

K-35690

8/82 JEM;ASD;bj

16400

Recording Requested by and
When Recorded Mail to:

James E. McCobb P.C.
P.O. Box 5050
Klamath Falls, OR 97601

Vol. 1182 Page 13783

CONSTRUCTION DEED OF TRUST
ASSIGNMENT OF RENTS AND
SECURITY AGREEMENT

THIS DEED OF TRUST is being executed by THOMAS J. SHAW, (the "Trustor"), who is the owner of the real property described in the attached Exhibit A, to Klamath County Title Company, a corporation (the "Trustee"), in favor of Robert P. Ellingson III, Howard Parnell and James E. McCobb, Trustees of the TKR Trust (the "Beneficiary").

The Beneficiary is making a loan to the Trustor in the amount of \$250,000 (the "Loan"). The Loan will be advanced from time to time under a Construction Loan Agreement between the Trustor and the Beneficiary.

In consideration of the Loan, the Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession as provided below, all of its present and future estate, right, title and interest in and to the following described property (the "Mortgaged Property"):

(A) The real property (the "Property") described in the attached Exhibit A which is incorporated into this Deed of Trust by reference, and all minerals, oil and gas on the property, as well as all development rights, air rights, water and water rights relating to the property.

(B) All present and future structures, buildings, improvements, appurtenances and fixtures of any kind on the property, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the property, it being intended and agreed that all such items will be considered to be a part of the real property conveyed by this Deed of Trust, whether or not attached or affixed to the property (the "Improvements").

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of Trust ("Future Advances"), including all extensions, renewals and modifications of any Future Advances.

(5) The payment and performance of the Trustor's obligations under the Construction Loan Agreement referred to above and under all other present and future agreements executed by the Trustor in favor of the Beneficiary and relating to the Note.

ARTICLE I

COVENANTS OF TRUSTOR

1.1. Payment of the Note: Trustor agrees to pay and perform all indebtedness and obligations that are secured by this Deed of Trust in accordance with their terms.

1.2. Warranty of Title: Trustor warrants that he holds good and merchantable title to the property subject to no liens or encumbrances other than those set forth on Exhibit B hereto. Trustor covenants with Beneficiary that it will defend Beneficiary's and Trustee's rights hereunder against the claims and demands of all persons.

1.3. Use of the Trust Property: Trustor covenants and warrants that the property is not currently used for agricultural, timber or grazing purposes. Trustor further covenants and warrants that the current use of the property is in compliance with all laws, ordinances and regulations of all governmental authorities.

1.4. Taxes and Assessments; Liens and Claims: The Trustor agrees to pay when due all taxes and assessments which are or may become a lien on the Mortgaged Property or which are assessed against the Mortgaged Property or its rents, royalties, profits and income. The Trustor also agrees to pay when due all lawful claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Mortgaged Property, subject to any provisions of the Construction Loan Agreement referred to above permitting the Trustor to contest any such claims or demands.

1.5. Insurance:

1.5.1. Property and Liability Insurance: Trustor agrees to maintain in force on the Mortgaged Property hazard insurance and public liability insurance. The insurance policies must be approved by the Beneficiary. Beneficiary shall be named as an additional insured on the public liability insurance, and

such insurance shall be primary noncontributing, in the event of loss, with any other insurance Beneficiary may carry. The hazard insurance policy must contain a standard mortgagee clause making all losses payable to the Beneficiary. The hazard insurance policy, together with receipts for the payment of premiums, is to be delivered to and held by the Beneficiary. All renewal and replacement policies must be delivered to the Beneficiary at least ten days before the expiration of the old policies.

1.5.2. Notice of Loss: In the event of loss, Trustor shall immediately notify Beneficiary, which may make proof of loss if it is not made promptly by Grantor.

1.6 Insurance Proceeds, Causes of Action, Claims, Compensation, Awards, and Recoveries: All insurance proceeds on the Mortgaged Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Mortgaged Property or for any damage or injury to it, are hereby assigned to and shall be paid to the Beneficiary. The Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may join with the Trustor in adjusting any loss covered by insurance. The Beneficiary will apply any sums received by it under this paragraph first to the payment of all of its costs and expenses incurred in obtaining those sums, and then, in its discretion and without regard to the adequacy of its security, to the payment of the indebtedness and obligations secured by this Deed of Trust or to the Trustor for restoration or repair of the Mortgaged Property.

1.7. Rents, Revenues, Income and Profits: All of the existing and future rents, revenues, income and profits of the Mortgaged Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Beneficiary. However, until the Trustor is in default under this Deed of Trust, the Trustor will have a license to collect and receive those rents, royalties, income and profits. Upon any default by the Trustor, the Beneficiary may terminate the Trustor's license in its discretion at any time without notice to the Trustor and may thereafter collect the rents, royalties, income and profits.

1.7.1. Leases and Occupancy Agreements: If required by the Beneficiary, the Trustor will not execute any leases or occupancy agreements affecting any of the Mortgaged Property except on a form approved by the Beneficiary.

1.7.2. Prepayments of Rent; Modification of Agreements: Without the prior written consent of the Beneficiary, the Trustor shall not accept prepayments of rent exceeding one month under any leases or occupancy agreements affecting any of the Mortgaged Property, nor modify or amend any such leases or occupancy agreements, nor in any manner impair the Beneficiary's interest in the rents, royalties, income and profits of the Mortgaged Property.

1.8. Transfer of Interest: Without the prior written consent of the Beneficiary, the Trustor shall not encumber any interest in the Mortgaged Property or sell, contract to sell, lease with option to purchase, or otherwise transfer any interest in the Mortgaged Property.

1.9. Waste; Duty to Maintain; Removal of Improvements; and Personal Property: The Trustor will not commit any waste on the Mortgaged Property or take any actions that might invalidate any insurance carried on the Mortgaged Property. The Trustor will maintain the Mortgaged Property in good condition and repair. No Improvements may be removed, demolished or materially altered without the prior written consent of the Beneficiary. No personal property in which the Beneficiary has a security interest may be removed from the Mortgaged Property unless it is immediately replaced by similar property of at least equivalent value on which the Beneficiary will immediately have a valid first lien and security interest.

1.10. Security Agreement: This Deed of Trust constitutes a Security Agreement with respect to all personal property in which Beneficiary is granted a security interest thereunder, and Beneficiary shall have all of the rights and remedies of a secured party under the Oregon Uniform Commercial Code, as well as all other rights and remedies available at law or in equity.

ARTICLE II

EVENTS OF DEFAULT

The Trustor will be in default under this Deed of Trust if:

2.1. Non Payment: The Trustor fails to make any payment required by the Note or any Future Advances, and does not cure that failure within ten days after written notice from the Beneficiary.

2.2. Breach of Other Covenants: The Trustor fails to perform any other covenant contained in this Deed of Trust and does not cure that failure within the period of time, if any, that the Beneficiary may elect in its discretion to grant in writing to the Trustor to cure that failure.

2.3. Bankruptcy and Debtor Relief: The Trustor files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor relief under any present or future law relating to bankruptcy or debtor relief, or such a petition is filed against the Trustor, and the Trustor does not oppose that filing or the petition is not dismissed within sixty days after filing, or the Trustor makes an assignment for the benefit of its creditors.

2.4. Breach of Other Agreement: A default occurs under any agreement which guarantees any part of the indebtedness or obligations secured by this Deed of Trust.

2.5. Misinformation: Any representation or disclosure made to the Beneficiary by the Trustor of any indebtedness or obligations secured by this Deed of Trust proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Deed of Trust.

ARTICLE III

REMEDIES

3.1. If the Trustor is in default, the Beneficiary may, at its option, and without notice to or demand upon the Trustor:

3.1.1. Acceleration: Declare any or all indebtedness secured by this Deed of Trust to be due and payable immediately.

3.1.2. Possession: Enter onto the Mortgaged Property in person or by agent or by court appointed receiver, and take any and all steps which may be desirable in the Beneficiary's judgment to complete any unfinished construction and to manage and operate the Mortgaged Property, and the Beneficiary may apply any rents, royalties, income or profits collected against the indebtedness secured by this Deed of Trust without in any way curing or waiving any default of the Trustor.

3.1.3. Foreclosure: Bring an action to foreclose this Deed of Trust or to enforce its provisions or any of the indebtedness or obligations secured by this Deed of Trust.

3.1.4. Power of Sale: Cause any or all of the Mortgaged Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.

3.2. Sale of Mortgaged Property: For any sale under the power of sale granted by this Deed of Trust, the Beneficiary or the Trustee must record and give all notices required by law and then, upon the expiration of such time as is required by law, the Trustee may sell the Mortgaged property upon any terms and conditions specified by the Beneficiary and permitted by applicable law. Any person, including the Trustor, the Trustee and the Beneficiary, may purchase at any sale.

3.3. Proceeds of Sale: The proceeds of any sale under this Deed of Trust will be applied in the following manner:

3.3.1. Costs and Expenses: Payment of the costs and expenses of the sale, including but not limited to Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Trustee, together with interest at the rate of ten percent per annum on all advances made by the Trustee.

3.3.2. Sums Expended by Beneficiary: Payment of all sums expended by the Beneficiary under the terms of this Deed of Trust and not yet repaid, together with interest on such sums at the rate of ten percent per annum.

3.3.3. Indebtedness: Payment of the indebtedness and obligations of the Trustor secured by this Deed of Trust in any order that the Beneficiary chooses.

3.3.4. Remainder: The remainder, if any, to the person or persons legally entitled to it.

ARTICLE IV

GENERAL PROVISIONS

4.1. Notice: All notices given under this Deed of Trust must be in writing and will be effectively served upon personal delivery or, if mailed, no later than 48 hours after deposit in first class or certified United States mail, sent to the Beneficiary at its address appearing in the recording information block on the front page of this Deed of Trust; provided that any notice pursuant to exercise of the Trustee's power of

sale in the event of default shall be sufficient if such notice complies with all provisions of Oregon law applicable to exercise of such powers of sale. Any party may by notice to the others designate a different address.

4.2. Inspection: The Beneficiary may at any reasonable times enter upon and inspect the Mortgaged Property in person or by agent.

4.3. Reconveyance: Upon the payment in full of all sums secured by this Deed of Trust, the Beneficiary agrees to request the Trustee to reconvey the Mortgaged Property, and upon payment of its fees and all other sums owing to it under this Deed of Trust, the Trustee will reconvey the Mortgaged Property without warranty to the person or persons legally entitled to it.

4.4. Terms: The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Mortgaged Property, and the term "Beneficiary" includes the original Beneficiary and also any future owner or holder, including pledgees and participants, of the Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Deed of Trust are for convenience only and do not limit its provisions.

4.5. Applicable law: This Deed of Trust will be governed by Oregon law.

4.6. Removal of Trustee: The Beneficiary may remove the Trustee or any successor Trustee at any time or times and appoint a successor Trustee by recording a written substitution in the county where the real property covered by this Deed of Trust is located, or in any other manner permitted by law. Upon that appointment, all of the powers, rights and authority of the Trustee will immediately become vested in its successor.

REQUESTS FOR NOTICE

The Trustor requests that a copy of any notice of default and notice of sale required by law be mailed to it at its address below:

Dated: 10-15-82

TRUSTOR:

Thomas J. Shaw
THOMAS J. SHAW

ADDRESS:

P.O. Box 257
Klamath Falls, Oregon 97601

County of... Klamath

SS.

13790

BE IT REMEMBERED, That on this 15th day of October, 1982,
before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within
named

Thomas J. Shaw

known to me to be the identical individual... described in and who executed the within instrument and
acknowledged to me that his... executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year last above written.



James E. McCall

Notary Public for Oregon
My Commission expires 7/7/84EXHIBIT "A"

Description of Property

A tract of land situated in the SE 1/4 of Section
32, Township 38 South, Range 9, E.W.M., more particularly
described as follows:

Beginning at the East quarter-corner of said
Section 32; thence S. 69°36'00" W. 38.1 feet to a point on the
Southeasterly line of Kinlock Street; thence S. 38°56'00" W.
along said Southeasterly line of Kinlock Street 16.47 feet;
thence S. 10°46'30" W. 246.59 feet to a point on the South-
westerly line of Fifth Street, if extended Southeasterly,
said point being "THE TRUE POINT OF BEGINNING" of this des-
cription and being marked by a 2" iron pipe with brass cap;
thence continuing S. 10°46'30" W. a distance of 317.04 feet
to a 1/2" iron pin; thence N. 50°27'40" W. a distance of
285.03 feet to a 5/8" iron pin; thence N. 38°56'00" E. a
distance of 276.49 feet to a point on the Southwesterly line
of Fifth Street, thence S. 51°04'00" E. along said South-
westerly line and said line if extended a distance of 135.40
feet to the point of beginning.

EXHIBIT "A" - Description of Property

EXHIBIT B

1. Right of Way, including the terms and provisions thereof, given by Burge W. Mason et al. to City of Klamath Falls, recorded March 23, 1920, in Deed Volume 52 on Page 257, records of Klamath County, Oregon.
2. Easement, including the terms and provisions thereof, given by Modoc Lumber Co. to Oregon Water Corporation, dated August 22, 1966, and recorded September 26, 1966, in M-66 on page 9110 and re-recorded in M-66 on page 9508, records of Klamath County, Oregon.
3. Grant of Easement, including the terms and provisions thereof, given by Modoc Lumber Co., to the City of Klamath Falls, Oregon, dated April 30, 1967, and recorded July 6, 1967, in M-67 on page 5043, records of Klamath County, Oregon.
4. Easement, including the terms and provisions thereof, given by Modoc Lumber Co. to Oregon Water Corporation, dated June 21, 1967, and recorded July 10, 1967, in M-67 on page 5159, records of Klamath County, Oregon.
5. Reservations and restrictions as disclosed by Ordinance No. 5931, recorded on M-73 on page 10602, records of Klamath County, Oregon, on August 10, 1973.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record

is 18 day of Oct A.D. 19 82 at 8:30 o'clock A.M. and
 duly recorded in Vol. M82 of Mtge on a 13783
 Fee \$36.00

By EVELYN BIEHN County Clerk
Joyce McArthur

Exhibit "B"

Liens and Encumbrances