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TRUST DEED

Vol. m8s Page 17025

THIS TRUST DEED, made this 3rd day of

October

1988, between

D. DAVID MONTGOMERY and VICTORIA M. MONTGOMERY, husband and wife

WARREN HENRY BYERS

as Beneficiary,

as Trustee, and

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Klamath County, Oregon, described as:

WITNESSETH:

SE $\frac{1}{4}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  of SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 14, in Township 37 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

Klamath County Tax Account #3712-0000-00900.

**SPECIAL TERMS:** Grantors shall not cut any timber from the real property described herein until the Note secured by this Trust Deed is paid in full.

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 **NINE 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 **per terms of Note**, 19, becomes due and payable.

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 said financing statements pursuant to the Uniform Commercial Code as the beneficiary may require and to pay for filing same in 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 building and such other hazard as the beneficiary may from time to time require, in an amount not less than the replacement cost of the building, by fire policies of insurance acceptable to the beneficiary, with loss payable to the latter, all of which policies shall be delivered to the beneficiary as soon as insured; 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 indebtedness secured hereby and in such order as beneficiary may determine, or any 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 and 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 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, immediately due and payable, and 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.

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 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.

**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 be taken as compensation for such taking that all or any portion of the monies payable 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 secured hereby; and grantor agrees that the balance applied upon the indebtedness and execute such instruments as shall be necessary to take such action.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and expenses of this deed and the note for endorsement in case of full reconveyance, 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, 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 and issues and profits, in its own name sue or otherwise collect said property's 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 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, time being of the essence with respect to such payment and/or performance, 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 in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to foreclose this trust deed by a written notice of default and his election to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the latter event the beneficiary or the trustee shall execute and cause to be recorded a notice of default and his election to sell the said described real property to satisfy the obligation secured hereby 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 so 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 secured by the trust deed, the default may be cured by payment of the amount due at the time of the cure or 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 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 full of the property sold, 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 for 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 and (4) the 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 (a) 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.

**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 except none**

**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 or household purposes (see Important Notice below).**

**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 use Stevens-Ness Form No. 1319, or equivalent. If compliance with the Act is not required, disregard this notice.

(If the signor of the above is a corporation, use the form of acknowledgment opposite.)

STATE OF OREGON

County of Klamath

This instrument was acknowledged before me on  
October 10, 1988, by

D. DAVID MONTGOMERY and VICTORIA M. MONTGOMERY

(SEAL)

My commission expires: 11/16/91

STATE OF OREGON

County of \_\_\_\_\_

This instrument was acknowledged before me on  
19, by

as

Notary Public for Oregon

My commission expires:

(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. 881-1)

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

**D. DAVID MONTGOMERY and VICTORIA M. MONTGOMERY**

**343 W. Nevada St.**

**Ashland, OR 97520**

Grantor

**WARREN HENRY BYERS**

**P.O. Box 5188**

**Klamath Falls, OR 97601**

Beneficiary

**AFTER RECORDING RETURN TO**

**MOUNTAIN TITLE COMPANY OF  
 KLAMATH COUNTY**

STATE OF OREGON

County of Klamath

I certify that the within instrument was received for record on the 19th day of Oct., 1988, at 9:10 o'clock A.M., and recorded in book/reel/volume No. M88 on page 17525 or as fee/file/instrument/microfilm/reception No. 92798, Record of Mortgages of said County.

Witness my hand and seal of

County affixed.

**Evelyn Biehn, County Clerk**

NAME

TITLE

By Pauline Mueller Deputy

Fee \$13.00