

54536

NTC-152741
COMMERCIAL TRUST DEED

Vol. 1785 Page 16964

Date: October 18, 1985

The parties to this Commercial Trust Deed (the "Trust Deed") are: GERTRUDE L. CARTWRIGHT and WILLIAM E. CARTWRIGHT, hereinafter referred to as "Grantor," with their address at 1501 Chapin Avenue, No. 102, Burlingame, California 94010; MOUNTAIN TITLE CO., INC., hereinafter referred to as "Trustee," with its address at 407 Main Street, Klamath Falls, Oregon 97601; and ELBERT W. STILES AND WYOMING STILES, hereinafter referred to as "Beneficiary," with their address at P.O. Box 217, Klamath Falls, Oregon 97601.

Grantor is the owner of real property described on Exhibit A hereto, together with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, all of which real property is hereinafter referred to as the "Trust Property."

Beneficiary has agreed to lend to Grantor, and Grantor has agreed to borrow from Beneficiary, the sum of \$222,000 upon the terms and conditions set out herein and in a promissory note (the "Note") dated concurrently with this Trust Deed and maturing December 1, 1988. Grantor has agreed to deed to Trustee the Trust Property to secure payment of the Note and any other indebtedness owing by Grantor to Beneficiary and to secure performance of all of Grantor's obligations under the Note, under this Trust Deed and under any other instruments evidencing an indebtedness of Grantor to Beneficiary.

THEREFORE, to secure payment by Grantor of the indebtedness to be evidenced by the Note in strict accordance with its terms, including payment of interest thereon, and performance by Grantor of the covenants contained herein and in the Note by it to be performed, and to secure payment of any other indebtedness of Grantor to Beneficiary which arises directly or indirectly out of the Note or this Trust

AFTER RECORDING, RETURN TO:

~~Bruce G. Barning~~
~~Attorney at Law~~

~~1000 Osborne Building~~
~~1001 S.W. 5th Avenue~~
~~Portland, Oregon 97204~~

Mountain Title Co. INC
407 Main

Klamath Falls, OR
97601

Send tapes to:

William C. Cartwright
1501 Chapin Ave #102
Burlingame, Calif. 94010

16965

Deed, Grantor hereby grants, bargains, sells and conveys to the Trustee, in trust, the Trust Property, and presently assigns the rents, revenues, income, issues and profits therefrom to the Trustee, its successors and its assigns, upon the terms set forth herein.

PROVIDED, HOWEVER, that until the occurrence of an event of default, Grantor may remain in control of and operate and manage the Trust Property and collect and enjoy the rents, revenues, income, issues and profits therefrom;

PROVIDED, FURTHER, that if Grantor shall make all payments for which provision is made in the Note in strict accordance with the terms thereof and shall perform all of the covenants contained herein, and shall make all payments due on any other indebtedness and shall perform all of the covenants contained in the Note and this Trust Deed, then Trustee shall execute and deliver to Grantor, without warranty, a reconveyance of the Trust Property.

The parties covenant and agree as follows:

Section 1. GRANTOR'S COVENANTS AND WARRANTIES.

1.01 Payment of the Note. Grantor will make all payments of interest and principal for which provision is made in the Note, and in any note or notes given in renewal or replacement thereof, promptly as such payments become due and payable and will pay the unpaid balance of the Note upon maturity.

1.02 Warranty of Title. Grantor warrants that it holds good and merchantable title to the Trust Property subject to no liens or encumbrances. Grantor covenants with Beneficiary that it will defend Beneficiary's and Trustee's rights hereunder against the claims and demands of all persons whomsoever.

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

1.04 Taxes and Assessments; Liens and Claims.

1.04(a) 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.

1.04(b) Protection of the Trust Property From Liens. Grantor shall not permit any lien prior or equal to the Trustee's title to be imposed upon the Trust Property, except liens for taxes or assessments assessed but not yet due.

1.04(c) Grantor's Right to Contest. Grantor may withhold payment of any taxes, assessments, claims or demands, or may elect to contest any lien if Grantor is in good faith conducting appropriate proceedings to contest its obligation to pay and for so long as the Trustee's interest in the Trust Property is not jeopardized. If the Trust Property is subjected to a lien which is not discharged within 30 days from the date that the notice of claim of lien is filed, Grantor shall deposit or cause to be deposited with Beneficiary cash, a sufficient corporate surety bond or other security reasonably satisfactory to Beneficiary in an amount adequate to provide for discharge of the lien plus any interest, cost, attorney fees or other charges that could accrue as a result of foreclosure or sale. In any contest Grantor shall, at Grantor's expense, defend itself, Trustee and Beneficiary and shall satisfy any final adverse judgment before enforcement against the Trust Property.

1.04(d) Evidence of Payment of Taxes or Assessments. Upon payment of real property taxes and assessments Grantor shall furnish to Beneficiary evidence of payment of such taxes and assessments. Grantor hereby authorizes the appropriate city or county official to deliver to Trustee and Beneficiary at any time a written statement of the taxes and assessments against the Trust Property.

1.05 Insurance.

1.05(a) 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 with loss payable to Beneficiary. The amount of insurance shall in no event be less than the amount of principal owed on the Note.

1.05(b) Insurance Companies, Policies and Certificates. Both the insurance company providing the policy required by this Section 1.05 and the form of the policy must be acceptable to Beneficiary. Grantor shall deliver to Beneficiary a certificate of coverage from the insurer insuring the policy required by paragraph 1.05(a) containing a stipulation that coverage will not be canceled or diminished without a minimum of 30 days' advance written notice to Beneficiary. Grantor shall deliver to Beneficiary at least 30 days prior to the expiration of any insurance policy required by this Section 1.05 a certificate showing the placement of a renewal or substitute policy of insurance.

1.05(c) Notice of Loss; Insurance Proceeds. In the event of loss, Grantor shall immediately notify Beneficiary, which may make proof of loss if it is not made promptly by Grantor. 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, be retained and applied by Beneficiary toward payment of all of the moneys secured by this Trust Deed in inverse order of maturity date without prepayment penalty, or be paid over wholly or in part to the Grantor upon such conditions as Beneficiary may determine for the repair of said buildings or improvements in their place or for any other purpose or object satisfactory to Beneficiary, but Beneficiary shall not be obligated to see to the proper application of any amount paid over to the Grantor.

1.06 Use, Maintenance and Alterations.

1.06(a) 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.

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

1.06(c) 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.

1.06(d) 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.

1.06(e) 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.

1.07 Condemnation. Grantor shall promptly pay to Beneficiary all awards or payments received by Grantor on account of condemnation of all or any part of the Trust Property. Beneficiary shall apply all amounts received on account of condemnation awards or payments to the last installments of principal on the Note and no prepayment penalty shall be payable with respect to such amounts. Any remaining proceeds after full payment of the Note shall be used to satisfy any other obligation of Grantor, payment of which is secured by this Trust Deed. Any remaining amount shall be paid to Grantor.

1.08 Reports.

1.08(a) Default. Grantor will furnish to Beneficiary notice of any default on its part under any lease affecting the Trust Property or under any loan agreement between Grantor and any other person.

1.08(b) Certificates of Lessee(s). Upon request of Beneficiary, and not more often than annually, Grantor will furnish to Beneficiary a certificate from each lessee of any portion of the Trust Property stating, if true, that the landlord (Grantor) is not in default under such lease, and that rental is current and has not been paid more than 60 days in advance.

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

1.09 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.

1.10 Reserves. If Grantor has failed on any occasion to perform its obligations under paragraphs 1.04 or 1.05 of this Trust Deed, Beneficiary may require Grantor to maintain with Beneficiary reserves for payment of taxes, assessments and insurance premiums. The reserve shall be created by monthly payments of a sum estimated by Beneficiary to be sufficient to produce, at least 15 days before due, an amount equal to the taxes, assessments and insurance premiums. If 15 days before payment is due, the reserve is insufficient, Grantor shall pay any deficiency to Beneficiary upon demand. The reserve shall be held by Beneficiary as a general deposit from Grantor and shall constitute a non-interest-bearing debt from Beneficiary to Grantor which Beneficiary may satisfy by payment of the taxes and assessments. Beneficiary shall not hold the reserve in trust for Grantor, and Beneficiary shall not be the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

Section 2. EVENTS OF DEFAULT.

The following shall constitute events of default:

2.01 Nonpayment. Failure of Grantor to make any payment required by the Note or to make any payment for taxes, insurance premiums or for reserves for such payments, or any other payment necessary to prevent filing of or discharge of any lien within ten days after written notice by Beneficiary (or Beneficiary's agents) of any such nonpayment. No notice by Beneficiary shall be required for nonpayment if during the preceding 12 calendar months Beneficiary has sent notice to Grantor concerning any nonpayment hereunder.

2.02 Breach of Other Covenant. Failure of Grantor to perform any obligation contained in this Trust Deed within 30 days after notice from Beneficiary (or Beneficiary's representative) specifying the nature of the default or, if the default cannot be cured within 30 days, failure within such time to commence and pursue with reasonable diligence curative action. No notice of default and opportunity to cure shall be required if during the preceding 12 calendar months Beneficiary has already sent a notice to Grantor concerning default in performance of the same obligation.

2.03 Misinformation. Falsity in any material respect of the warranty in paragraph 1.02 or of any repre-

sentation, warranty or information furnished to Beneficiary in connection with the Note or this Trust Deed.

2.04 Other Obligations. Failure of Grantor to perform any obligation required by the Note, or to perform any obligation required by any instrument evidencing any other indebtedness of Grantor to Beneficiary which indebtedness arises directly or indirectly out of the Note, this Trust Deed or the Assignment of Leases and Rents executed herewith.

2.05 Sale or Transfer of Possession. The sale of the Trust Property or transfer of possession thereof in any manner by Grantor without the prior written consent of Beneficiary, which will not be unreasonably withheld. Grantor acknowledges that the loan secured by this instrument 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. If Beneficiary consents to a sale or transfer to a third party by Grantor, the following conditions must be met:

(a) The credit of the third party must be satisfactory to Beneficiary;

(b) The third party must assume full personal liability for payment and performance of the Note, this Trust Deed and any other security instruments;

(c) Grantor, and any guarantor of the loan secured by this instrument, must confirm in writing that subsequent to such sale or transfer, Grantor, and all guarantors, shall remain personally obligated for payment and performance of the Note, this Trust Deed and any other security instruments;

(d) A charge for administrative costs shall be paid to Beneficiary by Grantor; and,

(e) If required by Beneficiary, the interest rate on the indebtedness secured by this instrument shall be increased by not more than 2 percent.

2.06 Default Under Leases. Default by Grantor under any lease covering any portion of the Trust Property under which Grantor is the landlord or lessor.

Section 3. REMEDIES IN CASE OF DEFAULT.

If an event of default shall occur, Beneficiary or Trustee, as the case may be, may exercise any of the following rights and remedies, in addition to any other remedies which may be available at law, in equity, or otherwise:

3.01 Acceleration. Beneficiary may declare the entire principal amount of the Note together with all interest and prepayment penalties to be immediately due and payable.

3.02 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.

3.03 Receiver. Beneficiary may have a receiver of the Trust Property appointed. Beneficiary (or a Trustee) 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 secured indebtedness. 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.

3.04 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.

3.05 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 this paragraph 3.05. If rents are collected by Beneficiary under this paragraph 3.05, 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.

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

3.07 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.

3.08 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.

3.09 Power of Sale. Beneficiary may direct Trustee to, 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. 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 6.07 shall neither preclude 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 or 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:

4.01 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.

4.02 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 improvement.

4.03 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.

4.04 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 lesser of 12 percent per year or the highest rate permitted by applicable law. Amounts borrowed or advanced and interest thereon shall be payable by Grantor to Beneficiary or Trustee on demand.

Section 5. APPLICATION OF PROCEEDS.

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

5.01 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 of lender-in-possession, and the costs and expenses provided for in paragraph 6.06.

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

5.03 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.

6.01 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."

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

6.03 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. If ownership of Grantor's interest in the Trust Property becomes vested in a person other than Grantor, Beneficiary, without notice to Grantor, may deal with Grantor's successor with reference to this Trust Deed and the Note by way of forbearance or extension without releasing Grantor from the obligations of this Trust Deed or liability under the Note.

6.04 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 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, except suits, actions and proceedings based upon a claim that Beneficiary or Trustee improperly entered into the Trust Deed or Note or loaned money thereunder.

6.05 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.

6.06 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 at the rate of 12 percent per year from the date of expenditure until repaid.

6.07 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 the rate of 2 percent in excess of the interest rate under the Note from the date of expenditure until repaid. 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.

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

6.09 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.

6.12 Commercial Trust Deed. This Trust Deed is a Commercial Trust Deed as defined by ORS 86.770(4).

6.13 Entire Agreement. This Trust Deed and the Note contain the entire agreement of the parties with respect to the matters covered, and no other previous agreement, statement or promise made by any party to this Trust Deed which is not contained in its terms or in the terms of the Note shall be binding or valid.

6.14 Waiver of Breach. The waiver by Beneficiary of a breach of any provision of this Commercial Trust Deed shall not operate or be construed as a waiver of any subsequent breach of any provision.

Gertrude L. Cartwright
Gertrude L. Cartwright
by William E. Cartwright her attorney
William E. Cartwright
William E. Cartwright

STATE OF Oregon)
County of Hamath) ss.

The foregoing instrument was acknowledged before me this 18th day of October, 1985, by GERTRUDE L. CARTWRIGHT William E. Cartwright as power of attorney for Gertrude L. Cartwright

Jane Steller
Notary Public for Oregon
My Commission Expires: 7-14-89

STATE OF Oregon)
County of Hamath) ss.

The foregoing instrument was acknowledged before me this 18th day of October, 1985, by WILLIAM E. CARTWRIGHT.

Jane Steller
Notary Public for Oregon
My Commission Expires: 7-14-89

EXHIBIT A

PARCEL 1: A tract of land in the NE 1/4 NE 1/4 of Section 32, Township 38 South, Range 9 described as follows:

Beginning at the Northwest corner of Block 78 of Klamath Addition to Klamath County, Oregon; thence North 38°56' East, a distance of 204 feet to the point of beginning; thence South 51°04' East, a distance of 100 feet; thence North 38°56' East, a distance of 116 feet to a point; thence North 51°04' West, a distance of 100 feet to a point; thence South 38°51' West, a distance of 116 feet to the point of beginning.

Note: Said Property is not platted however, it has been also described as Lots 1 and 2 and the Northeasterly 12 feet of Lot 3 all in Block 79, Klamath Addition, Klamath County, Oregon.

PARCEL 2: A tract of land in the NE 1/4 NE 1/4 of Section 32, Township 38 South, Range 9 described as follows:

Beginning at the Northwest corner of Block 78 of Klamath Addition to Klamath County, Oregon; thence North 38°56' East, a distance of 164 feet to the point of beginning; thence North 38°56' East a distance of 40 feet; thence South 51°04' East, a distance of 100 feet; thence South 38°56' West a distance of 40 feet; thence North 51°04' West, a distance of 100 feet to the point of beginning.

Note: Said property is not platted however, it has been also described as the Southwesterly 40 feet of Lot 3 of Block 79, Klamath Addition, Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 18th day
of October A.D., 19 85 at 3:33 o'clock P M., and duly recorded in Vol. M85
of _____
of Mortgages on Page 16964

FEE \$57.00

Evelyn Biehn,
By _____

County Clerk

Pam Smith