

K-36865

TRUST DEED

This is a trust deed made March 2d, 1984, between
 KLAMATH STUDS, INC., Grantor, whose address is 2337
Whistler's Park Road Roseburg Oreg 97470,
 KLAMATH COUNTY TITLE CO., Trustee, whose address is 422 Main
 Street, P.O. Box 151, Klamath Falls, Oregon 97601, and WALTER E.
 HELLER WESTERN INCORPORATED, Beneficiary, whose address is 111 S.
 W. Columbia, Suite 900, Portland, Oregon, 97201.

For value received by Grantor from Beneficiary, Grantor
 does hereby grant, bargain, sell and convey to Trustee, in trust,
 with power of sale, the real property located in Klamath County,
 Oregon, described as

Lots 3 and 4 and all of that portion of the
 E $\frac{1}{2}$ SW $\frac{1}{4}$ lying Westerly of the right of way of the S. P.
 Railroad in Section 31 Township 30 South, Range 8 East,
 Willamette Meridian.

all of which real property is hereinafter referred to as the
 "Trust Property."

Together with all easements, rights in party walls,
 water and water rights, pumps and pumping plants; all machinery,
 equipment, appliances and fixtures for generating or distributing
 air, water, heat, electricity, light, fuel or refrigeration, or
 for ventilating or sanitary purposes, or for the exclusion of
 vermin or insects, or for the removal of dust, refuge, or
 garbage; all installations, shelving, lockers, partitions,
 vaults, elevators, awnings, light fixtures, fire hoses and equip-
 ment, fire sprinklers, alarm systems, plumbing, heating units,
 water heaters, incinerators and communication systems and all
 tenements, hereditaments and appurtenances now or hereafter
 belonging or in any wise appertaining and the rents, issues and
 profits thereof. All of such items are hereby declared to be a
 part of the Trust Property.

No part of the Trust Property is currently used for
 agricultural, timber, or grazing purposes.

This Trust Deed is for the purpose of securing the
 payment and performance of:

- A. The obligation of Grantor to Beneficiary in the
 principal sum of \$850,000.00 together with interest
 thereon. Such obligation is evidenced by a Note
 and matures June 1, 1989.
- B. All sums which beneficiary shall hereafter pay out
 or advance for insurance, taxes, assessments,

Return to:

Black, Tremaine, Higgins, Lankton & Krieger
 3100 First Interstate Tower
 1300 S.W. 5th Avenue
 Portland, Oregon 97201

repairs to the Trust Property, payments to contract-seller or other expenses either authorized by the term of this Trust Deed or by Grantor or by the Loan and Security Agreement between Grantor and Beneficiary dated contemporaneously herewith or deemed by the Beneficiary necessary for the reasonable protection of its security, together with interest on such sums at the rate set forth in the Note referred to above.

- C. All other amounts loaned by Beneficiary to Grantor and all present and future obligations of Grantor to Beneficiary, whether direct, indirect, primary, secondary, fixed or contingent, including, without limitation, loans made or obligations incurred pursuant to an inventory loan security agreement or a factoring agreement between Beneficiary and Grantor.

Grantor hereby covenants, warrants and represents that Grantor holds good title to the Trust Property with good right and authority to encumber or sell and convey the same and that the Trust Property is free from all liens and encumbrances except for easement given by Bruce A. Standley, Harold Cole and Phyllis Cole to Oliver P. Standley, recorded October 27, 1983, Vol. M83, page 18563, Deed Records of Klamath County, Oregon. Grantor covenants with Beneficiary that Grantor will defend Beneficiary's and Trustee's rights hereunder against the claims and demands of all persons.

The parties hereto agree as follows:

SECTION 1. GRANTOR'S COVENANTS AND WARRANTIES

- 1.1 Payment of the Debt. Grantor will pay Beneficiary, its successors and assigns, all sums that may now or hereafter be or become owing by Grantor to Beneficiary.
- 1.2 Use of Loan Proceeds. Grantor warrants that the proceeds of the loan represented by the Note and this Trust Deed are not to be used for Grantor's personal, family, household or agricultural purposes. The proceeds are to be used for business or commercial purposes other than agricultural purposes.
- 1.3 Use of the Trust Property. Grantor covenants and warrants that the current use of the Trust Property is in compliance with all laws, ordinances and regulations of all governmental authorities.

1.4 Taxes and Assessments; Liens and Claims.

1.4.1 Payment. Grantor shall pay when due all taxes and all assessments imposed against the Trust Property and all claims and demands arising from the Grantor's use or occupancy of the Trust Property.

1.4.2 Protection of the Trust Property from Liens. Grantor shall not permit any lien to be imposed upon the Trust Property.

1.5 Insurance.

1.5.1 Property Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement cost basis covering all buildings and improvements, including additions thereto and replacements thereof, in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Beneficiary. The amount of insurance shall in no event be less than the amount of indebtedness secured hereby or such smaller sum as Beneficiary approves in writing.

1.5.2 Insurance Companies, Policies and Certificates. Both the insurance company providing the policy required by this Section 1.5 and the form of the policy must be acceptable to Beneficiary. Grantor shall deliver to Beneficiary a certificate of coverage from the insurer issuing the policy required by paragraph 1.5.1 containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days advance written notice to Beneficiary. Grantor shall deliver to Beneficiary at least 10 days prior to the expiration of any insurance policy required by this Section 1.5 a certificate showing the placement of a renewal or substitute policy of insurance.

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

1.5.4 Insurance Proceeds. Insurance proceeds shall be paid directly to Beneficiary

which may deal directly with any insurance company. If Beneficiary by reason of such insurance receives any money for loss or damage, such amount may, at the option of Beneficiary, either: (i) be retained and applied by Beneficiary toward payment of all or part of the indebtedness secured by this Trust Deed in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired, or (ii) be paid over wholly or in part to the Grantor upon such conditions as Beneficiary may determine for the repair of buildings or improvements located on the Trust Property or for the erection of new buildings or improvements in their place or for any other purpose or object satisfactory to Beneficiary. If Beneficiary elects to pay all or a portion of the insurance proceeds to Grantor, Beneficiary shall not be obligated to see to the proper application or any amount paid to Grantor.

1.6 Use, Maintenance and Alterations.

1.6.1 Duty to Maintain. Grantor shall maintain the Trust Property in good condition and repair and promptly perform all repairs and maintenance necessary to preserve its value.

1.6.2 Waste; Nuisance. Grantor shall not conduct or permit any nuisance on the Trust Property nor commit or suffer any strip or waste thereof.

1.6.3 Removal of Improvements. Grantor shall not demolish or remove any improvements on the Trust Property without the prior written consent of Beneficiary but Grantor may make alterations which it deems necessary for the purpose of renting the Trust Property.

1.6.4 Beneficiary's Right to Enter and Inspect. Grantor will permit Beneficiary and its agents to enter upon the Trust Property at all reasonable times to inspect the Trust Property.

1.6.5 Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the

use or occupancy of the Trust Property. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Beneficiary's and Trustee's interests in the Trust Property are not jeopardized.

1.7 Eminent Domain.

1.7.1 Notice of Taking or Condemnation Proceeding. If the Trust Property, or any part thereof or interest therein, should be taken or damaged by reasons of any public improvement or condemnation proceeding, or if Grantor should receive any notice or other information regarding a condemnation proceeding or similar type of proceeding, Grantor shall immediately notify Beneficiary.

1.7.2 Condemnation Proceeds. Beneficiary shall be entitled to all compensation, awards and other payments or relief related to condemnation, and shall be entitled at its sole option to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Grantor (Condemnation Proceeds) are hereby assigned to Beneficiary and Grantor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary may require. Beneficiary shall have the option, in its sole discretion, to either:

(a) apply such Condemnation Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney fees incurred by Beneficiary in connection with such Condemnation Proceeds, upon all or part of the indebtedness secured by this Trust Deed in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired, or

(b) apply all of such Condemnation Proceeds, after deducting all of Beneficiary's

costs and expenses, to the restoration of the Trust Property upon such conditions as Beneficiary may determine.

1.8 Reports.

1.8.1 Default. Grantor shall furnish to Beneficiary notice of any default on its part under any lease affecting the Trust Property.

1.8.2 Leases. Grantor will furnish to Beneficiary, upon request, copies of leases covering any portion of the Trust Property entered into after the date hereof.

1.9 Security Agreement. This instrument shall constitute a security agreement with respect to any fixtures attached to the Trust Property to secure all indebtedness and obligations secured by this Trust Deed and all future advances and all future indebtedness and obligations of Grantor to Beneficiary. This instrument shall also constitute a financing statement and shall be filed for recording in the real estate records of the county where the Trust Property is located.

SECTION 2. EVENTS OF DEFAULT.

2.1 Nonperformance. Failure of Grantor to make any payment on the indebtedness secured hereby when the same is due or to perform any obligation contained in this Trust Deed.

2.2 Misinformation. Falsity in any material respect of any representation, warranty or information furnished to Beneficiary in connection with this Trust Deed.

2.3 Sale or Transfer of Possession. The sale or transfer of possession of the Trust Property or any part thereof in any manner by Grantor, whether by deed, contract of sale, lease or similar agreement, without the prior written consent of Beneficiary. The execution and delivery by the Grantor of any joint venture agreement, partnership agreement, declaration of trust, option agreement or other instrument whereunder any other person may become entitled, directly or indirectly, to the possession or enjoyment of the Trust Property, or the income or other benefits

derived or to be derived therefrom, shall in each case be deemed to be a sale or transfer of Grantor's interest in the Trust Property for the purposes of this section. Grantor acknowledges that the loan secured by this Trust Deed is personal to Grantor and that in making it Beneficiary has relied on Grantor's credit, Grantor's interest in the Trust Property and financial market conditions at the time this loan is made.

2.4 Certain Taxes. This subsection shall apply to the following state taxes:

(a) A specific tax on mortgages, trust deeds, secured indebtedness or any part of the indebtedness secured by this Trust Deed.

(b) A specific tax on the Grantor of property subject to a trust deed which the taxpayer is authorized or required to deduct from payments on the trust deed.

(c) A tax on property chargeable against the beneficiary or trustee under a trust deed or holder of the note secured thereby.

(d) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

If any state tax to which this subsection applies is enacted after the date of this Trust Deed, enactment of the tax shall constitute an event of default unless the following conditions are met:

(i) Grantor may lawfully pay the tax or charge imposed by the state tax without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee, and

(ii) Grantor pays or agrees to pay the tax or charge within 30 days after notice from Beneficiary or Trustee that the tax law has been enacted.

SECTION 3. REMEDIES IN CASE OF DEFAULT.

3.1 Acceleration. Beneficiary may declare all sums secured by this Trust Deed, including all interest and prepayment penalties, to be immediately due and payable.

3.2 Books and Records. Beneficiary may examine all books, records and contracts of Grantor pertaining to the Trust Property and of any guarantors and make such memoranda thereof as may be desired.

3.3 Receiver. Beneficiary may have a receiver of the Trust Property appointed. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or Beneficiary shall not disqualify a person from serving as receiver. Grantor waives all defenses and consents to the appointment of a receiver at Beneficiary's option.

3.4 Possession. Beneficiary may, either through a receiver or as a lender-in-possession, take possession of all or any part of the Trust Property, and Grantor shall peaceably surrender the same.

3.5 Rents and Revenues. Beneficiary may revoke Grantor's right to collect the rents and revenues from the Trust Property, and may, either itself or through a receiver, collect the same. To facilitate collection, Beneficiary may notify Grantor's tenants to pay rents directly to it. Beneficiary shall not be deemed to be in possession of the Trust Property solely by reason of exercise of the rights contained in paragraph 3.5. If rents are collected by Beneficiary under this paragraph 3.5, Grantor hereby irrevocably designates Beneficiary as Grantor's attorney-in-fact to endorse instruments received in payment of rent, in respect of any part of the Trust Property, in the name of Grantor and to negotiate such instruments and collect the proceeds thereof.

3.6 Foreclosure. Beneficiary may obtain a decree foreclosing Grantor's interest in all or any part of the Trust Property.

3.7 Fixtures and Personal Property. With respect to any fixtures or personal property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and

all of the rights and remedies of a secured party under the Uniform Commercial Code.

3.8 Abandon Security. Beneficiary may abandon any security afforded by this Trust Deed or any other security instrument by notifying Grantor of Beneficiary's election to do so.

3.9 Power of Sale. Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Property by advertisement and exercise of the power of sale under applicable law.

3.10 Sale of Collateral; Bid at Public Sale. In exercising its rights and remedies, Beneficiary shall be free to sell all or any part of the collateral together or separately, or to sell certain portions of its collateral and refrain from selling other portions. Beneficiary shall be entitled to bid at any public sale of all or any portion of its collateral.

3.11 Cumulative Remedies. Beneficiary is taking other collateral security to secure the obligations secured hereby. Beneficiary may enforce such obligations and/or enforce its rights with respect to such other security at the same time as enforcing its rights hereunder, or independently, at Beneficiary's option, without obligation to marshal assets or to look to any particular security in any order of priority. Election to pursue one remedy shall not exclude resort to any other remedy, and, unless the context otherwise requires, all remedies under this Trust Deed are cumulative and not exclusive. An election to cure under paragraph 6.7 shall neither prejudice the right to declare a default nor constitute a waiver of the breached term or of any of the remedies provided herein. No delay or omission in exercising any right or remedy shall impair that or any other right to remedy or shall be construed to be a waiver of the default.

SECTION 4. RECEIVER OR TRUSTEE-IN-POSSESSION.

Upon taking possession of all or any part of the Trust Property, a receiver or Trustee or Beneficiary or Beneficiary's representative may:

4.1 Management. Use, operate, manage, control and conduct business on the Trust Property and make expenditures for such purposes and for maintenance and improvements as in its judgment are necessary.

4.2 Rents and Revenues. Collect all rents, revenues, income, issues and profits from the Trust Property and apply such sums to the expenses of use, operation, management, maintenance and improvements.

4.3 Construction. At its option, complete any construction in progress on the Trust Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans and specifications as it deems appropriate.

4.4 Additional Indebtedness. If the revenues produced by the Trust Property are insufficient to pay expenses, including, without limitation, any disbursements made by Beneficiary or Trustee pursuant to this Section 4, a receiver may borrow, or Beneficiary or Trustee may advance, such sums upon such terms as it deems necessary for the purposes stated in this section, and repayment of such sums shall be secured by this Trust Deed. Amounts borrowed or advanced shall bear interest at a rate equal to the highest rate then applicable on any indebtedness secured by this Trust Deed.

SECTION 5. APPLICATION OF PROCEEDS.

All proceeds realized from the exercise of the rights and remedies under Section 3 and 4 shall be applied as follows:

5.1 Costs and Expenses. To pay the costs of exercising such rights and remedies, including the costs of any sale, the costs and expenses of any receiver or lender-in-possession, and the costs and expenses provided for in paragraph 6.6

5.2 Indebtedness. To pay all other amounts owed by Grantor, payment of which is secured by this Trust Deed.

5.3 Surplus. The surplus, if any, shall be paid to the clerk of the court in the case of

a foreclosure by judicial proceeding, otherwise to the person or persons legally entitled thereto.

SECTION 6. GENERAL PROVISIONS.

6.1 Reconveyance Upon Payment. Upon written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Trust Deed and the Note to Trustee for cancellation and retention and payment of its fees, Trustee shall reconvey, without warranty, the Trust Property then held hereunder. The recitals in any reconveyance executed under this Trust Deed of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.2 Substitute Trustee. In the event of dissolution or resignation of the Trustee, Beneficiary may substitute on or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all of the powers and duties of prior trustee(s).

6.3 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding on and inure to the benefit of the successors and assigns of Grantor, Trustee and Beneficiary.

6.4 Indemnity. Grantor shall hold Beneficiary and Trustee harmless from any and all loss and expense, including but not limited to attorney fees and court costs, in any suit, action or proceeding or any appeal therefrom brought against Trustee or Beneficiary by a third party resulting from or attributable to Beneficiary's ownership of the Note or Trustee's interest under this Trust Deed.

6.5 Notice. Any notice under this Trust Deed shall be in writing. Any notice to be given or document to be delivered under this Trust Deed shall be effective when either delivered in person or deposited as registered or certified mail, postage prepaid, addressed to the party at the address first stated in this Trust Deed; 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.

6.6 Expenses and Attorney Fees. In the event that Beneficiary or Trustee shall take any action, judicial or otherwise, to enforce the Note or any provision of this Trust Deed or if Beneficiary or Trustee shall be required to appear in any proceeding to protect and maintain the priority of Trustee's title to the Trust Property, Trustee or Beneficiary (or both) shall be entitled to recover from Grantor all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports and surveyors' reports, and its attorney fees, whether incurred in a suit or action or any appeals from a judgment or decree therein or in connection with nonjudicial action. Grantor shall reimburse Beneficiary or Trustee (or both) for expenses so incurred on demand with interest from the date of expenditure until repaid at a rate equal to the highest rate then applicable on any indebtedness secured by this Trust Deed.

6.7 Beneficiary's Right to Cure. If Grantor fails to perform any obligation required of it under this Trust Deed, Beneficiary may, without notice, take any steps necessary to remedy such failure. Grantor shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at a rate equal to the highest rate then applicable on any indebtedness secured by this Trust Deed. Such action by Beneficiary shall not constitute a waiver of the default or any other right or remedy which Beneficiary may have on account of Grantor's default.

6.8 Applicable Law. This Trust Deed shall be governed by the laws of the state of Oregon.

6.9 Time of Essence. Time is of the essence of this Trust Deed.

6.10 Headings. The headings to the sections and paragraphs of this Trust Deed are included

only for the convenience of the parties and shall not have the effect of defining, diminishing or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

6.11 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Trust Deed, but this Trust Deed shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, Grantor has caused this Trust Deed to be executed as of the day and year first above written.

KLAMATH STUDS, INC.

(Seal)

By: B. N. Granville

President

By: [Signature]

Secretary

STATE OF OREGON)
) ss
County of Multnomah)

This certifies that on this 2nd day of March, 1984, before me, the undersigned, a Notary Public in and for said County and State, personally appeared B. N. Granville and Ralph W. Schiast, to me personally known, who being duly sworn, did say that the former is the President and the latter is the Secretary of KLAMATH STUDS, INC., the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and they acknowledged said instrument to be the free act of said corporation.

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

Karin J. Atkins

NOTARY PUBLIC FOR OREGON

My commission expires 12-4-84

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STATE OF OREGON: COUNTY OF KLAMATH:ss
I hereby certify that the within instrument was received and filed for record on the 2nd day of March A.D., 1984 at 12:00 o'clock P.M. and duly recorded in Vol 484, of Mortgages on page 222.

Fee \$ 52.00

EVELYN BIEHN, COUNTY CLERK

by Pam Smith Deputy