

4819

ITC 21947-K

TRUST DEED

Vol. m89 Page 16663

August

1989

THIS TRUST DEED, made this 31st day of August, 1989, between
BRUCE P. YOST

as Grantor, MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY

NANCY I. TURIELLO and RUDOLPH T. TURIELLO, wife and husband
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 LEGAL DESCRIPTION OF WHICH IS MADE A PART HEREOF BY THIS REFERENCE.

THIS TRUST DEED IS AN ALL-INCLUSIVE TRUST DEED AND IS BEING RECORDED SECOND AND JUNIOR TO A FIRST REAL ESTATE CONTRACT IN FAVOR OF VERNON THOMAS DU BOIS AND ALICE J. DUBOIS, husband and wife, as Contract Vendors.

SEE EXHIBIT "A" 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 TWENTY-EIGHT 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 June 30, 1992

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; not to commit or permit any waste of said property; and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay or have paid all costs incurred therefor.

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 or have paid 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 now or hereafter erected on the said premises against loss or damage by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than the insurable value, written in and attached to the beneficiary's policy, with loss payable to the beneficiary; all companies acceptable to the beneficiary shall be delivered to the beneficiary as soon as insured; policies of insurance shall not be assigned or transferred to any other party; if the grantor shall fail, for any reason to provide 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 and pay for such insurance, and the amount of the beneficiary's payment shall be added to the amount secured by the beneficiary under any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such order as collected, or may determine, or at 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 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, make such payment, with interest at the rate of four percent (4%) of this 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 the 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 hereinafter described, as well as the grantor, shall be bound to the covenants hereof and they are bound for the payment of the obligation herein same 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.

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's and attorney's 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 attorney's fees 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 decree of 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.

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 right, if it so elects, to require that all or any portion of the moneys payable under the right of eminent domain or condemnation, less the amount required as compensation for such taking, which is in excess of the amount actually paid to and for all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary, less, applied by it first upon any reasonable costs and expenses and attorney's fees, both in such proceedings, and the balance applied upon the indebtedness secured hereby; and grantor agrees, at its own expense, to take such actions and execute such 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 its fees and presentation 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 hereon; (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "person or persons 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 or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less 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 collection of such rents, issues and profits, or the proceeds of sale or of 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 event the beneficiary at his election may proceed to foreclose this trust deed by either a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the event the beneficiary elects to foreclose by advertisement and sale, the beneficiary shall execute and cause to be recorded his written notice of default and his election to sell the said described real property to satisfy the obligation secured hereby whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and 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 debt secured by the trust deed, the default may be cured by paying the debt secured 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 cured by the grantor or any other person electing 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 property either 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 to 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 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 successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, the trustee named herein shall, without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee hereunder named or appointed hereunder. Each such appointment upon any trustee shall be made by written instrument executed by beneficiary, and substituted therefor 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: 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.

12 PM 3 5 SEP '89

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 Real Estate Contract dated November 5, 1981, a memorandum of which is recorded on November 5, 1981, in Volume M81, page 19322, Microfilm Records of Klamath County, Oregon, in favor of Vernon Thomas DeBois and Alice J. Dubois, husband and wife, as Vendors which the Grantor named herein does not agree to assume nor pay 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 **Haven's News Form No. 1379**, or equivalent. If compliance with the Act is not required, disregard this notice.

BRUCE P. YOST

(If the signer of the above is a corporation, use the form of acknowledgement opposite.)

STATE OF OREGON.

County of Clatsop Klamath

This instrument was acknowledged before me on
August 31, 1989, by

BRUCE P. YOST

Notary Public for Oregon

(SEAL)

My commission expires: 11/6/91

STATE OF OREGON.

County of _____

This instrument was acknowledged before me on
19..... by.....

413

of

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)

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

BRUCE P. YOST

331 N. 9th Street

Klamath Falls, OR 97601

Granger

NANCY I. TURIELLO and RUDOLPH T. TURIELLO

Barceloneta

AFTER RECORDING RETURN TO

MCOUNTAIN TITLE COMPANY OF
KLAMATH COUNTY

STATE OF OREGON.

County of _____

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

Witness my hand and seal of
County affixed

NAME

TITLE

By Deputy

EXHIBIT "A"

This Trust Deed is an "All-Inclusive Trust Deed" and is second and subordinate to the Real Estate Contract now of record dated November 5, 1981, of which a memorandum was recorded November 5, 1981, in Volume M81, page 19322, Microfilm Records of Klamath County, Oregon, in favor of Vernon Thomas DuBois and Alice J. DuBois, husband and wife, as Vendors, which secures the payment therein mentioned.

NANCY I. TURIELLO and RUDOLPH T. TURIELLO, wife and husband, Beneficiary herein agrees to pay, when due, all payments due upon the said Real Estate Contract in favor of Vernon Thomas DuBois and Alice J. DuBois, husband and wife, and will save the Grantors herein, BRUCE P. YOST, harmless therefrom.

Should the said Beneficiary herein default in making any payments due upon said prior Real Estate Contract, Grantor herein may make said delinquent payments and any sums so paid by Grantor herein shall then be credited upon the sums next to become due upon the Note secured by this Trust Deed.

Grantor to pay real property taxes and fire insurance when due and provide proof of said payments to the Beneficiary.

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1

That portion of Block 44 of NICHOLS ADDITION to the City of Klamath Falls, Oregon more particularly described as beginning at a point 243 feet North, 51 degrees 15' West of a point 60 feet North, 38 degrees 45' East of the Northeast corner of Block 12 in the City of Klamath Falls, (formerly Linkville), sometimes described as Block 12 of Nichols Addition to the City of Klamath Falls, the numbering of the blocks in Nichols Addition to the City of Klamath Falls, being a continuation of the numbering of the blocks in the Original Town of Klamath Falls, formerly Linkville; thence North 38 degrees 45' East 155 feet 9 inches; thence North 51 degrees 15' West 57 feet; thence South 38 degrees 45' West 155 feet 9 inches; thence South 51 degrees 15' East 57 feet to place of beginning, being situated in the SW1/4 of the SE1/4 of Section 29, Township 38 South, Range 9 East of the Willanette Meridian, being a part of the land deeded to Sarah E. Taylor by Deed recorded in Book 1, page 457, Deed Records of Klamath County, Oregon.

EXCEPTING THEREFROM that portion of Block 44 of NICHOLS ADDITION to the City of Klamath Falls, Oregon, particularly described as beginning at a point 243 feet North, 51 degrees 15' West of a point 60 feet North, 38 degrees 45' East of the Northeast corner of Block 12 in the City of Klamath Falls, (formerly Linkville), sometimes described as Block 12 of Nichols Addition to the City of Klamath Falls, formerly Linkville, said point of beginning being on the Northeasterly line of Ninth Street; thence continuing North 51 degrees 45' West, a distance of 3.0 feet; thence North 38 degrees 15' East at right angles to Ninth Street, a distance of 81.10 feet; thence South 51 degrees 15' East a distance of 3.0 feet; thence South 38 degrees 45' West a distance of 81.10 feet to the point of beginning; said parcel being Southeasterly 3.0 feet of the Southwesterly 81.10 feet of that parcel described in Deed Volume M78, page 8088, Microfilm Records of Klamath County, Oregon.

PARCEL 2

The Southeasterly 3 feet of the following described property:

Beginning at the Northwest corner of Block 44, NICHOLS ADDITION to the Town of Linkville, now City of Klamath Falls, Oregon; thence Westerly along the Northeasterly line of 9th Street, 50 feet; thence Northeasterly parallel with Jefferson Street (formerly Bush Street) 90 feet; thence Southeasterly parallel with 9th Street 50 feet; thence Southwesterly along the Northerly line of said Block 44 in said Nichols Addition 90 feet to the place of beginning, being a portion of closed Canal Street, now Washington Street, and being further described as the South 50 feet of the West 90 feet of closed Canal Street.

Tax Account No: 3809 029DC 16000

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 5th day
of Sept. A.D., 19 89 at 3:21 o'clock P.M., and duly recorded in Vol. M89
of Mortgages on Page 16663.

FEE \$23.00

Evelyn Biehn County Clerk

By D. Andrew Munkler