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58394

TRUST DEED

Vol. 186 Page 2935

THIS TRUST DEED, made this 14th day of February, 1986, between WALT STALLCUP ENTERPRISES, INC., an Idaho corporation qualified to do business in the State of Oregon, as Grantor, CONTINENTAL LAND TILE COMPANY, B. L. T. ENTERPRISES, INC., an Oregon corporation as Trustee, and 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:

All leasehold improvements and fixtures located within the improvements located on the land particularly described on Exhibit "A" hereunto attached, together with the Grantor's interest as Lessee (by Assignment) in and to the land described on said Exhibit "A" attached hereto and the improvements located thereon.

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 MILLION ONE HUNDRED FIFTY 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 February 15, 1996.

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.

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 now or hereafter erected on the said premises against loss or damage by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than \$                     , written in an amount acceptable to the beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the beneficiary as soon as insured; if the grantor shall fail for any reason to procure 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 same 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 any part thereof, may be released to grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any 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 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, render all sums secured by this trust deed immediately due and payable and 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 adjudicate 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 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 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 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 all sums secured hereby immediately due and payable. In such an event the beneficiary at his election may proceed to foreclose this trust deed by 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 86.795.

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 the default or defaults. If the default consists of a failure to pay, when due, the sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be 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 by the trustee in enforcing the obligation of the trust deed together with trustee's and attorney's fees not exceeding the amounts provided 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, 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 persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority and (4) the 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 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 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.

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The grantor covenants and agrees to and with the beneficiary and those claiming under him, that he is law-  
fully seized in fee simple of said described real property and has a valid, unencumbered title thereto of said  
leasehold improvements and Lessees interest

and that he will warrant and forever defend the same against all persons whomsoever.  
Where inconsistent, the terms of this trust deed shall be subject to the  
terms of a business assets purchase agreement and an assignment of lease  
for security between Grantor and Beneficiary of even date herewith.

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, execu-  
tors, 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 instru-  
ment to be \_\_\_\_\_ voluntary act and deed.

(OFFICIAL  
SEAL)

Before me:

Notary Public for Oregon

My commission expires:

(ORS 93.490)

STATE OF OREGON, County of \_\_\_\_\_ Jackson \_\_\_\_\_ ss.  
February 14, 1986

Personally appeared Walter B. Stallcup \_\_\_\_\_ and  
he \_\_\_\_\_ who, ~~each~~ being first  
President

~~secretary of~~ Walt Stallcup Enterprises,  
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: 11-18-89

#### 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.

Grantor

Beneficiary

SPACE RESERVED  
FOR  
RECORDER'S USE

AFTER RECORDING RETURN TO

Jackson County Title  
1150 Grater Lake Ave  
Suite B  
Medford, OR 97504

STATE OF OREGON,

County of \_\_\_\_\_ } ss.

I certify that the within instru-  
ment was received for record on the  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and recorded  
in book/reel/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.

NAME

By \_\_\_\_\_

TITLE

Deputy

EXHIBIT A

Lease dated \_\_\_\_\_ and amended by Addendum to Lease dated effective August 10, 1977, between S T H, Inc., an Inchoate Oregon Corporation (as Lessor) and B.L.T. Enterprises, Inc., an Oregon Corporation (as Lessee), for an initial term of twenty (20) years commencing August 10, 1977, together with three (3)-five (5) year renewal options covering the land and improvements located at 2323 S. 6th St., Klamath Falls, Oregon 97601, more particularly described as follows:

Parcel 1, Lots 2, 4, 17 and 18 of the Subdivision of Lot 803 Enterprise Tracts. Parcel 2, Lot 5 of the re-subdivision of Lot 803 Enterprise Tracts in the City of Klamath Falls, Oregon, according to the Official Records thereof on file in Klamath County, Oregon excepting therefrom a parcel of land deeded to the State of Oregon by and through its State Highway Division by Deed dated on July 20, 1943, recorded September 18, 1943, in Volume 158 of Deeds, Page 407, Records of Klamath County, Oregon, as follows: Beginning at the southeast corner of said Lot 5; thence north  $34^{\circ}11'$  East along the easterly line of said Lot 5 a distance of 10.22 feet to a point opposite to and 40.0 feet northerly from Station 4+44.62; thence parallel to and 40.0 feet distant from the relocated center line of the Klamath Falls-Lakeview Highway north  $55^{\circ}50'30''$  west a distance of 45.05 feet to the westerly line of said Lot 5; thence south  $34^{\circ}11'$  west along said westerly line a distance of 10.20 feet to southwest corner of said Lot 5; thence south  $55^{\circ}49'$  east along the south lot line a distance of 45.05 feet to the point of beginning. Parcel 3, Lot 3, of the Subdivision of Lot 803 Enterprise Tracts except portion conveyed to the State of Oregon by Instrument recorded in Volume 161, Page 42, Deed Records of Klamath County, Oregon.

Including all Improvements located thereon, together with all of the Lessor's rights, easements and appurtenances in adjoining and adjacent land, highways, roads, streets, lanes, whether public or private, serving said described premises.



## EXHIBIT A - Page 1 of 1

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_  
of February A.D., 19 86 at 10:41 o'clock A M., and duly recorded in Vol. M36 day  
of Mortgages on Page 2935

FEE \$13.00

By Evelyn Biehn County Clerk  
Bernetha A. Ketch