

ATC 28807

STEVENESS LAW PUBLISHING CO., PORTLAND, OR. 97204

OC 54218

TRUST DEED

Vol. **m85** Page **16413**

THIS TRUST DEED, made this 1st day of September, 1985, between
1ST PACIFIC FINANCIAL SERVICES, INC.

as Grantor, STEWART TITLE

TOWN AND COUNTRY SHOPPING CENTER, a California Limited Partnership
 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:

SEE EXHIBIT "A" ATTACHED

Beneficiary herein agrees that upon the sale of Parcel 5 (commonly known as Joji's) a Partial Reconveyance will be provided to the Grantor herein. Grantor agrees that proceeds from said sale shall be placed in an escrow account which shall be designated for tenant improvements for Parcels 1 through 4 of subject property.

All conditions of the underlying mortgages of record shall apply hereto

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 TWO HUNDRED THIRTY THOUSAND AND 00/100 (\$230,000.00) 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, it

not sooner paid, to be due and payable November 1, 1990. 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 and such other hazards as the beneficiary may from time to time require, in an amount not less than full insurable value, in companies acceptable to the beneficiary, with loss payable to the latter; all 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 said insurance 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 not cure or waive any default or notice of default hereunder or release shall 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 taxes, assessments 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 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, 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 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 thereof; (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 the sums secured hereby immediately due and payable. In such an event the beneficiary at his election may proceed to foreclose this trust deed 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 obligation 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 86.735 to 86.745.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.753, may cure sums secured by the trust deed. If the default consists of a failure to pay, when due, entire amount due at the time of the cure other than such portion as has not then been due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed by law.

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, in 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 surplus, if any, to the grantor or to his successor in interest entitled to such surplus.

16. 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, which, when recorded in the mortgage records 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 or 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.

65 OCT 10 AM 10 49

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

easements, lease, mortgages, agreements and unpaid taxes of record.

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.

* 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 _____

ss.

, 19 _____

Personally appeared the above named _____

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

Before me:

(OFFICIAL SEAL)

Notary Public for Oregon

My commission expires: _____

1ST PACIFIC FINANCIAL SERVICES, INC.

By _____

STATE OF OREGON, County of Multnomah) ss.

Oct. 1, 19 85

Personally appeared Craig J. Porter and

who, each being first

duly sworn, did say that the former is the president

~~X~~ and that the latter is the

Secretary of 1st Pacific Financial Services, Inc.

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: 2/2/87

(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 LAW PUB. CO., PORTLAND, ORE.

1st Pacific Financial

Grantor

Town and Country

Shopping Center

Beneficiary

AFTER RECORDING RETURN TO

Town and Country
c/o Stewart Title
200 S. W. Market
Portland, OR 97201

SPACE RESERVED

FOR

RECORDER'S USE

STATE OF OREGON,

County of Klamath) ss.

I certify that the within instrument was received for record on the 10th day of October, 19 85, at 10:49 o'clock A.M. and recorded in book/reel/volume No. _____ on page _____ or as fee/file/instrument/microfilm/reception No. _____ Record of Mortgages of said County.

Witness my hand and seal of County affixed.

County Clerk

NAME

TITLE

By _____

Deputy

Fee: \$9.00

Exhibit "A"
DESCRIPTION

16414 A

PARCEL 1

A portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at an iron pin on the South right of way line of South Sixth Street as presently located and constructed, which bears South 0° 22' 15" East a distance of 48.5 feet from the Northwest corner of said NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence Easterly, along said right of way line a distance of 142.5 feet to a point; thence South at right angles to said right of way line a distance of 460.0 feet to a point; thence West, parallel to said right of way line, a distance of 142.5 feet, more or less, to the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence North along said West line a distance of 460.0 feet to the point of beginning.

PARCEL 2

A tract of land situated in the SE $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at the East one-fourth corner of said Section 3; thence South 89° 52' West 1,275.74 feet; thence South 00° 21' 47" East 54.10 feet to a one-half inch pipe on the Southerly right of way line of the Dalles-California Highway marking the Northeast corner of that parcel of land described in Deed Volume 251 at page 162, as recorded in the Klamath County Deed Records; thence continuing South 00° 21' 47" East along the East line of said parcel described in said Deed Volume 251 at page 162, 233.00 feet to the true point of beginning of this description; thence continuing South 00° 21' 47" East along said line 395.64 feet to the Northerly right of way line of the Oregon-California and Eastern Railway Company; thence North 67° 41' West along said right of way line 156.57 feet (162 feet by record); thence North 00° 55' 30" West along the West line of said parcel described in said Deed Volume 251 at page 162, 334.24 feet; thence North 89° 14' East 147.71 feet to the true point of beginning of this description with bearings based on the East line of the SE $\frac{1}{4}$ of said Section 3 as being South 01° 14' East.

PARCEL 3

A portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at a one-half inch iron pin on the South right of way line of South Sixth Street, as the same is presently located and constructed, said point being on the West line of tract of land deeded to Miller by Deed Volume 251 at page 162 and the East line of a tract of land deeded to Wheeler by deed Volume 142 at page 349, Klamath County Deed Records; thence South 0° 55' 30" East along the line between the two above described tracts a distance of 341.6 feet to a 5/8 inch iron pin marking the Southeast corner of a tract of land deeded to United States National Bank of Oregon by deed recorded in Volume M-72 at page 13690, Deed Records of Klamath County, Oregon, and the true point of beginning of this description; thence continuing South 0° 55' 30" East a

continued ...

description continued ...

distance of 225.64 feet, more or less, to the Northeasterly right of way line of the O.C. & E. Railroad; thence North $67^{\circ} 41'$ West along said right of way line a distance of 148.11 feet to the Southwest corner of said Wheeler tract; thence North $0^{\circ} 55' 30''$ West along the West line of said Wheeler tract, a distance of 167.58 feet to the Southwest corner of said United States National Bank tract; thence North $89^{\circ} 14'$ East along the South line of said tract, a distance of 136.09 feet to the point of beginning.

PARCEL 4

A tract of land situated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows:

Beginning at a $\frac{1}{2}$ inch iron pin which bears South $89^{\circ} 52'$ West a distance of 745.73 feet and South $0^{\circ} 20' 55''$ East a distance of 220.16 feet from the brass cap monument marking the East quarter corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, said beginning point also being on the South line of tract described as Parcel #1 in Deed from Klamath County School District to Klamath County, recorded in Volume 295 at page 135, Deed Records of Klamath County, Oregon; thence continuing from said beginning point South $0^{\circ} 20' 55''$ East along a line parallel to Easterly wall of the Payless Drug Store Building as the same is presently located and constructed, a distance of 402.04 feet to a $\frac{1}{2}$ inch iron pipe on the Northeasterly boundary of the O.C. & E Railroad right of way as the same is presently located and constructed, a distance of 304.44 feet, more or less, to a $\frac{1}{2}$ inch iron pipe on the Northeasterly boundary of the O.C. & E Railroad right of way as the same is presently located and constructed, and from which point the aforesaid monument marking the East quarter corner of said Section 3 bears North $50^{\circ} 50' 20''$ East a distance of 1273.34 feet; thence Northwesterly along said Northeasterly boundary of the O.C. & E Railroad right of way a distance of 299.5 feet, more or less, to the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence North along said West line a distance of 186.5 feet, more or less, to a point on said West line which bears South $0^{\circ} 22' 15''$ East a distance of 460.0 feet from the Southerly boundary line of the relocated right of way of the Klamath Falls-Lakeview Highway; thence Easterly, parallel with said highway right of way line a distance of 142.5 feet to a point; thence North, parallel with the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$, a distance of 460.0 feet, more or less, to the Southerly boundary of said relocated highway right of way; thence Easterly along said relocated right of way line a distance of 387.7 feet, more or less, to a point which bears North $0^{\circ} 20' 55''$ West from the point of beginning; thence South $0^{\circ} 20' 55''$ East a distance of 174.66 feet, more or less, to the point of beginning.

PARCEL 5

A parcel of land lying in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows:

Beginning at a point which bears South $01^{\circ} 14'$ East a distance of 55.03 feet and South $89^{\circ} 14'$ West a distance of 580.0 feet from the quarter section corner common to Sections 2 and 3, said Township and Range, said point being on the South right of way line of South Sixth Street as presently located and constructed; thence continuing South $89^{\circ} 14'$ West along said South right of way line a distance of 129.4 feet to the North-west corner of this description; thence South $0^{\circ} 18'$ East a distance of 137.0 feet to an iron pin; thence North $89^{\circ} 14'$ East a distance of 131.9 feet to an iron pin; thence North $01^{\circ} 14'$ West a distance of 137.0 feet, more or less, to the point of beginning, EXCEPTING a strip of land 8 feet wide running North and South on the West side of said parcel reserved for sidewalk purposes.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of _____ October _____ A.D., 19 85 at 10:49 o'clock A M., and duly recorded in Vol. M85
of _____ Mortgages _____ the 10th day
on Page 16413

FEE \$17.00

By _____ County Clerk