

65372

Aspen #M-30251180 Page 15601  
TRUST DEED

Dated: August 29 19 86

From: Gene R. and Kathe L. Byrnes, the "Grantor" Husband and Wife

Mailing Address: 636 Front Street, Klamath Falls, Oregon 97601

To: WESTERN BANK, the "Beneficiary" (or "Lender")

Loan Center Branch

Mailing Address: P.O. Box 1438, Coos Bay, Oregon 97420

AND: Aspen Title and Escrow, INC., the "Trustee"

Mailing Address: 600 Main Street, Klamath Falls, Oregon 97601

The lender has loaned money or extended credit to Gene R. and Kathe L. Byrnes \* (Borrower), which is repayable with interest according to the terms of the following described promissory note(s):

DATE OF NOTE	ORIGINAL PRINCIPAL BALANCE	CURRENT PRINCIPAL BALANCE	MONTHLY PAYMENT	DATE FINAL PAYMENT IS DUE
8/29/86	\$9,000.00	\$9,000.00	\$100.00	9/1/1996

The term "indebtedness" as used in this Trust Deed shall mean (a) the principal and interest payable under the note(s) and under any number of extensions and/or renewals of the note(s), (b) any future amounts, together with interest, that the lender may in its absolute discretion loan to Borrower or Grantor under this Trust Deed and any number of extensions and/or renewals thereof, (c) any and all other indebtedness, obligations and liabilities of Borrower or Grantor to Lender now or hereafter existing, matured or to mature, absolute or contingent, and wherever payable, including such as may arise from advances made by Lender to, or for the benefit of Grantor or Borrower, endorsements, guaranties, acceptances, bills of exchange, promissory notes, or other paper discounted by Lender or taken as security for any loans or advances of any kind, sort or description whatsoever, and (d) any sums paid or advanced by the lender to discharge obligations of Grantor as permitted under this Trust Deed, with interest. The interest rate, payment terms and balance due under the note(s) or any other obligations secured hereby may be indexed, adjusted, renewed or renegotiated in accordance with the terms of the note(s) or other obligation.

Grantor irrevocably grants, bargains, sells and conveys to Trustee, in trust with power of sale, to secure payment of the indebtedness and performance of all obligations of Grantor under this Trust Deed, the following described property located in Klamath County, Oregon, described as:

Lots 5 and 6, Block 1, Resubdivision of Block 242, MILLS SECOND ADDITION to the City of Klamath Falls, according to the Official Plat thereof on file in the office of the County Clerk of Klamath County, Oregon....

which has the address of on Martin Street off sixth Street, Klamath Falls, OR 97601 together with the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining, including but not limited to roads and easements used in connection with the premises; also, all fixtures, improvements, buildings and parts of buildings situated upon said property, and all other fixtures now or hereafter installed in or on the premises, and any shrubbery, flora or timber now growing or hereafter planted or growing thereon, and (unless this Trust Deed is being given to secure an extension of consumer credit requiring disclosure under the Federal Truth and Lending Act), Grantor also hereby grants to Lender a Uniform Commercial Code security interest in all equipment, machinery, furnishings and other articles of personal property now or hereafter located on or used in connection with the property; all of the foregoing is collectively referred to as the "Property". Grantor further hereby assigns to Lender as additional security for payment of the indebtedness and performance of all obligations of Grantor, all present and future rents, leases, and profits from the Property. If this Trust Deed is a commercial Trust Deed as described in ORS 86.770, the beneficiary shall be entitled to a deficiency judgment in the event of foreclosure by judicial proceeding. THE PROPERTY IS NOT CURRENTLY USED FOR AGRICULTURAL, TIMBER OR GRAZING PURPOSES.

\*Insert "Grantor" or name of borrower if different from Grantor.

10.2 In exercising its rights and remedies, the lender and Trustee shall be free to sell all or any part of the Property together or separately or to sell certain portions of the Property and refrain from selling other portions. The lender shall be entitled to bid at any public sale on all or any portion of the Property. The lender shall give Grantor reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. A waiver by either party of a breach of a provision of this agreement shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by the lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Trust Deed after failure of Grantor to perform shall not affect the lender's right to declare a default and exercise its remedies under this paragraph.

10.3 In the event suit or action is instituted to enforce any of the terms of this Trust Deed the lender shall be entitled to recover from Grantor such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal. All reasonable expenses incurred by the lender that are necessary at any time in the lender's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of searching records, obtaining title reports, surveyor's reports, attorneys' opinions or title insurance, whether or not any court action is involved, shall become part of the indebtedness payable on demand and shall bear interest at the same rate as provided in the note from the date of expenditure until paid.

# 11. NOTICE.

Any notice under this Trust Deed shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the address stated in this Trust Deed. Either party may change the address for notices by written notice to the other party.

# 12. SUCCESSION: TERMS.

12.1 Subject to the limitations stated in this Trust Deed on transfer of Grantor's interest, this Trust Deed shall be binding upon and inure to the benefit of the parties, their successors and assigns.

12.2 In construing this Trust Deed and the term Deed of Trust or Trust Deed shall encompass the term Security Agreement when the instrument is being construed with respect to any personal property.

12.3 Attorneys' fees. "Attorneys' fees," as that term is used in the note and this Trust Deed, shall include attorneys' fees, if any, which may be awarded by an appellate court.

Gene R. Byrnes  
Gene R. Byrnes  
Kathe L. Byrnes  
Kathe L. Byrnes

STATE OF OREGON,

County of Klamath } ss.

FORM NO. 23 — ACKNOWLEDGMENT  
STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

BE IT REMEMBERED, That on this 29th day of August, 19 86, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Gene R. Byrnes and Kathe L. Byrnes

known to me to be the identical individual(s) described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

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

Return To:  
Western Bank  
P.O. Box 1377  
Coos Bay, OR 97476  
Attn: Jeff McKinnon

Wardene L. Addington  
Notary Public for Oregon  
My Commission expires 3-22-89

Deed, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Trust Deed to the person or persons legally entitled thereto.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_ the 29th day of August A.D., 19 86 at 11:54 o'clock A M., and duly recorded in Vol. 186 of Mortgages on Page 15601.

FEE \$17.00.

Evelyn Biehn, County Clerk  
By [Signature]

person or persons legally entitled thereto.

Date: \_\_\_\_\_, 19 \_\_\_\_\_

4. **WARRANTY: DEFENSE OF TITLE.**  
 Grantor warrants that it holds merchantable title to the Property in fee simple, free of all encumbrances other than (a) those enumerated in the title policy, if any, issued for the benefit of the lender; and (b) the encumbrances described as: NONE

in connection with this transaction and accepted by the lender (herein referred to as "Permitted Encumbrances"). Grantor warrants and will forever defend the title against the lawful claims, other than Permitted Encumbrances, of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of the lender under this Trust Deed, Grantor shall defend the action at Grantor's expense. If any Permitted Encumbrance is a lien, Grantor shall pay any sums and do any other acts necessary to prevent a default or prevent any action or condition which with the lapse of time, the giving of notice, or any other action of creditor, would be a default or enable any creditor to declare a default or foreclose any Permitted Encumbrance which is a lien.

5. **CONDEMNATION.**

If all or any part of the Property is condemned, the lender may at its election require that all or any portion of the net proceeds of the award be applied on the indebtedness. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses and attorney fees necessarily paid or incurred by Grantor and the lender in connection with the condemnation. If any proceeding in condemnation is filed, Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor hereby assigns to Lender the net proceeds of any condemnation award.

6. **DUE ON SALE CLAUSE.**

Grantor agrees that Lender may, at Lender's option, declare the entire indebtedness immediately due and payable if all or any part of the Property, or an interest therein, is sold, transferred, assigned, further encumbered, or alienated. If Lender exercises its option to accelerate Grantor agrees that Lender may use any default remedies permitted under this Trust Deed and under applicable law. Grantor agrees that Lender may exercise Lender's rights under this Due-On-Sale provision each time all or any part of the Property, or an interest in the Property is sold, transferred, assigned, further encumbered, or alienated whether or not Lender previously exercised Lender's rights under this or any other Due-On-Sale provision.

7. **SECURITY AGREEMENT: FINANCING STATEMENTS.**

This instrument shall constitute a security agreement with respect to any personal property included within the description of the Property. Grantor shall join with Lender in executing one or more financing statements under the Uniform Commercial Code and shall file the statement at Grantor's expense in all public offices where filing is required to perfect the security interest of the lender in any personal property under the Uniform Commercial Code.

8. **DEFAULT.**

The following shall constitute events of default:

- 8.1 Any portion of the indebtedness is not paid when it is due.
- 8.2 Failure of Grantor within the time required by this Trust Deed to make any payment for taxes, insurance, or mortgage insurance premiums or for reserves for such payments, or any payment necessary to prevent filing of or discharge any lien.
- 8.3 Failure of Grantor to perform any other obligation under this Trust Deed within twenty (20) days after receipt of written notice from the lender specifying the failure.
- 8.4 If this Trust Deed secures a construction loan, any failure of Grantor or builder or any other person or entity to comply with or perform any provision of any construction loan agreement executed in connection with the loan within twenty (20) days after receipt of written notice from Beneficiary specifying the failure.
- 8.5 Default in any obligation secured by a lien which has or may have priority over this Trust Deed, or the commencement of any action to foreclose any prior lien.
- 8.6 Either Grantor or Borrower become insolvent, file a voluntary petition in bankruptcy, become subject to an involuntary petition in bankruptcy, make an assignment for the benefit of creditors, or consent to the appointment of a receiver or Trustee for any portion of the Property or all or a substantial part of Grantor's or Borrower's assets.
- 8.7 Default by Grantor or any predecessors in title of Grantor, as lessee or sublessee, under the terms of any lease or sublease of the Property to which Grantor is a party or through which Grantor's interest in the Property is derived.

9. **RELEASE ON FULL PERFORMANCE.**

When all sums secured by this Trust Deed are paid Lender shall request Trustee to reconvey the above described real property. Trustee shall, without warranty, reconvey the real property to the person legally entitled thereto. Such person shall pay all fees for filing the reconveyance and shall pay Trustee a reasonable fee for preparation and execution of the reconveyance instrument.

10. **RIGHTS AND REMEDIES ON DEFAULT.**

10.1 Upon the occurrence of any event of default and at any time thereafter, the lender may exercise any one or more of the following rights and remedies:

- a. The right at its option by notice to Borrower to declare the entire indebtedness immediately due and payable.
- b. With respect to all or any part of the Property that constitutes realty, the right to foreclose by judicial foreclosure in accordance with applicable law.
- c. The right to have the Trustee sell the Property in accordance with the Deed of Trust Act of the State of Oregon and the Uniform Commercial Code of the State of Oregon where applicable, at public auction to the highest bidder. Any person except Trustee may bid at the trustee's sale. The power of sale conferred by this Trust Deed and the law is not an exclusive remedy and when not exercised, Lender may foreclose this Trust Deed as a mortgage. The 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, Trustee, or Lender shall be a party, unless such action or proceeding is brought by the trustee.
- d. With respect to all or any part of the Property that constitutes personally, the rights and remedies of a secured party under the Uniform Commercial Code.
- e. The right, without notice to Grantor, to take possession of the Property and collect all rents and profits, including those past due and unpaid, and apply the net proceeds, over and above the lender's costs, against the indebtedness. In furtherance of this right the lender may require any tenant or other user to make payments of rent or use fees directly to the lender, and payments by such tenant or user to the lender in response to its demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed.
- f. The right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property and to operate the Property preceding foreclosure or sale and apply the proceeds, over and above costs of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. The lender's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the indebtedness by a substantial amount.
- g. Subject to any limitations imposed by law, the right to obtain a deficiency judgment in the event the net sale proceeds of any foreclosure sale are insufficient to pay the entire unpaid indebtedness.
- h. Any other right or remedy provided in this Trust Deed, the promissory note(s) evidencing the indebtedness, any construction loan agreement, any other security document, or under law.