

TN-1

94610

TRUST DEED

Vol. 781 Page

474

THIS TRUST DEED, made this 6th day of January, 1981, between PETER KIRK and REBECCA KIRK, husband and wife

as Grantor, TRANSAMERICA TITLE INSURANCE COMPANY, FRANK M. PEDERSEN

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:

Lots 15 and 16, Block 20, INDUSTRIAL ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon.

JAN 12 1981

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 TWELVE THOUSAND FIVE HUNDRED AND NO/100s

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 January 1, 1991.

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, 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, nor 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 and such other hazards as the beneficiary may require, from time to time, in an amount not less than \$100,000, written in 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 of any such insurance secured hereby and in such order as beneficiary may determine, or at option of beneficiary, the entire amount so secured, 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 all 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 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; hereafter, 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 the beneficiary shall be immediately due and payable hereunder notice, and the beneficiary 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 evidence of title of this deed, to pay all costs and expenses, including attorney's fees, 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.

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 to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary, paid or 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 expenses 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 thereon; (d) reconvey, without warranty, all or any part of the property. The grantor, in any reconveyance may be described as the "persons" legally entitled thereto, and the recitals therein of any matters or facts shall be conclusive proof of the truthness 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, and 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 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 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 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 the amount 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 deeded as their interest 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 conveyance trustee appointed hereunder. Upon such appointment, and without 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 in 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.

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.

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.

Peter Kirk
Rebecca Kirk

STATE OF OREGON, County of Klamath, ss.
January 12, 1981.
Personally appeared the above named Peter Kirk and Rebecca Kirk, husband and wife.

and acknowledged the foregoing instrument to be their voluntary act and deed.
Before me, the undersigned authority, on this day personally appeared Peter Kirk and Rebecca Kirk, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

My commission expires 11/28/82.

REQUEST FOR FULL RECONVEYANCE

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 [blank] at [blank].

DATED: 1981 Jan 12.

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 LAW FIRM, PORTLAND, ORE. 50

Grantor: *Peter Kirk and Rebecca Kirk*

Beneficiary: *Bank of America*

DATE AFTER RECORDING RETURN TO: *TA Branch*

STATE OF OREGON, County of Klamath, ss.
I certify that the within instrument was received for record on the 12th day of January, 1981, at 10:53 o'clock A.M., and recorded in book/reel/volume No. M81 on page 474 or as document/fee/file/instrument/microfilm No. 94610. Record of Mortgages of said County.

Witness my hand and seal of
Evelyn Biehn County Clerk
By *Beretha [Signature]* Deputy

Fee \$7.00