

45312

## TRUST DEED

Vol. 78 Page 5829

THIS TRUST DEED, made this 27th day of March, 1978, between  
**HENRY O. BIERKE AND JEANETTE L. BIERKE, Husband and Wife**

**KLAMATH FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION**, a corporation organized and existing under the laws of the United States, as beneficiary.

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

**Lot 9, Block 8, FAIRVIEW ADDITION NO. 2 TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon.**

AND FURTHER RECITED THAT  
 KLAMATH FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION  
 THE BENEFICIARY, DATED THIS TWENTY-FIFTH DAY OF MARCH  
 IN THE YEAR OF ONE THOUSAND NINETEEN SEVEN HUNDRED EIGHTY-EIGHT

M.W. D. WITNESS

CHIEF

MURKIN, HARRIS &amp; CO., ATTORNEYS FOR THE BENEFICIARY

RECEIVED IN THE OFFICE OF THE CLERK OF THE CITY OF KLAMATH  
 ON THIS TWENTY-EIGHTH DAY OF MARCH, 1978  
 AT THE REQUEST OF THE CLERK  
 TO BE FILED  
 INDEXED  
 SERIALIZED  
 FILED  
 10:28 A.M.  
 1978  
 2858

RECEIVED IN THE OFFICE OF THE CLERK OF THE CITY OF KLAMATH  
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which said described real property is not currently used for agricultural, timber or grazing purposes, together with all and singular the appurtenances, tenements, hereditaments, rents, issues, profits, water rights, easements or privileges now or hereafter belonging to, derived from or in anywise pertaining to the above described premises, and all plumbing, lighting, heating, ventilation, air-conditioning, refrigerating, watering and irrigation apparatus, equipment and fixtures, together with all awnings, venetian blinds, floor covering in place such as wall-to-wall carpeting and linoleum, shades and built-in appliances now or hereof installed in or used in connection with the above described premises, including all interest therein which the grantor has or may hereafter acquire for the purpose of securing performance of each agreement of the grantor herein contained and the payment of the sum of **FOURTEEN THOUSAND AND FORTY ONE HUNDRED AND FORTY SEVEN DOLLARS**, with interest thereon according to the terms of a promissory note of even date herewith, payable to the beneficiary or order and made by the grantor, principal and interest being payable in monthly installments of **\$117.50** commencing

May 25, 1978.

This trust deed shall further secure the payment of such additional money, if any, as may be loaned hereafter by the beneficiary to the grantor or others having an interest in the above described property, as may be evidenced by a note or notes. If the indebtedness secured by this trust deed is evidenced by more than one note, the beneficiary may credit payments received by it upon any of said notes or part of any payment on one note and part on another, as the beneficiary may elect.

The grantor hereby covenants to and with the trustee and the beneficiary that the said premises and property conveyed by this trust deed are free and clear of all encumbrances and that the grantor will and his heirs, executors and administrators shall warrant and defend his said title thereto against the claims of all persons whomsoever, and shall indemnify the trustee in full for any loss or damage sustained by him in defending the same, and shall pay his expenses in connection therewith.

The grantor covenants and agrees to pay said note according to the terms and conditions set forth in the note, and to keep all buildings, property and improvements thereon, and to pay all taxes, assessments and other charges levied against said property. To keep said property free from all encumbrances, having pre-  
 cedence over this trust deed; to complete all buildings in course of construction or hereafter constructed on said premises within six months from the date hereof or the date construction is hereafter commenced; to repair and restore promptly and in a good workmanlike manner any building or improvement on said property which may be destroyed or damaged and pay, when due, all costs incurred therefor; to allow beneficiary to inspect said property at all times during construction; to replace any work or materials unsatisfactory to beneficiary within fifteen days after written notice from the beneficiary of such fact; not to remove or destroy any building or improvement now or hereafter constructed on said premises; to keep all buildings and improvements now or hereafter erected upon said property in good repair and to commit or suffer no waste of said premises; to keep all buildings, property and improvements now or hereafter erected on said premises continuously insured against loss by fire or such other hazards as the beneficiary may, from time to time, require in a sum not less than the original principal sum of the note or obligation secured by this trust deed, in a company or companies acceptable to the beneficiary, and to deliver the original policy of insurance in correct form and with premium paid, to the principal place of business of the beneficiary, at least fifteen days prior to the effective date of any such policy of insurance. If said policy of insurance is not so tendered, the beneficiary may in its own discretion obtain insurance for the benefit of the beneficiary which insurance shall be non-cancellable by the grantor during the full term of the policy thus obtained.

In order to provide regularly for the prompt payment of said taxes, assessments and other charges and insurance premiums, the grantor agrees to pay to the beneficiary, together with and in addition to the monthly payment of principal and interest payable under the terms of the note or obligation secured hereby, an amount equal to one-twelfth (1/12th) of the taxes, assessments and other charges due and payable with respect to said property within each succeeding twelve months, and also one-thirtieth (1/30th) of the insurance premiums obtained.

3. In order to provide regularly for the prompt payment of said taxes, assessments and other charges and insurance premiums, the grantor agrees to pay to the beneficiary, together with and in addition to the monthly payment of principal and interest payable under the terms of the note or obligation secured hereby, an amount equal to one-twelfth (1/12th) of the taxes, assessments and other charges due and payable with respect to said property within each succeeding three years while this trust deed remains in effect, as estimated and directed by the beneficiary, for several purposes thereof and shall thereupon be charged to the principal of the note or, at the option of the beneficiary, the sum so added shall be held by the beneficiary in trust as a reserve account, without interest, to pay said premiums, taxes, assessments and other charges when they may become due and payable, provided that the beneficiary may, at any time, demand payment of the principal of the note or obligation secured hereby, and the grantor shall then pay the same to the beneficiary.

4. While the grantor is to pay any and all taxes, assessments and other charges levied or assessed against said property, or any part thereof, before the same begin to bear interest, and also to pay premiums on all insurance policies upon said property, such premiums are to be made through the beneficiary, as aforesaid. The grantor hereby authorizes the beneficiary to pay said property in the amounts as shown by the statements thereof furnished by the collector of such taxes, assessments and other charges, and to pay the insurance premiums in the amounts shown on the statements thereof furnished by the insurance carriers or their representatives, and to charge said sums to the principal of the loan or to withdraw the sums which may be required from the reserve account, if any, established for that purpose. The grantor agrees to make payment to hold the beneficiary responsible for failure to pay the same when written notice is given to the grantor.

5. In the event of default, any balance remaining in the reserve account shall be credited to the indebtedness. If the reserve account for taxes, assessments, insurance premiums as they become due, the grantor shall pay the deficit to the beneficiary upon demand, and if not paid within ten days after such demand, the beneficiary may, at its option add the amount of such deficit to the principal of the obligation secured hereby.

6. Should the grantor fail to keep any of the foregoing covenants, then the beneficiary may at its option carry out the same, and all its expenditures therefor shall draw interest at the rate specified in the note, shall be repayable by the grantor on demand and shall be secured by the lien of this trust deed. In this connection, the beneficiary shall have the right in its discretion to complete any improvements made on said premises and also to make such repairs to said property as in its sole discretion it may deem necessary or advisable.

The grantor further agrees to comply with all laws, ordinances, regulations, fees and expenses of this trust, including the cost of title search, as well as to enforcing this obligation, and trustee's and attorney's fees actually incurred by the grantor or the rights or powers of the beneficiary or trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum to be fixed by the court, in any such action or proceeding in which the beneficiary or trustee may appear and in any suit brought by beneficiary to foreclose this deed, and all said sums shall be secured by this trust deed.

The beneficiary will furnish to the grantor on written request therefor an annual statement of account but shall not be obligated or required to furnish any further statements of account.

7. It is mutually agreed that:

1. In the event that any portion or all of said property shall be taken under the right of eminent domain or condemnation, the beneficiary shall have the right to commence to prosecute in its own name, appear in or defend any action or proceedings, or to make any compromise or settlement in connection with such taking and, if so elected, to require that all or any portion of the money so payable as compensation for such taking, which are in excess of the amount so incurred by the grantor in such proceedings, shall be paid to the beneficiary fees necessarily paid or incurred by the beneficiary. In such proceedings, and the same to be applied upon the indebtedness secured hereby; and the grantor agrees to its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon the beneficiary's request.

2. At any time, and from time to time upon written request of the 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, the trustee may (a) consent to the making of any map or plat of said property; (b) join in granting an easement or creating and restriction thereon, or void in any subordination or other agreement affecting this deed or the lien or claim hereof; (d) reconvey, without warranty, all or any part of the property. The grantor in any reconveyance may be described as "the person or persons legally entitled thereto" and the recitals thereto of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services in this paragraph shall be \$3.00.

3. As additional security, grantor hereby assigns to beneficiary during the continuance of these trusts, all rents, issues, royalties and profits of the property affected by this deed and of any personal property located thereon. Until grantor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, grantor shall have the right to collect all such rents, issues, royalties and profits earned prior to default as they become due and payable. Upon any default by the grantor hereunder, grantor may at any time, demand payment of the same to the beneficiary.

4. The entering upon and taking possession of said property, the collection of such rents, issues and profits or 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, as aforesaid, shall not cure or waive any default, or notice of default, hereunder, or invalidate any act done pursuant to such notice.

5. The grantor shall notify beneficiary in writing of any sale or contract for sale of the above described property and furnish beneficiary on a form supplied it with such personal information concerning the purchaser as would ordinarily be required of a new loan application and shall pay beneficiary service charge.

6. Time is of the essence of this instrument; and upon default by the grantor in payment of any indebtedness secured hereby or in performance of any agreement hereinunder, the beneficiary may declare all sums secured hereby immediately due and payable by delivery to the trustee of written notices of default and election to sell the trust property, which notice trustee shall cause to be duly filed for record. Upon delivery of said notice of default and election to sell, the beneficiary shall deposit with the trustee this trust deed and all promissory notes and documents evidencing expenditures secured hereby, whereupon the trustee shall fix the time and place of sale and give notice thereof as then required by law.

7. After default and any time prior to five days before the date set by the trustee for the trustee's sale, the grantor and other persons so privileged, may pay the entire amount due under this trust deed and the obligations secured thereby (including costs and expenses actually incurred in enforcing the terms of the obligation and trustee's and attorney's fees not exceeding \$50.00 each) other than such portion of the principal as would not then be due had no default occurred; and thereby cure the default.

8. After the lapse of such time as may then be required by law following the recording of said notice of default and giving of said notice of sale, the trustee shall sell said property at the time and place fixed by him in said notice of sale, either as a whole or in separate parcels, and in such order as he may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any part of the property by public announcement at such time and place of sale and from time to time thereafter, postpone the sale by public an-

nouncement at the time fixed by the preceding postponement. The trustee shall deliver to the purchaser his deed in form as required by law, conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee but including the grantor and the beneficiary, may purchase at the sale.

9. When the trustee sells pursuant to the powers provided herein, the trustee shall apply the proceeds of the trustee's sale as follows: (1) To the expenses of the sale including the compensation of the trustee, and a reasonable charge by the attorney. (2) To the obligation secured by the trust deed. (3) To all persons having recorded liens subsequent to the interests of the trustee in the trust deed as their interests appear in the order of their priority. (4) The surplus, if any, to the grantor of the trust deed or to his successor in interest entitled to such surplus.

10. For any reason permitted by law, the beneficiary may from time to time appoint a successor or successors to any trustee named herein, or to any successor trustee appointed hereunder. Upon such appointment and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by the 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.

11. Trustee accepts this trust when this deed, duly executed and acknowledged is made a public record as provided by law. The trustee is not obligated to notify any party hereto of pending sale under any other deed of trust as of any action or proceeding in which the grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by the trustee.

12. This deed applies to, insures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "beneficiary" shall mean the holder and owner, including pledgee, of the note 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/or neuter, and the singular number, includes the plural.

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

(SEAL)

STATE OF OREGON  
County of Klamath

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of March

1978, before me, the undersigned a

Notary Public in and for said county and state, personally appeared the within named:

HENRY O. BIERKE AND JEANETTE L. BIERKE Husband and Wife

to me personally known to be the identical individuals named in and who executed the foregoing instrument and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

(SEAL)

Notary Public for Oregon  
My commission expires:

1000.00
Loc No. _____
Grantor _____
TO _____
KLAMATH FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
Beneficiary _____
After Recording Return To: KLAMATH FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION

(DON'T USE THIS  
SPACE: RESERVED  
FOR RECORDING  
LABEL IN COUNT-  
Y WHERE  
USED.)

STATE OF OREGON  
County of Klamath } ss.

I certify that the within instrument was received for record on the 28th day of March, 1978, at 10:58 o'clock A.M. and recorded in book M78 on page 5829 Record of Mortgages of said County.

Witness my hand and seal of County affixed.

Wm. D. Milne

County Clerk

Deputy

Fee \$6.00

ATTORNEY IN FACT  
State of Oregon ss.  
County of Klamath)

Personally appeared Bruce H. Bierke, who, being duly sworn, did say that he is attorney in fact for Henry O. Bierke and Jeannette L. Bierke and that he executed the foregoing instrument by authority of and in behalf of said principals; and that he acknowledged said instrument to be the act and deed of said principals.

Before me:

STATE OF OREGON

Suzie V. Brown  
Notary Public for Oregon  
My Commission Expires: 11-12-78