

S6640

TRUST DEED

Vol. 2042 Page 2042

THIS TRUST DEED, made this 27th

of January 1989 between ROBERT C. DOWDELL, TRUSTEE OF BDK NOMINEE REALTYTRUST, UTA DATED JANUARY 21, 1989

as Grantor, ASPEN TITLE & ESCROW, INC.

FIRST INTERSTATE BANK OF OREGON, N.A., TRUSTEE

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:

SEE ATTACHED "EXHIBIT A"

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 EIGHTY FIVE THOUSAND and No/100- (\$85,000.00) -

note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, it not sooner paid, to be due and payable at maturity of note, 19

The date of maturity of the debt incurred 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 therof, 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, 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 therewith.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property; if the beneficiary so requests, to file in executing such financial statements pursuant to the Uniform Commercial Code at the beneficiary's office or offices, as well as the cost of all lien searches made by the filing offices or searching agents as may be deemed desirable by the beneficiary.

4. To provide and continuously maintain insurance on the buildings and such other hazards as the beneficiary may from time to time require, in amounts not less than \$ INSURABLE VALUE, written in policies acceptable to the beneficiary, with loss payable to the latter; all if the grantor shall fail for any reason to procure any such insurance and to deliver such 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 life or other insurance policy may be applied by beneficiary, determine, or at option of beneficiary the entire amount so collected, or not due or waive any default or notice of default hereunder or invalidate any

5. To keep said premises free from construction liens and to pay all against said property before expiration of such liens, assessments and taxes to beneficiary; should the grantor fail to make payment of any taxes, assesses by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at his 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 covenant, hereinafter and for such payments, with interest as aforesaid, the proportionate amount that they are found for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the non-payment thereof shall, at the option of the beneficiary, 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, 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 appellate court shall adjudge 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 compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily incurred by grantor in the defense of any proceeding, including expenses and attorney's fees, in the trial and appellate courts, necessarily incurred by beneficiary in such proceedings, and the balance unpaid upon indebtedness and account which 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 all fees and presentation of this deed and the note for the liability (in case of full reconveyance, for cancellation), without affecting (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 subdivision 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 conveyance may be described as "the person or persons legally entitled thereto," and the recitals therein of any matter or facts shall be conclusive proof of the truthfulness thereof. Trustee's loss 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 trustee 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 pay by the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order of bankruptcy may determine.

11. The entering upon and taking possession of said property, the collection of such rents, issues and profits, or the proceeds of the sale of 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 the 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 or 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, which the beneficiary may have in the trustee's place of business, and sell the property, the beneficiary or his election to sell the said described real property to satisfy the obligation secured hereby whereupon the trustee shall in the time and place of sale, give notice thereto as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 85.734 to 86.796.

13. After the trustee has commenced foreclosure by advertisement and sale, at any time prior to 5 days before the date the trustee commences the sale, the grantor or any other person so notified by ORS 86.733, 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 claiming 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 note 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 his deed in form as required by law conveying the property so sold, but without any covenant or warranty excepts or implied warranties 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 substitute to any trustee named herein or to any successor trustee appointed by trustee, the same 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.

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 hereof of pending suit 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.

JAN 30 '89 14:45 KAFKA & KAUFMAN P.C.

P 20
2043

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

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),
- (b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes.

This deed applies to, insures 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

Robert C. Dowdell Trustee

ROBERT C. DOWDELL, TRUSTEE

* **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 signer of the above is a corporation, use the form of acknowledgement appended.)

STATE OF OREGON,
County of Klamath Polk } ss.

This instrument was acknowledged before me on
JANUARY 30, 1989, by
ROBERT C. DOWDELL, TRUSTEE

STATE OF OREGON,

County of } ss.

This instrument was acknowledged before me on

19.., by

as

ot

Notary Public for Oregon

(SEAL)

My commission expires:

Carolyn Edmunds
Notary Public for Oregon

(SEAL)
NOTARY PUBLIC, STATE OF FLORIDA
COMMISSION EXPIRES: MAY 31, 1992
BONDED THRU NOTARY PUBLIC UNDERSTATED

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)

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

Grantor

SPACE RESERVED
FOR
RECORDER'S USE

Beneficiary

AFTER RECORDING RETURN TO

Milton Kafka, Atty
P.O. Box 415
Sharon, Massachusetts
02067

STATE OF OREGON,

County of } ss.

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

Witness my hand and seal of County affixed.

NAME

TITLE

Deputy

By

EXHIBIT "A"

A portion of Section 32, Township 38 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at the intersection of the Westerly line of Tenth Street and the Southerly line of Pine Street; thence Southeasterly along the Westerly line of Tenth Street 125.3 feet; thence Southwesterly parallel with Pine Street 66.92 feet to the Easterly line of Ninth Street; thence Northwesterly along the Easterly line of Ninth Street 129.04 feet, more or less, to the Southerly line of Pine Street; thence Northeasterly along the Southerly line of Pine Street 127.5 feet, more or less to the point of beginning.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Co. the 1st day
of Feb. A.D. 19 89 at 3:11 o'clock P.M., and duly recorded in Vol. M89,
of Mortgages on Page 2042.

FEE \$18.00

Evelyn Biehn County Clerk

By Deelene Mullenahare