

38-18755

## TRUST DEED

Vol. 77 Page 13448

68653

THIS TRUST DEED, made this 31 day of MARCH, 19 79, between  
JACK F. KENNERD + EDNA R. KENNERD, N/S BORN D + WIFE  
 TRANSAMERICA TITLE INSURANCE COMPANY, a CALIFORNIA CORPORATION as Trustee, and WELLS FARGO REALTY  
 SERVICES, INC., a CALIFORNIA CORPORATION, TRUSTEE 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 10 in Block 31 of Tract 1184-Oregon Shores-Unit 2-1st Addition as shown on the map filed on November 8,  
 1978 in Volume 21, Page 29 of Maps in the office of the County Recorder of said County.

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereto 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 Forty Six  
THOUSAND + NO/100 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 April 15, 19 90.

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 remove or demolish any building or improvement thereon; not to commit or  
 permit any waste of said property.

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 lien searches made by filing officers or searching agencies 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 premises against loss or damage by fire and such other  
 hazards as the beneficiary may from time to time require in an amount not less than \$  
 50,000, 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; if the grantor shall fail for any reason to  
 procure any such insurance and to deliver said policies to the beneficiary at least  
 fifteen days prior to the expiration 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 any indebtedness secured hereby and in such order as 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 liens and to pay all taxes,  
 assessments and other charges that may be levied or assessed upon or against said  
 property before any part of such taxes, assessments and other charges become past  
 due or delinquent and promptly deliver receipts therefor 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, without waiver of any rights arising from breach of any of  
 the covenants hereof and for such payments, with interest as aforesaid, the property  
 hereinbefore 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, fees and expenses of this trust including the cost of title  
 search as well as the other costs and expenses of the trustee incurred in connection  
 with this obligation.

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, 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 provided, however, in case the suit is  
 between the grantor and the beneficiary or the trustee then the prevailing party shall  
 be entitled to the attorney's fees herein described; the amount of attorney's fees  
 mentioned in this paragraph 7 in all cases shall be fixed by the trial court or by the  
 appellate court if an appeal is taken.

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 it so  
 elects, to require that all or any portion of the money 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  
 proceedings, 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,  
 necessarily 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 thereof; (d) reconvey, without warranty, all or any part of  
 the property. The grantee 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 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 with  
 due notice, either in person, by agent or 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 or any part thereof, in its own name  
 and otherwise collect the rents, issues and profits, including those past due and  
 unpaid, and apply the same, less costs and expenses of operation and collection,  
 including reasonable attorney's fees subject to paragraph 7 hereof upon any  
 indebtedness secured hereby, in such order as beneficiary may determine.

11. 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.

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 and if the above  
 described real property is currently used for agricultural, timber or grazing purposes  
 the beneficiary may proceed to foreclose it as a trust deed in equity, as a mortgage in  
 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 as a mortgage or direct 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 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 86.795.

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 terms of the obligation and trustee's  
 and attorney's fees not exceeding \$50 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 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 recitals 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 sale to payment of (1) the expenses of sale, including the  
 compensation of the trustee and a reasonable charge by trustee's attorney, (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 or its 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 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 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 accepts this trust when this deed, duly executed and acknowledged  
 is made a public record as provided by law. Trustee 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.

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

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

13449

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).

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.

You have the option to void your contract or agreement by notice to the seller if you did not receive a Property Report prepared pursuant to the Rules and Regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, in advance of, or at the time of your signing the contract or agreement. If you received the Property Report less than 48 hours prior to signing the contract or agreement you have the right to revoke the contract or agreement by notice to the seller until midnight of the third business day following the consummation of the transaction. A business day is any calendar day except Sunday, and the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving and Christmas.

\* 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. 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

County of

STATE OF CALIFORNIA,

COUNTY OF Los Angeles } SS.

On 11 April, 1979 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Kerry S. Penn known to me to be the person whose name is subscribed to the within instrument as a witness thereto, who being by me duly sworn, depose and said: That he resides at Los Angeles

he was present and saw Jack F. Kincaid and Edna R. Kincaid personally known to him to be the person described in, and whose name is subscribed to the within and annexed instrument, execute the same; and that affiant subscribed his name thereto as a witness to said execution.

Signature

Gerald E. Green

FOR NOTARY SEAL OR STAMP



OFFICIAL SEAL  
GERALD E. GREEN  
NOTARY PUBLIC - CALIFORNIA  
LOS ANGELES COUNTY  
My comm. expires AUG 25, 1982

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums due under said trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by said trust deed (which are delivered to you herewith together with said trust deed) and to reconvey, without warranty, to the parties designated by the terms of said trust deed the estate now held by you under the same. Mail reconveyance and documents to

DATED: , 19

Beneficiary

Do not lose or destroy this Trust Deed OR THE NOTE which it secures. Both must be delivered to the trustee for cancellation before reconveyance will be made.

## TRUST DEED

Grantor

Beneficiary

Wells Fargo Realty Services Inc.  
572 E. Green Street  
Pasadena, CA 91101  
KAREN STARK  
Trust Services

SPACE RESERVED  
FOR  
RECORDER'S USE

STATE OF OREGON

County of Klamath } SS.

I certify that the within instrument was received for record on the 3th day of June, 19 79, at 10:30 o'clock A.M., and recorded in book 179 on page 13449 or as file/reel number 63653 Record of Mortgages of said County.

Witness my hand and seal of County affixed.

County Clerk

Title

By Gerald E. Green Deputy

Fee \$4.00