

97415

Aspen 33058

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST**

DATED: ... February 17, 1989 .....  
 BETWEEN: DWIGHT E. BROWN and CHARLENE L. BROWN, husband and wife ..... ("Grantor,")  
 AND: HIGHLAND COMMUNITY FEDERAL CREDIT UNION ..... ("Credit Union,")  
 AND: ASPEN TITLE & ESCROW, INC., An Oregon Corporation ..... ("Trustee,")

Grantor conveys to Trustee for benefit of Credit Union (which is the beneficiary of this Deed of Trust) all of Grantor's right, title, and interest in and to the following described real property (the "Real Property"), together with all existing or subsequently erected or affixed improvements or fixtures.

Lots 13 and 14, Block 37, BUENA VISTA ADDITION TO THE CITY OF  
 KLAMATH FALLS, in the County of Klamath, State of Oregon.

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 FEB 23 1989

Grantor presently assigns to Credit Union all of Grantor's right, title and interest in and to all rents, revenues, income, issues and profits (the "Income") from the Real Property described above.

Grantor grants Credit Union a Uniform Commercial Code security interest in the Income and in all equipment, fixtures, furnishings, and other articles of personal property owned by Grantor, now or subsequently attached or affixed to the Real Property described above, together with all accessions, parts, or additions to, all replacements of and all substitutions for any of such property, and together with all proceeds (including insurance proceeds and refund of premium) from any sale or other disposition (the "Personal Property").

(Check if Applies)

There is a mobile home on Real Property, which is covered by this security instrument, and which is and shall remain:  
☐ Personal Property  
☒ Real Property

The Real Property and the Personal Property are collectively referred to as the "Property."

Credit Union has loaned, or has agreed to loan, Grantor \$ 9,000.00, which is repayable with interest according to the terms of a promissory note or other credit agreement given to evidence such indebtedness dated the same as this deed and security agreement. The maturity date of this deed and security agreement is February 20, 1990. The loan is pursuant to a line of credit or other open-end credit agreement, the maturity date does not mean the Credit Union is obligated to maintain the loan until the maturity date. The promissory note or credit agreement, and any note or credit agreement given in renewal or substitution for the promissory note or credit agreement originally issued, is herein referred to as "the Note". The interest rate on the Notes may be indexed, adjusted, renewed, or renegotiated.

The term "Indebtedness" as used in this deed shall mean (a) all principal and interest payable under the Note, and (b) any amounts expended or advanced by Credit Union to discharge obligations of Grantor or expenses incurred by Credit Union or Trustee to enforce obligations of Grantor hereunder, as permitted under this deed and security agreement, together with interest thereon as provided herein.

#### Future Advances.

The "Indebtedness" ☐ does ☒ does not include future loans made by the Credit Union, at its discretion and not pursuant to a line of credit, to the Borrower, including interest thereon. This trust deed, the assignment of the Income, and security interest are given to secure payment of the Indebtedness and performance of all obligations of Grantor under this deed and security agreement and are given and accepted on the following terms:

1. **Payment and Performance.** Grantor shall pay to Credit Union all amounts secured by this deed and security agreement as they become due, and shall strictly perform all of Grantor's obligations.

2. **Possession and Maintenance of the Property.**

2.1 **Possession.** Until default, Grantor may remain in possession and control of and operate and manage the Property and collect the Income from the Property.

2.2 **Duty to Maintain.** Grantor shall maintain the Property in first class condition and promptly perform all repairs and maintenance necessary to preserve its value.

2.3 **Nuisance, Waste.** Grantor shall neither conduct or permit any nuisance nor commit or suffer any strip or waste on or to the Property or any portion thereof including without limitation removal or alienation by Grantor of the right to remove any timber, minerals (including oil and gas), or gravel or rock products.

2.4 **Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without the prior written consent of Credit Union. Credit Union shall consent if Grantor makes arrangements satisfactory to Credit Union to replace any improvement which Grantor proposes to remove with one of at least equal value. "Improvements" shall include all existing and future buildings, structures, and parking facilities.

2.5 **Credit Union Right to Enter.** Credit Union, its agents and representatives, may enter upon the Property at all reasonable times to attend to Credit Union's interest and to inspect the Property.

2.6 **Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Credit Union in writing prior to doing so and Credit Union's interest in the Property is not jeopardized. Credit Union may require Grantor to post adequate security (reasonably satisfactory to Credit Union) to protect Credit Union's interest.

2.7 **Duty of Protect.** Grantor shall do all other acts, in addition to those set forth in this section, that from the character and use of the Property are reasonably necessary to protect and preserve the security.

**2.8 Construction Loan.** If some or all of the proceeds of the loan creating the Indebtedness is to be used to construct or complete construction of any improvement on the Property, the improvement shall be completed within six months from the date of this deed and security agreement and Grantor shall pay in full all costs and expenses in connection with the work.

**3. Taxes and Liens**

**3.1 Payment.** Grantor shall pay when due before they become delinquent all taxes and assessments levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Credit Union under this deed, except for the lien of taxes and assessments not due, except for the prior indebtedness referred to in Section 17, and except as otherwise provided in Subsection 3.2.

**3.2 Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Credit Union's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantor has notice of the filing, secure the discharge of the lien or deposit with Credit Union, cash or a sufficient corporate surety bond or other security satisfactory to Credit Union in an amount sufficient to discharge the lien plus any costs, attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien.

**3.3 Evidence of Payment.** Grantor shall upon demand furnish to Credit Union evidence of payment of the taxes or assessments and shall authorize the appropriate county official to deliver to Credit Union at any time a written statement of the taxes and assessments against the Property.

**3.4 Notice of Construction.** Grantor shall notify Credit Union at least 15 days before any work is commenced, any services are furnished, or any materials are supplied to the Property if a construction lien could be asserted on account of the work, services or materials, and the cost exceeds \$5,000 (if the Property is used for nonresidential or commercial purposes or \$1,000 if the Property is used as a residence). Grantor will on request furnish to Credit Union advance assurances satisfactory to Credit Union that Grantor can and will pay the cost of such improvements.

**4. Property Damage Insurance.**

**4.1 Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value basis covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a mortgagee's loss payable clause in favor of Credit Union. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Credit Union. Grantor shall deliver to Credit Union certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of 10 days' written notice to Credit Union.

**4.2 Grantor's Report on Insurance.** If the Property is not used as Grantor's residence within 60 days after the close of its fiscal year, Grantor shall furnish to Credit Union a report on each existing policy of insurance showing:

- (a) the name of the insurer;
- (b) the risks insured;
- (c) the amount of the policy;
- (d) the Property insured, the then current replacement value of the Property, and the manner of determining that value; and
- (e) the expiration date of the policy.

Grantor shall, upon request, have an independent appraiser satisfactory to Credit Union determine the cash value or replacement cost of the Property.

**4.3 Application of Proceeds.** Grantor shall promptly notify Credit Union of any loss or damage to the Property. Credit Union may make proof of loss if Grantor fails to do so within 15 days of the casualty. Credit Union may, at its election, apply the proceeds to the reduction of the Indebtedness or the restoration and repair of the Property. If Credit Union elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Credit Union. Credit Union shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default hereunder. Any proceeds which have not been paid out within 180 days after their receipt and which Credit Union has not committed to the repair or restoration of the Property shall be used to prepay first accrued interest and then principal of the Indebtedness. If Credit Union holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor.

**4.4 Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this deed and security agreement at any trustee's or other sale held under the provision contained within, or at any foreclosure sale of such Property.

**4.5 Compliance with Prior Indebtedness.** During the period in which any prior Indebtedness described in Section 12.1 is in effect, compliance with the insurance provisions contained in the instrument evidencing such prior Indebtedness shall constitute compliance with the insurance provisions under this deed and security agreement, to the extent compliance with the terms of this deed and security agreement would constitute a duplication of insurance requirements. If any proceeds from the insurance become payable on loss, the provisions in this deed for division of proceeds shall apply only to that portion of the proceeds not payable to said holder of the prior Indebtedness.

**4.6 Association of Unit Owners.** In the event the Real Property has been submitted to unit ownership pursuant to a Unit Ownership Law, or similar law for the establishment of condominiums or cooperative ownership of Real Property, the insurance may be carried by the association of unit owners in Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property. If not so used by the association, such proceeds shall be paid to Credit Union.

**5. Expenditure by Credit Union.** If Grantor fails to comply with any provision of this deed, including the obligation to maintain the prior Indebtedness in good standing as required by Section 17 hereunder, Credit Union may at its option on Grantor's behalf take the required action and any amount that it expends in so doing shall be added to the Indebtedness and bear interest at the rate the note bears. Amounts so added shall be payable on demand with interest from the date of expenditure at the rate the Note bears. The rights provided for in this section shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Credit Union shall not by taking the required action cure the default so as to bar it from any remedy that it otherwise would have had.

**6. Warranty; Defense of Title.**

**6.1 Title.** Grantor warrants that it holds merchantable title to the Property in fee simple free of all encumbrances other than those set forth in Section 17 or in any policy of title insurance issued in favor of Credit Union in connection with the deed and security agreement.

**6.2 Defense of Title.** Subject to the exceptions in the paragraph above, Grantor warrants and will forever defend the title against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Credit Union or Trustee under this deed, Grantor shall defend the action at its expense.

**7. Condemnation.**

**7.1 Application of Net Proceeds.** If all or any part of the Property is condemned, Credit Union may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees necessarily paid or incurred by Grantor, Credit Union, or Trustee in connection with the condemnation.

**7.2 Proceedings.** If any proceedings in condemnation are filed, Grantor shall promptly notify Credit Union in writing and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award.

**8. Imposition of Tax By State.**

**8.1 State Taxes Covered.** The following shall constitute state taxes to which this section applies:

- (a) A specific tax upon trust deeds or upon all or any part of the Indebtedness secured by a trust deed or security agreement.
- (b) A specific tax on a Grantor which the taxpayer is authorized or required to deduct from payments on the Indebtedness secured by a deed of trust or security agreement.
- (c) A tax on a trust deed or security agreement chargeable against the Credit Union or the holder of the note secured.
- (d) A specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by a Grantor.

**8.2 Remedies.** If any state tax to which this section applies is enacted subsequent to the date of this deed, this shall have the same effect as a default, and Credit Union may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met:

- (a) Grantor may lawfully pay the tax or charge imposed by the state tax, and
- (b) Grantor pays or offers to pay the tax or charge within 30 days after notice from Credit Union that the tax law has been enacted.

**9. Power and Obligations of Trustee.**

**9.1 Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the request of Credit Union and Grantor:

- (a) Join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights in the public.
- (b) Join in granting any easement or creating any restriction on the Real Property.
- (c) Join in any subordination or other agreement affecting this deed and security agreement or the interest of Credit Union under this deed and security agreement.
- (d) Sell the Property as provided under this deed and security agreement.

**9.2 Obligations to Notify.** Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Credit Union, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

**10. Transfer by Grantor.**

**10.1 Consent by Credit Union.** Grantor shall not transfer or agree to transfer all or part of Grantor's interest in the Property without the prior written consent of Credit Union. Any attempt to transfer shall constitute a default hereunder. A "sale or transfer" means the conveyance of real property or any right, title, or interest therein, whether legal or equitable, whether voluntary or involuntary, by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three years, lease-option contract, or any other method of conveyance of real property interests.

If Grantor or a prospective transferee applies to Credit Union for consent to a transfer, Credit Union may require such information concerning the prospective transferee as would normally be required from a new loan applicant.

**10.2 Condition to Consent.** As a condition of its consent to any transfer, Credit Union may in its discretion impose an assumption fee in accordance with Credit Union's fee schedule then in effect, and may increase the interest rate of the Indebtedness to the prevailing rate for similar rates then charged by Credit Union. Credit Union may increase the amount of each remaining installment so that the Indebtedness will be fully paid by the original maturity date. In no event, however, shall the interest rate be increased, nor any fee imposed, beyond the maximum rate permitted under applicable law. This paragraph sets forth terms that Credit Union may impose as a condition to consent. This paragraph is not exclusive and Credit Union, at its sole discretion, may impose additional terms or may decline to consent to a transfer.

**10.3 Effect of Consent.** If Credit Union consents to one transfer, that consent shall not constitute a consent to other transfers or a waiver of this section. No transfer by Grantor shall relieve Grantor of liability for payment of the Indebtedness. Following a transfer, Credit Union may agree to any extension of time for payment or modification of the terms of this deed and security agreement or the Note or waive any right or remedy under this deed and security agreement or the Note without relieving Grantor from liability. Grantor waives notice, presentment, and protest with respect to the Indebtedness.

#### **11. Security Agreement; Financing Statements.**

**11.1 Security Agreement.** This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures, and Credit Union shall have all of the rights of a secured party under the Oregon Uniform Commercial Code of the state in which the Real Property is located.

**11.2 Security Interest.** Upon request by Credit Union, Grantor shall execute financing statements and take whatever other action is requested by Credit Union to perfect and continue Credit Union's security interest in the Income and Personal Property. Grantor hereby appoints Credit Union as Grantor's attorney in fact for the purpose of executing any documents necessary to perfect or continue the security interest granted therein. Credit Union may, at any time and without further authorization from Grantor, file copies or reproductions of this deed and security agreement as a financing statement. Grantor will reimburse Credit Union for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property and make it available to Credit Union within three days after receipt of written demand from Credit Union.

**11.3 Mobile Homes.** If the Property includes mobile homes, motor homes, modular homes, or similar structures, such structures shall be and shall remain Personal Property or Real Property as stated above regardless of whether such structures are affixed to the Real Property, and irrespective of the classification of such structures for the purpose of tax assessments. The removal or addition of axles or wheels, or the placement upon or removal from a concrete base, shall not alter the characterization of such structures.

**12. Reconveyance on Full Performance.** If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this deed and security agreement and the Note, Credit Union shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Credit Union's security interest in the Income and the Personal Property. Any reconveyance fee or termination fee required by law shall be paid by Grantor.

#### **13. Default.** The following shall constitute events of default:

- (a) Failure of Grantor to pay any portion of the Indebtedness when it is due.
- (b) Failure of Grantor within the time required by this deed and security agreement to make any payment for taxes, insurance, or for any other payment necessary to prevent filing of or to affect discharge of any lien.
- (c) Dissolution or termination of existence (if Grantor is a corporation), insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, the commencement of any proceeding under any bankruptcy or insolvency laws by or against, or the failure to obtain dismissal or deny the contents of any petition filed under any bankruptcy or insolvency laws within the time required to answer by, Grantor or any of the individuals or entities who are herein collectively referred to as "Grantor."
- (d) Default of Grantor under any prior obligation or instrument securing any prior obligation, or commencement of any suit or other action to foreclose any prior lien.
- (e) If the Real Property has been submitted to unit ownership pursuant to a Unit Ownership Law or any similar law, failure of Grantor to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder. If Grantor's interest in the Real Property is a leasehold interest and such Property has been submitted to unit ownership, and failure of Grantor to perform any of the obligations imposed on him by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor as a member of an association of unit owners to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association.
- (f) Failure by Grantor to perform any other obligation under this deed and security agreement if:
  - (1) Credit Union has sent to Grantor a written notice of the failure and the failure has not been cured within 15 days of the notice, or if the default cannot be cured within 15 days, Grantor has not commenced curative action or is not diligently pursuing such curative action, or
  - (2) Grantor has given notice of a breach of the same provision(s) of this deed and security agreement within the preceding 12 months.
- (g) If the interest of Grantor in the Property is a leasehold interest, any default by Grantor under the terms of the lease, or any other event (whether or not the fault of Grantor) that results in the termination of Grantor's leasehold rights; provided, that such events shall not constitute a default hereunder if Grantor provides Credit Union with prior written notice reasonably satisfactory to Credit Union setting forth Grantor's intent to place the Personal Property at another location, stating the location, and evidencing Grantor's right to do so.
- (h) Any breach by Grantor under the terms of any other agreement between Grantor and Credit Union that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness of Grantor to Credit Union, whether made now or later.
- (i) If Credit Union reasonably deems itself insecure.

#### **14. Rights and Remedies on Default.**

**14.1 Remedies.** Upon the occurrence of any event of default and at any time thereafter, Trustee or Credit Union may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

- (a) Credit Union shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.
- (b) With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Credit Union shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.
- (c) With respect to all or any part of the Personal Property, Credit Union shall have all the rights and remedies of a secured party under the Uniform Commercial Code in effect in the state of Oregon.
- (d) Credit Union shall have the right, without notice to Grantor, to take possession of the Property and collect the Income, including amounts past due and unpaid, and apply the net proceeds, over and above Credit Union's costs, against the Indebtedness. In furtherance of this right, Credit Union may require any tenant or other user to make payments of rent or use fees directly to Credit Union. If the Income is collected by Credit Union, then Grantor irrevocably designates Credit Union as Grantor's attorney in fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Credit Union in response to Credit Union's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Credit Union may exercise its rights under this subparagraph either in person, by agent, or through a receiver.
- (e) Credit Union shall have 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, to operate the Property preceding foreclosure or sale, and to collect the Income from the Property and apply the proceeds, over and above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Credit Union's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Credit Union shall not disqualify a person from serving as a receiver.
- (f) If Grantor remains in possession of the Property after the Property is sold as provided above or Credit Union otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at will of Credit Union or the purchaser of the Property and shall pay while in possession a reasonable rental for use of the Property.
- (g) If the Real Property is submitted to unit ownership, Credit Union or its designee may vote on any matter that may come before the members of the association of unit owners, pursuant to the power of attorney granted Credit Union in Section 16.2.
- (h) Trustee and Credit Union shall have any other right or remedy provided in this deed and security agreement, or the Note.

**14.2 Sale of the Property.** In exercising its rights and remedies, the Trustee or Credit Union, 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. Credit Union shall be entitled to bid at any public sale on all or any portion of the Property.

**14.3 Notice of Sale.** Credit Union shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten days before the time of the sale or disposition.





STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Co. the 23rd day  
of Feb. A.D., 19 89 at 2:47 o'clock P M., and duly recorded in Vol. M89,  
of Mortgages on Page 3297.

FEE \$28.00  
Return: A.T.C.

Evelyn Biehn County Clerk

By Pauline Millenstori