

93299

FIRST TRUST DEED

Vol. 78 Page 23438

THIS TRUST DEED, made this 28th day of November, 1980, between AMERICAN CARE CENTERS-OREGON, INC. (an Oregon corporation)

as Grantor, KLAMATH COUNTY TITLE COMPANY, as Trustee, and RICHARD O. DILLING and NELLIE DILLING, 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:

Parcels 1, 2 and 3. See Exhibit A attached hereto and made a part hereof for description of said Parcels.

"Note" as used herein means three separate promissory notes, all of even date, all payable to Richard O. Dilling and Nellie Dilling jointly. The indebtedness evidenced by said three notes equals the sum typed below. The notes are due in 1982, 1990 and 1990.

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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 \$30,854.09, \$202,965.62, and \$78,005.20

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 see above

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 80% of insurable value. 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 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, 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 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 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 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 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 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. 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 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 sue or 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 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 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 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 the amounts provided by law) 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 or the time to which said sale may be postponed as provided by law. 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 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, 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.

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, the United States or any agency thereof, or an escrow agent licensed under ORS 696.505 to 696.585.

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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 except mortgage recorded May 28, 1963 Volume 217 page 378 assigned to Country Life Ins. Co., mortgage recorded May 7, 1968 Volume M-68 page 4141 and mortgage recorded July 30, 1969 Volume M-69 page 6613, both held by First Federal Savings and Loan Association of Klamath Falls, and that he will warrant and forever defend the same against all persons whomsoever.

Grantor reserves the right to transfer Parcel 1 to Americana Leisure Estates, Inc.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are:

(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 as 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, or is not to finance the purchase of a dwelling use Stevens-Ness Form No. 1306, or equivalent. If compliance with the Act is not required, disregard this notice.

(If the signer of the above is a corporation, use the form of acknowledgment opposite.)

AMERICAN CARE CENTERS-OREGON, INC.

By Bruce B. Boldt
Bruce B. Boldt, President

STATE OF OREGON,

County of _____ ss.

Personally appeared the above named _____, 19____

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

(OFFICIAL SEAL)

Before me:

Notary Public for Oregon

My commission expires:

(ORS 93.490)

STATE OF OREGON, County of Multnomah ss.

Personally appeared Bruce B. Boldt and _____, 1980

who, ~~each~~ being first he is the president of ~~AMERICAN CARE CENTERS-OREGON, INC.~~ AMERICAN CARE CENTERS-OREGON, INC.

a corporation, and that the instrument was signed ~~and acknowledged~~ in behalf of said corporation by authority of its board of directors; and ~~and~~ acknowledged said instrument to be its voluntary act and deed.

Before me:

Notary Public for Oregon

My commission expires: FEB. 15, 1983

(OFFICIAL SEAL)

REQUEST FOR FULL RECONVEYANCE

To be used only when obligations have been paid.

TO: _____, Trustee

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____

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

(FORM No. 881)

STEVENS-NESS L.W. PUB. CO., PORTLAND, ORE.

AMERICAN CARE CENTERS-OREGON, INC.

INC.

Grantor

RICHARD O. DILLING and

NELLIE DILLING

Beneficiary

SPACE RESERVED
FOR
RECORDER'S USE

AFTER RECORDING RETURN TO
Swire & Riebe
770 Pittock Block
Portland, Oregon 97205

J. Anthony Beacomini
635 Main
Klamath Falls

STATE OF OREGON,
County of _____ ss.

I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book/reel/volume No. _____ on page _____ or as document/fee/file/instrument/microfilm No. _____ Record of Mortgages of said County. Witness my hand and seal of County affixed.

NAME _____ TITLE _____
By _____ Deputy

Exhibit A to First Trust Deed

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Grantor : American Care Centers-Oregon, Inc.
(An Oregon Corporation)
Beneficiary: Richard O. Dilling and Nellie Dilling

PARCEL 1

(Ponderosa Apartments)

All the following described real property situated in
Klamath County, Oregon:

A parcel of land situate in the South half of the
Southeast quarter of the Southeast quarter of Section 28
Township 38 South, Range 9 East of the Willamette Meridian,
more particularly described as follows:

Commencing at a 5/8 inch iron pin marking the Southwest
corner of the SE 1/4 SE 1/4 of said section 28; thence
South 89°30' East along the South line of said Section 28
a distance of 330.60 feet; thence North 0°49'30" East a
distance of 35.20 feet; thence South 89°50' East a dis-
tance of 355.20 feet; thence North 0°49'10" East a dis-
tance of 345.03 feet to a 1/2 inch iron pipe marking the
true point of beginning of this description; thence con-
tinuing North 0°49'10" East a distance of 284.0 feet, more
or less to a point on the North line of the S 1/2 SE 1/4
SE 1/4 of said Section 28; thence North 89°17'30" West
along said North line, a distance of 684.58 feet to the
Northwest corner of said S 1/2 SE 1/4 SE 1/4, said point
being in the East line of Williams Avenue as shown on the
plat of Dixon Addition to the City of Klamath Falls, and
is also the Northwest corner of property conveyed by Virgil
E. Cumbo, et al, to Ponderosa, Inc., by Deed Volume 344 page
193, records of Klamath County, Oregon; thence South 1°09'
West along the West line of said SE 1/4 SE 1/4 and the East
line of Williams Avenue, a distance of 334.42 feet, more or
less, to the Northwest corner of the SW 1/4 SW 1/4 SE 1/4 SE 1/4
of said Section 28; thence South 89°30' East along the North
line of said SW 1/4 SW 1/4 SE 1/4 SE 1/4 a distance of 330.24
feet; thence North 0°49'30" East a distance of 46.21 feet to a
1/2 inch iron pipe; thence South 89°50'20" East a distance of
355.03 feet, more or less, to the point of beginning.

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PARCEL 2

(Ponderosa Nursing Home)

All the following described real property situated in Klamath County, Oregon:

A portion of Section 28 Township 38 South, Range 9 E.W.M., and more particularly described as follows: From a point at the intersection of the center lines of Williams Avenue and Main Street, of the City of Klamath Falls, Oregon, which point is also the Southwest corner of the SE 1/4 SE 1/4 Section 28 Township 38 South, Range 9 E.W.M., thence South 89°30' East, along the Section line common to Section 28 and 33 a distance of 330.0 feet; thence North 1°09' East a distance of 35.0 feet to an iron pin which is the true point of beginning; thence North 1°09' East a distance of 345.0 feet to an iron pin; thence South 89°30' East a distance of 355.08 feet to an iron pin; thence South 1°09' West a distance of 345.0 feet to an iron pin; thence North 89°30' West a distance of 355.08 feet, more or less, to the true point of beginning.

PARCEL 3

(Washburn Manor)

All the following described real property situated in Klamath County, Oregon:

A tract of land situated in Tract 40C, Enterprise Tracts, in the SW 1/4 NW 1/4, Section 34, Township 38 South, Range 9 E.W.M., more particularly described as follows:

Beginning at a one-half inch iron pin on the Easterly right of way line of Washburn Way, said point being North 00°20'00" East along the centerline of Washburn Way and along the West line of said Section 34 a distance of 332.19 feet and South

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89°33'03" East a distance of 30.00 feet from the 5/8 inch iron pin marking the Westerly quarter corner of said Section 34; thence North 00°20'00" East along the Easterly right of way line of Washburn Way a distance of 285.00 feet to a one-half inch iron pin; thence South 89°33'03" East parallel with the North line of "Mills Gardens" subdivision a distance of 472.43 feet to a one-half inch iron pin; thence continuing South 89°33'03" East a distance of 29 feet, more or less, to the Westerly right of way line of the U.S.B.R. "A" Canal; thence Southeasterly along said Westerly line to the North line of "Mills Gardens" subdivision; thence North 89°33'03" West along the Northerly line of "Mills Gardens" subdivision (S. 89°45' W. by said subdivision plat) a distance of 20.96 feet, more or less, to a two inch iron pipe; thence continuing North 89°33'03" West along said subdivision line a distance of 606.40 feet to the point of beginning.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County Title Co.

This 3rd day of December A. D. 1980 at 9:11 o'clock AM., and

duly recorded in Vol. 480, of Mortgages on Page 23438

Wm D. MILNE, County Clerk
By Bernetha J. Letoch

Fee \$17.50