

36667

TRUST DEED

STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR. 97204

THIS TRUST DEED, made this 7th day of May, 1984, between THOMAS B. CARNAHAN and ELIZABETH A. CARNAHAN, husband and wife, as Grantor, MOUNTAIN TITLE COMPANY, INC., PERLA DEVELOPMENT CO., INC., an Arizona corporation, RIVERWOOD REALTY CORP., a Washington corporation and ISAAC SHACHORY, a married man, all as tenants in common, 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:

A tract of land situated in Government Lots 20, 21, and 22 of Section 5, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at the Northwest corner of said Government Lot 21; thence South 01° 54' 38" West 664.38 feet to the Southwest corner of said Lot 21 and 22; thence along the Southerly line of said Lot 22, North 88° 56' 31" East 337.52 feet to the Southwesterly right of way line of State Highway No. 62; thence North 28° 52' 30" West along said

THIS TRUST DEED IS AN ALL-INCLUSIVE TRST DEED AND IS BEING RECORDED SECOND AND JUNIOR TO A FIRST TRUST DEED IN FAVOR OF EDWIN F. LEIBOLD AND LAURINE C. LEIBOLD, HUSBAND AND WIFE. SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of TWENTY-SIX THOUSAND AND NO/100 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 of note

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.

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, conditional 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 from time to time require in an amount not less than \$100,000.00.

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, 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 or 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, including attorney's fees mentioned in this paragraph 7 in all cases shall be paid 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 be taken 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 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 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 any 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 any part thereof, enter upon and take possession of said property, 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 trustee shall execute and cause to be recorded his written notice of default and his election hereby, whereupon the trustee shall in 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, by express or implied, as agent or to his successor in interest entitled to such

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to the 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 principal due as then interests may appear in the order of then priority and (4) the surplus, if any, to the grantor or to his successor in interest entitled to such

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, and without hereunder. Each such appointment upon any trustee herein named or appointed and its record 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 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 issue 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 89B.010 to 89B.020.

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 Trust Deed recorded August 22, 1979, Volume M19, page 20018, Microfilm Records of Klamath County, Oregon, in favor of Edwin F. Leibold and Laurine C. Leibold, husband and wife, which Beneficiary herein agrees to hold Grantor harmless therefrom 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 other legal entity or a natural person, for his 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.)

STATE OF OREGON,

County of Klamath ) ss.  
April 13, 1984

Personally appeared the above named  
THOMAS B. CARNAHAN and ELIZABETH A.  
CARNAHAN, husband and wife

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

(OFFICIAL SEAL)

Before me:

Notary Public for Oregon

My commission expires: 11/16/87

(ORS 93.450)

STATE OF OREGON, County of ) ss.  
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Personally appeared

duly sworn, 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 the 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.

Before me:

Notary Public for Oregon

My commission expires:

(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. 881-1)

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

Thomas B. & Elizabeth A. Carnahan

315. 20018  
Klamath Falls, OR 97601

Grantor

Perla Development Co., Inc.,  
Riverwood Realty, Corp., and  
Isaac Shachory

Beneficiary

AFTER RECORDING RETURN TO

MOUNTAIN TITLE COMPANY, INC.

SPACE RESERVED  
FOR  
RECORDER'S USE

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 \_\_\_\_\_ 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.

By

Deputy

EXHIBIT "A"

This Trust Deed is an "All Inclusive Trust Deed" and is second and subordinate to the Trust Deed now of record dated March 29, 1979. and recorded August 22, 1979, in Volume M79, page 20018, in Microfilm Records of Klamath County, Oregon, in favor of Edwin F. Leibold and Laurine C. Leibold, husband and wife, as Beneficiary which secures the payment of a note therein mentioned. Perla Development Co., Inc., an Arizona corporation, Riverwood Realty Corp. a Washington corporation, and Isaac Shachory, a married man, Beneficiaries herein agree to pay, when due, all payments due upon the said Promissory Note in favor of Edwin F. Leibold and Laurine G. Leibold, husband and wife, and will save Grantors herein, Thomas B. Carnahan and Elizabeth A. Carnahan, husband and wife, harmless therefrom. Should the said Beneficiary herein default in making any payments due upon said prior Note and Trust Deed, Grantor herein may make said delinquent payments and any sums so paid by Grantor herein shall then be credited upon the sums next to become due upon the Note secured by this Trust Deed.

*[Handwritten signature]*

LEGAL DESCRIPTION continued . . . . .

Southwesterly right of way line, 1381.76 feet; thence South 61° 07' 30" West 1118.09 feet to the point of beginning, with bearings based on Survey No. 2694, as recorded in the office of the Klamath County Surveyor.

EXCEPTING THEREFROM that portion lying with the State Highway #62.

STATE OF OREGON: COUNTY OF KLAMATH:ss  
I hereby certify that the within instrument was received and filed for record on the 16th day of May A.D., 1984 at 2:45 o'clock P M, and duly recorded in Vol M84, of Mortgages on page 8099.

Fee: \$ 12.00

EVELYN BIEHN, COUNTY CLERK  
by: [Signature], Deputy