

81895

TRUST DEED

Vol. 1787 Page 21213

COTTAGE, DEED, TRUST

THIS TRUST DEED, made this 3rd

day of

November

1987, between

ROBERT K. MARKS and CLYDIA M. MARKS, husband and wife

as Grantor, ASPEN TITLE & ESCROW, INC., an Oregon Corporation  
JOHN L. PERRY and DONNA S. PERRY, husband and wife with full rights of survivorship

as Beneficiary,

CLATAMA COUNTY

WITNESSETH:

in Klamath

County, Oregon, described as:

with power of sale, the property

SEE ATTACHED EXHIBIT "A"

THIS TRUST DEED

THIS TRUST DEED IS AN ALL-INCLUSIVE TRUST DEED AND IS BEING RECORDED THIRD AND JUNIOR TO A FIRST MORTGAGE IN FAVOR OF SMALL BUSINESS ADMINISTRATION, AN AGENCY OF THE UNITED STATES AND TO A SECOND CONTRACT OF SALE IN FAVOR OF STEPHEN E. ARMANTROUT AND PATRICIA A. ARMANTROUT, HUSBAND AND WIFE.

SEE ATTACHED EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

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 ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED AND NO/100 (\$137,500.00)

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, if not sooner paid, to be due and payable at maturity 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. 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.

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, nor to commit or permit any waste of said property;

2. To complete, 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 buildings as the beneficiary may from time to time require, in an amount not less than the insurable value of such buildings, in companies acceptable to the beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the beneficiary as soon as issued; 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 same at grantor's expense. The amount of any policy of insurance now or hereafter placed on said buildings, may determine, or at option of beneficiary the entire amount so collected, or not cure of 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 the 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 by this deed, shall be added to and become a part of the debt secured by this deed; together with the obligations described in paragraphs 6 and 7 of this deed, shall be added to and become a part of the debt secured by this deed; and the grantor shall be bound for the payment of the obligation herein described, hereof and for such payments, with interest as aforesaid, 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 with interest, and the nonpayment thereof shall, at the option of the beneficiary, constitute a breach of this trust deed.

6. To pay all costs 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 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 such action or proceeding in which the beneficiary or trustee may appear, including but not limited to the foreclosure of this deed, to pay all costs and expenses, including attorney's fees mentioned in this paragraph 7 in all cases shall be decreed by 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 have the right, if it so elects, to require that all or any portion of the money payable as compensation for such taking, which is 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 to take such action as may be necessary to execute such instruments as shall be necessary to obtain such compensation, to apply upon beneficiary's request.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and expenses for cancellation of the note for endorsement (in case of full redemption of this deed) 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 grantor in any reconveyance may be described as the "person or persons to whom the property is reconveyed," 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 and profits, including those past due and unpaid, and apply the same to the payment of the principal and interest on the indebtedness, and the trustee's fees and expenses of operation and collection, including reasonable attorney's fees 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 its performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the trustee declares all sums secured hereby immediately due and payable. In such event the beneficiary at his election may proceed to foreclose this trust deed by advertisement and sale, or may direct the trustee to foreclose this trust deed by either at law or in equity, which the beneficiary may waive. In the latter event the beneficiary or the trustee shall execute and cause to be recorded in the time and place of sale, give notice thereof whereupon the trustee shall 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 privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, the entire amount due 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 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 a 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 for having recorded liens subsequent to the trust deed, (2) to all persons who have claims against the property 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 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: This 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.





## PARCEL 1:

Beginning at a point which is 30 feet North and 212 feet East from the Southwest corner of Lot 29, Section 14, Township 36 South, Range 12 East of the Willamette Meridian; thence due East along the State Highway, 132 feet; thence due North 132 feet; thence West 116 feet; thence North 198 feet; thence West 16 feet; thence South 330 feet to the point of beginning, in the County of Klamath, State of Oregon.

EXCEPTING THEREFROM the following: A seven foot strip of land situated in said Lot 29, in the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 14, Township 36 South, Range 12 East of the Willamette Meridian, more particularly described as follows:

Beginning at an iron pin located North a distance of 30.0 feet and East a distance of 344.0 feet from the iron pipe marking the Southwest corner of said Section 14; thence North a distance of 132.0 feet to an iron pin; thence West a distance of 7.0 feet to an iron pin; thence South a distance of 132.0 feet to an iron pin; thence East a distance of 7.0 feet, more or less, to the point of beginning.

## PARCEL 2:

Beginning at the Southwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14, Township 36 South, Range 12 East of the Willamette Meridian; thence East 228 feet; thence North 162 feet to the place of beginning; thence North 198 feet; thence East 109.4 feet; thence South 198 feet; thence West 109.4 feet to the place of beginning in SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 14, Township 36 South, Range 12 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

## PARCEL 3:

A parcel of land situated in Lot 29, Section 14, Township 36 South, Range 12 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at a point 337.4 feet East and 162 feet North of the quarter corner common to Sections 15, 14, 22 and 23, Township 36 South, Range 12 East of the Willamette Meridian, which point is the Southeast corner of property described in Deed Volume 74 at page 607 and the true point of beginning; thence East to the Southwest corner of property described in Deed Volume 76 at page 408; thence North 208.75 feet to a point on the South line of property described in Deed Volume 116 at page 175; thence West along the South line of said parcel; thence North 208 feet along the West line of said parcel to a point on the South line of parcel described in Deed Volume 117 at page 375; thence West along the South line of said parcel described in Deed Volume 117 at page 375 to the Southwest corner of said parcel; thence South 218.9 feet, more or less, to the Northwest corner of property described in Deed Volume 74 at page 607; thence East 109.4 feet along the North line of said parcel described in Deed Volume 74 at page 607 to the Northeast corner of said parcel; thence South along the East line of said parcel, 198 feet to the point of beginning.



Exhibit "A" continued ...

PARCEL 4:

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Beginning at a point which is 30 feet North and 30 feet East of the Southwest corner of Lot 29 in Section 14, Township 36 South, Range 12 East of the Willamette Meridian, in the County of Klamath, State of Oregon; thence due East 177 feet along the state highway to the point of beginning; thence at right angles due North 330 feet; thence East 5 feet; thence South 330 feet; thence West to the point of beginning.

THIS TRUST DEED IS AN "ALL INCLUSIVE" TRUST DEED AND IS THIRD AND SUBORDINATE TO THE CONTRACT OF SALE NOW OF RECORD DATED SEPTEMBER 1, 1977 and RECORDED SEPTEMBER 2, 1977 IN BOOK M-77 AT PAGE 16403, KLAMATH COUNTY, OREGON, IN FAVOR OF STEPHEN E. ARMANTROUT AND PATRICIA A. ARMANTROUT, HUSBAND AND WIFE, AS VENDOR. JOHN L. PERRY AND DONNA S. PERRY, BENEFICIARY HEREIN AGREE TO PAY, WHEN DUE, ALL PAYMENTS DUE UPON THE SAID CONTRACT OF SALE IN FAVOR OF STEPHEN E. ARMANTROUT AND PATRICIA A. ARMANTROUT, AND WILL SAVE GRANTORS HEREIN, ROBERT K. MARKS AND CLYDIA M. MARKS, HARMLESS THEREFROM. SHOULD THE SAID BENEFICIARY HEREIN DEFAULT IN MAKING ANY PAYMENTS DUE UPON SAID CONTRACT OF SALE, GRANTOR HEREIN MAY MAKE SAID DELINQUENT PAYMENTS AND ANY SUMS SO PAID SHALL THEN BE CREDITED UPON THE SUMS NEXT TO BECOME DUE UPON THE NOTE SECURED BY THIS TRUST DEED.

*WLP JLP*  
R.K.M. *(Cm)*

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Company the 23rd day  
of November A.D. 19 87 at 4:05 o'clock P M., and duly recorded in Vol. M87  
of Mortgages on Page 21213  
By Evelyn Biehn County Clerk  
[Signature]

FEES \$25.00