

86810

## AMENDED TRUST DEED

Vol. 118 Page 12930

THIS TRUST DEED, made this

10 day of July

CLARENCE H. NEWHALL  
TRANSAMERICA TITLE INSURANCE COMPANY  
SHIRLEY F. HILYARD

and \_\_\_\_\_, 1980, between \_\_\_\_\_, as Grantor, \_\_\_\_\_, as Trustee, \_\_\_\_\_, as Beneficiary, Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Klamath County, Oregon, described as:

A parcel of land situated in the East  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of Section 12, Township 39, South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the most Westerly corner of Lot 1, Block 1, HILYARD TRACTS, as the same is shown and recorded in official Klamath County Records, thence from said point of beginning South  $37^{\circ}33'$  East along the Westerly line of said Lot 1, Block 1, HILYARD TRACTS, 62.80 feet more or less, thence South  $05^{\circ}33'$  East along the Westerly line of said Lot 1, Block 1, HILYARD TRACTS, 74.73 feet more or less to the most Southerly corner of that certain parcel described in Vol. M-79, page 10239 Microfilm Records of Klamath County, Oregon; thence South  $43^{\circ}55'$  West along the Southwesterly extension of the Southerly line of said parcel described in Vol. M-79, page 10239, 78.94 feet to a point which is located 60 feet thence North  $05^{\circ}33'$  West parallel to the Westerly line of said Lot 1, Block 1, HILYARD TRACTS, parallel to the Westerly line of said Lot 1, Block 1, and 60 feet Westerly measured at right angles, 108.83 feet more or less, thence North  $37^{\circ}33'$  West (Legal description continued on Exhibit "1" attached hereto and made a part hereof) 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 Ten Thousand Four Hundred No/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 \_\_\_\_\_ per terms on note \_\_\_\_\_, 19 \_\_\_\_\_.

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.

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

1. To protect the security of this trust deed, grantor agrees: and repair; not to remove or demolish said property in good condition not to commit or permit any waste of said property;

2. To complete or restore promptly and in good 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, 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 and such other hazards on the premises against loss or damage by fire and other hazards, the beneficiary may from time to time require, in policies acceptable to the beneficiary, with loss payable to the beneficiary; all deliver said policy to the beneficiary, as soon as issued; and if the beneficiary may procure the same at grantor's expense; 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, 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 due and payable, and to 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 hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments shall be bound to the extent described, and that they are bound for the payment of the obligation herein described, and the payment thereof shall be immediately due and payable with out notice, and the payment thereof shall, at the option of the beneficiary, 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 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, or in any suit, action or proceeding in which the beneficiary or trustee may appear, 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 fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, grantor further agrees to pay such sums as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.

8. It is mutually agreed that: 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 monies payable as compensation for such taking, which are in excess of the monies payable to grantor in such proceedings, shall be paid to beneficiary and not to 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 to execute such instruments as shall be necessary in obtaining such compensation, promptly upon beneficiary's request in obtaining such compensation.

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 reconveyances, 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 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 without 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 or otherwise collect the proceeds and profits, including those past due and unpaid, and apply the same, less its fees upon any indebtedness secured hereby, and 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 the proceeds of fire and other 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 this 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 may proceed to foreclose this trust deed in law for mortgage foreclosure, and the beneficiary's election to foreclose shall be recorded in the public records of the county or counties in which the property is located, and the trustee shall execute and deliver to the beneficiary a written notice of default and his election to sell the property, and the trustee shall fix the time and place of sale, give notice thereof as 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 to foreclose 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 debt of the obligation and trustee's and attorney's fees not exceeding \$50 each) or 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, 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 the principal of the debt and interest subsequent to the date 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 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 is duly executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto 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, 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.

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.

This Trust Deed is an amendment of Trust Deed dated May 4, 1979, recorded in Vol. M-79, page 10241 Records of Klamath County, Oregon, executed to include additional real property.

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 an organization, or (even if grantor is a natural person) are for business or commercial purposes other than agricultural purposes.

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

Personally appeared the above named

Clarence H. Newhall

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

(OFFICIAL SEAL)

Before me, Donna K. Mateson  
Notary Public for Oregon  
My Commission Expires: 1/24/84

STATE OF OREGON, County of \_\_\_\_\_ ) ss.

Personally appeared \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_, who, being duly sworn, 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.

Notary Public for Oregon  
My commission expires: \_\_\_\_\_

(OFFICIAL SEAL)

REQUEST FOR FULL RECONVEYANCE

TO: The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by 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\_\_\_\_, at \_\_\_\_\_, Oregon. I, \_\_\_\_\_, Notary Public for Oregon, do hereby certify that the foregoing instrument was received for record on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and recorded in book \_\_\_\_\_ on page \_\_\_\_\_ or as file/reel number \_\_\_\_\_ Record of Mortgages of said County. Witness my hand and seal of County affixed.

TRUST DEED

2000 31.33 (FORM No. 881-1)  
212 STEVENS-NESS LAW FIRM, CO., PORTLAND, ORE. 97201  
GRANTOR: \_\_\_\_\_  
BENEFICIARY: \_\_\_\_\_

AFTER RECORDING RETURN TO

STATE OF OREGON ) ss.  
County of \_\_\_\_\_  
I certify that the within instrument was received for record on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and recorded in book \_\_\_\_\_ on page \_\_\_\_\_ or as file/reel number \_\_\_\_\_ Record of Mortgages of said County. Witness my hand and seal of County affixed.

SPACE RESERVED FOR RECORDER'S USE

INITIALED

By \_\_\_\_\_ Deputy

right angles 58.35 feet more or less to a point that is located South 64°27' West and the Southwesterly extension of the Northerly line of said Lot 1, Block 1, HILYARD TRACTS, thence North 64° 27' East 61.34 feet more or less to the point of beginning.

TOGETHER WITH the following parcel of real property, to-wit:

Commencing at the most Northerly corner of Lot 1 in Block 1, of HILYARD TRACTS, according to the duly recorded plat thereof, thence Southeasterly along the North-easterly line of said lot 1, 105.5 feet; thence at right angles 100 feet, more or less, to the Westerly line of said Lot 1, thence following said Westerly line of said Lot 1 in a Northwesterly direction 125 feet, more or less, to the most Northwesterly corner of said Lot 1, thence Northeasterly on said lot line 38.2 feet, more or less, to the place of beginning. SAVING AND EXCEPTING THEREFROM that portion conveyed to State of Oregon in Deed Vol. M-71, page 9890, Microfilm Records of Klamath County, Oregon.

" Grantor may remove any structures on said described property without written consent from the Beneficiary and without breach of this security instrument."

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record ~~EXHIBIT~~

this 11th day of July A. D. 1980 at 4:35 o'clock P. M., on

duly recorded in Vol. M80, of Mortgages on Page 12930

Wm D. MILNE, County Clk

By Bernetha J. DeLoach

Fee \$10.50

EXHIBIT "1"

Return To:

GIACOMINI, JONES & ASSOCIATES  
ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION  
635 MAIN STREET  
KLAMATH FALLS, OREGON 97601