting in any way Beneficiary's rights hereunder as against the Trust Property, may:

a. Extend, release, surrender, exchange, compromise, discharge or modify any right or obligation secured by or provided by this Deed of Trust or any other instrument securing this loan, or

b. Take any other action which Beneficiary may deem reasonably appropriate to protect its security interest in the Trust Property.

17. **Successors and Assigns.** This Deed of Trust applies to, binds and benefits all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, assigns and pledgees. In this Deed of Trust, whenever the context so requires, the singular includes the plural.

18. **Notices, Refunds.** All notices and reserve account refunds shall be given and paid to Grantor unless this loan has been assumed in accordance with paragraph 11 and Beneficiary has received a properly executed assignment of reserve account(s), notwithstanding Beneficiary's receipt and acceptance of payments from a person other than Grantor.

19. **Notice.** Except for any notice required under applicable law to be given in another manner, any notice to Grantor provided for in this Deed of Trust shall be given by mailing such notice addressed to Grantor at the Property Address or at such other address as Grantor may designate by written notice to Beneficiary.

Sam W. Carter, Sr.
 Sam W. Carter, Sr.

Virginia A. Carter
 Virginia A. Carter

STATE OF OREGON } INDIVIDUAL
 County of Klamath } ss. March 18, 1976
 Personally appeared the above named SAM W. CARTER, SR. and VIRGINIA A. CARTER, husband and wife
 and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

Barlene V. Addington
 Notary Public for
 My commission expires: March 21, 1977

STATE OF _____ } CORPORATE
 County of _____ } ss. _____, 19____
 Personally appeared _____ and _____
 who, being duly sworn, each for himself and not one for the other, did say that the former is the _____
 and that the latter is the _____ of _____
 a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of
 said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and
 each of them acknowledged said instrument to be its voluntary act and deed. Before me:

Notary Public for
 My commission expires: _____

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 18th day of
 March, A.D., 1976 at 11:30 o'clock A.M. and duly recorded in Vol. 176
 of _____ on Page 3279.

FEE \$ 0.00

WM. D. MILNE, County Clerk
 By *Harold Dragic* Deputy