

A-28622

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## TRUST DEED

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THIS TRUST DEED, made this 15<sup>th</sup> day of July, 1978, between Leonard S. Odgera and Joan D. Odgera, Husband and Wife, as Grantor, and Klamath County Title Company, an Oregon Corporation, as Trustee, and Martin Development Corporation, a California 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 3, Block 7, of Tract No. 1093, Pinecrest, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

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together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise connected with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of **Thirty thousand, one hundred, forty-four and 00/100 Dollars**, with interest at the rate of a promissory note of extra date hereinafter, 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 on **AUGUST 19, 1982**, 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, hereinafter, shall become immediately due and payable. OR HYPOTHECATED FOR OR BY OPERATION OF LAW OR

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

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 remove or demolish any building or improvement thereon;

2. To complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, at any time 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 requires, to join in executing such documents and instruments 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 his expenses made by filing officers or searching agents as may be deemed desirable by the beneficiary;

4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said property against loss or damage by fire and other hazards as the beneficiary may from time to time require, in amounts not less than **\$5,000.00**, written in compliance with the requirements of the Uniform Commercial Code as it may be in effect from time to time, all policies of insurance shall be delivered to the beneficiary, as required, and the grantor shall tell for any reason to procure any such insurance and to deliver such policies to the beneficiary without affecting, however, the cancellation of any policy of insurance now or hereafter placed on said buildings, the beneficiary may procure the same at grantor's expense. The amount collected under any fire or other insurance policy may be applied by beneficiary, upon his bidlessness secured hereby and in such order as beneficiary may direct, to the payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either out of such payment, beneficiary may, at his 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, without waiver of any right arising from breach of any of the covenants herein and for such payments, with interest thereon, the grantor, notwithstanding any provision to the contrary, shall be bound to the beneficiary, except 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;

5. To keep and remain free from construction liens and to pay all aging and unpaid property held by any part of such taxes, assessments and other charges before and due or delinquent and promptly deliver receipt therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either out of such payment, beneficiary may, at his 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, without waiver of any right arising from breach of any of the covenants herein and for such payments, with interest thereon, the grantor notwithstanding any provision to the contrary, shall be bound to the beneficiary, except 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, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the trustee incurred and expended in connection with the administration and trustee, and attorney's fees actually incurred;

7. To appear in and defend any action or proceeding, pertaining to affect the security rights or powers of beneficiary, administratrix and any next of kin or proceeding in which the beneficiary or trustee may appear, including an action for the foreclosure of this debt to pay all costs and expenses, including evidence of title and the beneficiary, or trustee's attorney's fees, the amount of attorney's fees mentioned in this paragraph 7, all taxes shall be paid by the said trustee and to the extent of any unpaid taxes any judgment or decree of the said court, grantor further agrees to pay same on the amount of attorney's fees mentioned in this paragraph 7;

8. As trustee, grantor agrees:

a. In the event that any portion 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 amount received for compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees mentioned in paragraph 7, be paid to beneficiary, and

b. If so elected, to require that all reasonable costs, expenses and attorney's fees mentioned in paragraph 7, be paid to beneficiary, and the balance applied upon the indebtedness, and trustee 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 fee and presentation of this deed and the note for endorsement (in case of full reconveyance, less 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 plan of said property; (b) join in, subscribe to or create any restriction or other agreement affecting this deed or the lien or charge created thereby, 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 recite the date of any matters or facts shall be conclusive proof of the truthfulness 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 agent, by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property, and, part thereof, in its own name sue or otherwise collect the rents, fees, costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as beneficiary may determine.

11. Upon entering upon and taking possession of said property, the beneficiary may collect the rents, fees and profits, of the property, the interest, policies of compensation or awards for any taking or damage of the property, and the application or return thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

12. Upon any default by grantor in payment of any indebtedness secured hereby or in his performance of any agreement herein, the beneficiary may declare all sums secured hereby immediately due and payable. In such an event and if the above described real property is generally used for agricultural, timber or grazing purposes, the beneficiary may proceed to foreclose this trust deed in equity, as a mortgagee, the manner provided by law for mortgage foreclosures. However if said real property is not so currently used, the beneficiary, at his election may proceed to foreclose this trust deed in equity or a mortgage or, instead, the trustee to foreclose this trust deed by advertisement 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, in the state 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 86.745 to 86.795.

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 privileged 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 same, and the obligation and trustee's and attorney's fees not exceeding \$500 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 dismissed 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 may sell said property either in one parcel or in separate parcels and shall sell the parcel or parcels of execution to the highest bidder, or will, 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 recital in the deed of any matter of fact shall be conclusive proof of the truthfulness thereof. Any person, including the trustee, but including the owner and beneficiaries, may withdraw at the sale.

15. When trustee fails pursuant to the powers provided herein, trustee shall apply the proceeds of this payment to (1) the expenses of sale, including compensation of the trustee and a reasonable salary by trustee's attorney, (2) to the satisfaction secured by the trust deed, (3) to all persons having recordable rights subservient to the interest of the trustee in the trust as their interests may appear in the order of their priority and (4) the trustee, if applicable, the amount up to 10% to his successor in interest, subject to the payment of attorney's fees.

16. For any action so permitted by law, beneficiary may have time to file, appear as plaintiff or defendant to any trustee named herein or to any trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties contained upon any trustee herein named or appointed hereunder. Each such appointment and designation shall be made by written instrument executed by beneficiary, containing reference to this trust deed and its place of record, which, when recorded, shall be filed in the office of the County Clerk or Registerer of the county in which the property is situated, which shall constitute proof of proper appointment of the successor trustee.

17. Trustee accepts this trust when this deed is duly executed and acknowledged, and may apply for record 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.

