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23585

TRUST DEED

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THIS TRUST DEED, made this 28th day of December, 1976, between Keith & Evelyn Caldwell, husband & wife, as Grantor, B.J. Matzen, City Attorney, as Trustee, and City of Klamath Falls, a municipal corporation, as Beneficiary,

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Klamath County, Oregon, described as:

Lot 12, Block 1, Tract 1091, Lynnewood, in the City of Klamath Falls, Klamath County, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, free of all encumbrances except reservations, restrictions, easements and rights-of-way of record and those apparent upon the land.

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of Eight Thousand One Hundred \$800/100ths Dollars, with interest thereon according to the terms of a promissory note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable January 19, 1987.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of said note becomes due and payable. In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the grantor without first having obtained the written consent or approval of the beneficiary, then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

The above described real property is not currently used for agricultural, timber or grazing purposes.

To protect the security of this trust deed, grantor agrees:

1. To protect, preserve and maintain said property in good condition and repair, not to commit or permit any acts which would damage or destroy any building or improvement thereon; not to commit or permit any acts which would damage or destroy any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.

2. To complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all such searches made by the offices or searching agencies as may be deemed desirable by the beneficiary.

4. To provide and continually maintain insurance on the buildings now or hereafter erected on the said premises against loss or damage and such other hazards as the beneficiary may from time to time require, in an amount not less than \$1,000.00 per annum, written in companies acceptable to the beneficiary with loss payable to the latter; all policies of insurance shall be delivered to the beneficiary as soon as insured. The grantor shall fail for any reason to procure any such insurance and to deliver such policies to the beneficiary at least fifteen days prior to the expiration of any policy, the beneficiary may cancel or terminate placed on said buildings, the beneficiary may procure the same and pay the premium thereon. The amount collected under any life or other insurance policy may be applied by the beneficiary upon any indebtedness secured hereby and in such order as the beneficiary may determine; or at option of beneficiary the entire amount so collected, or any part thereof, may be released to grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. To keep said premises free from construction leases and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property but on account of such assessments and other charges become past due or delinquent and promptly deliver record thereof to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, which will then be due and payable to the beneficiary in accordance with the covenants hereof and for such payment, with interest as aforesaid, the property hereinafter described, as well as the grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.

6. To pay all costs and expenses of this trust, including the cost of title examination, as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.

7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee; and in any suit or action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be determined by the trial court; grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.

It is mutually agreed that:

8. In the event that any portion or all of said property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if so elected, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceeding, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, incurred and paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon beneficiary's request.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyance, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may

(a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed; or the lien or charge thereon; (d) reconvey, without warranty, all or any part of the property. The name in any reconveyance may be described as the "person or persons legally entitled thereto" and the recitals therein of any matters or facts shall be conclusive proof of the entitlements thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.

10. Upon any default by grantor hereunder, beneficiary may at any time without notice, either in person, by letter or by a receiver to be appointed by a court, and without regard to the advance of any service for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same to the costs and expenses of operation and collection, including reasonable attorney's fees for any indebtedness secured hereby, and in such order as beneficiary may determine.

11. The entry and upon and after taking possession of said property, the collection of such rents, issues and profits, the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof, attorneys' shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in his performance of any agreement hereunder, the beneficiary may declare all sums secured hereby immediately due and payable. In such an event as the above described real property is currently used for agricultural, timber or grazing purposes, the beneficiary may proceed to foreclose this trust deed in equity as a mortgage in the manner provided by law for mortgage foreclosures. However, if said real property is not currently used, the beneficiary of his election may proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by sale by auction and sale. In the latter event the beneficiary or the trustee shall execute and cause to be recorded his written notice of default and his election to sell the said described real property to satisfy the obligations secured hereby, whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.740 to 86.755.

13. Should the beneficiary elect to foreclose by advertisement and sale then after default at any time prior to five days before the date set by the trustee for the trustee's sale, the grantor or other person so entitled by ORS 86.760, may pay to the beneficiary or his successors in interest, respectively, the entire amount then due under the terms of the trust deed and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of the obligation and trustee's and attorney's fees not exceeding \$100 for each other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default, in which event all foreclosure proceedings shall be discontinued by the trustee.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale. The trustee shall sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The results in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of the payment of the obligation, including the compensation of the trustee and a reasonable amount by trustee, attorney's (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the grantor or to his successor in interest entitled to such surplus.

16. For any reason permitted by law, beneficiary may from time to time appoint a successor or successor to any trustee named herein or to any successor trustee appointed hereunder. Upon the appointment of a successor trustee, the power and duties conferred upon any trustee herein named or appointed hereunder, each such appointment and substitution shall be made by written instrument executed by beneficiary, containing reference to this trust deed and its place of record, which, when recorded in the office of the County Clerk or Recorder of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

17. Trustee neither in the trustee's name, this deed, duly executed and acknowledged is made a public record as a public instrument. This deed is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon, or the United States Title Insurance Company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches, or the United States or any agency thereof.

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The grantor covenants and agrees to and with the beneficiary and those claiming under him, that he is lawfully seized in fee simple of said described real property and has a valid, unencumbered title thereto

and that he will warrant and forever defend the same against all persons whomsoever.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are: (a) primarily for grantor's personal, family, household or agricultural purposes (see Important Notice below), (b) for the payment of taxes or expenses of the property, or (c) for the payment of debts or expenses of the grantor.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

IN WITNESS WHEREOF, said grantor has hereunto set his hand the day and year first above written.

*IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; if warranty (a) is applicable and the beneficiary is a creditor or such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures; for this purpose, if this instrument is to be a FIRST lien to finance the purchase of a dwelling, use Stevens-Ness Form No. 1305 or equivalent; if this instrument is NOT to be a first lien, use Stevens-Ness Form No. 1306, or equivalent. If compliance with the Act not required, disregard this notice. (If the signer of the above is a corporation, use the form of acknowledgment opposite.)

(ORS 93.490)

STATE OF OREGON, County of Klamath, ss.
County of December 28, 1976

Personally appeared the above named, Keith & Evelyn Caldwell, Husband & Wife

and acknowledged the foregoing instrument to be the voluntary act and deed.

Before me,

Notary Public for Oregon 9-19-80

My commission expires:

STATE OF OREGON, County of , ss.

Personally appeared and each for himself and not one for the other, did say that the former is the president and that the latter is the secretary 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 Oregon (OFFICIAL SEAL)

My commission expires:

\$ 8,100.00

Klamath Falls, Oregon

December 28, 1976

I (or if more than one maker) we, jointly and severally, promise to pay to the order of

City of Klamath Falls at 226 S. 5th, Klamath Falls, OR 97601

Eight Thousand One Hundred & 00/100ths

with interest thereon at the rate of 8 1/2 per cent. per annum from December 28, 1976, until paid, principal and interest payable in monthly installments of not less than \$ 100.43 in any one payment; each payment as made shall be applied first to accumulated interest and the balance to principal; the first payment to be made on the 28th day of January, 1977, and a like payment on the 28th day of each month thereafter until

January, 1987, when the whole unpaid balance hereof, if any, shall become due and payable; if any of said

installments is not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. If this note is placed in the hands of an attorney for collection, we promise and agree to pay the reasonable attorney's fees and collection costs of the holder hereof, and if suit or action is filed hereon, also promise to pay (1) holder's reasonable attorney's fees to be fixed by the trial court and (2) if any appeal is taken from any decision of the trial court, such further sum as may be fixed by the appellate court, as the holder's reasonable attorney's fees in the appellate court.

Keith Caldwell
Evelyn Caldwell

FORM No. 607—INSTALLMENT NOTE.

SN Stevens-Ness Law Publishing Co., Portland, Ore.

TRUST DEED

(Form No. 881)
STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

Grantor

Beneficiary

AFTER RECORDING RETURN TO

City of K. Falls
226-205th
city

Fee \$6.00

STATE OF OREGON

County of Klamath, ss.

I certify that the within instrument was received for record on the 30 day of December, 1976, at 4:16 o'clock PM, and recorded in book 20957 on page 20957 or as file/reel number 20957. Record of Mortgages of said County.

Witness my hand and seal of County affixed

Wm. D. Milne

County Clerk Title

By Hazel Drayton Deputy

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