

6302

TRUST DEED

Vol. m89 Page 19269

THIS TRUST DEED, made this 10th day of OCTOBER, 1989, between THE NEW EARTH COMPANY, AN OREGON CORPORATION and DARYL KOLLMAN AND MARTA KOLLMAN, husband and wife. AMERICAN PACIFIC TITLE & ESCROW COMPANY, as Grantor, JOHN WILSON, as Trustee, and JOHN WILSON, 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 EXHIBIT "A" ATTACHED AND MADE A PART HEREOF

LEGAL DEED

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 THOUSAND AND NO/100-----

(\$100,000.00) *****

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 October 1, 1994 Dollars; with interest thereon according to the terms of a promissory

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.

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 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.

beneficiary. 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 said beneficiary may from time to time require, in companies acceptable to the beneficiary, the sum of \$1,000,000.00 written in policies of insurance shall be delivered to the beneficiary as soon as insured; all such policies shall fail or for any reason to procure any such insurance and to deliver said policies of insurance to the beneficiary at least fifteen days prior to the expiration of any policy of insurance shall be deemed to constitute a breach of contract. The beneficiary may procure the same and may hereafter placed on said buildings, collected under any fire or other insurance policy may be applied to the amount due on any indebtedness secured hereby and in such order as beneficiary may determine, or at option of beneficiary the entire amount so collected, or any part thereof, may be paid or released to grantor. Such application or release shall not constitute a breach of contract, nor shall it constitute a breach of contract, nor cure or waive any default or notice of default hereunder or invalidate any claim done pursuant to this 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 due, the grantor shall, in full and complete satisfaction of the obligation hereunder, deliver 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 deed 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 obligations hereunder and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the grantor, shall be bound to the same extent that they are bound to 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, render all sums secured by this trust deed immediately due and payable and 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.

appears 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 is a party, for any suit for the foreclosure of this deed, to pay all costs and expenses, in amount of attorney's fee, title and the beneficiary's or trustee's attorney's fees; the fixed by the trial court and in the event of an appeal therefrom, in all cases shall be the decree of the trial court, grantor further agrees to pay such sum as the 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 the compensation or monies payable as compensation for such taking, which are in excess of the amount of all reasonable costs, expenses and attorney's fees necessarily paid or incurred in connection with such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable claims of beneficiary, and thereafter both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured by such proceedings, or, if beneficiary so elects, to take such actions and execute such instruments as may 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 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 thereof; (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "persons 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 personally, 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 principal 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 fire and other insurance, or the 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, and notice of default hereunder or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured by this deed, or 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 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 remedy, either at law or in equity, or may direct the trustee to pursue any other right or remedy, and the beneficiary elects to foreclose by advertisement and sale, and the trustee shall execute and cause to be recorded his written notice of default under his election to sell the said described real property to satisfy the obligation secured by this deed. 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 86.738.

the manner provided in ORS 86.733 to 86.735.

After the trust is commenced, the trustee has the right to sue the grantor, 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 due at the time of the default may be cured by paying the entire amount due. If the default consists of a failure to perform an obligation, then 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. The trustee may also incur expenses in addition to curing the default or defaults; the person effecting the cure shall be entitled to reimbursement for all costs and expenses actually incurred in enforcing the obligation of the trust, together with trustee's and attorney's fees not exceeding the amounts provided in ORS 86.733 to 86.735.

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 the said sale may be sold one parcel or in separate parcels and shall sell the parcel or parcels at such public auction and shall receive for cash, payable at the time of sale. Trustee shall deliver to the purchaser for cash, payable at the time of sale. Trustee shall convey the property so sold, but without any covenant or warranty required by law conveying the same to the purchaser. The recitals in the deed of any matters of fact shall be conclusive proof of the truth thereof against the grantor and beneficiary, notwithstanding that the grantor and beneficiary, may

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 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, and without conveyance to the successor trustee, the latter shall be vested with all the 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. When recorded in the mortgage records of the county or counties in which the property 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 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, 1989-1990 real property taxes, a lien, not yet due and payable. Reservations and Restrictions, including the terms and provisions thereof, From: Great Northern Railway Company, A Minnesota Corporation and Southern Pacific Company, A Delaware Corp., To: Crater Lake Machinery Co., and that he will warrant and forever defend the same against all persons whomsoever.

*documented in the official records of Klamath County, as Vol: 326, Page: 481.

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

THE NEW EARTH COMPANY, AN OREGON CORPORATION,

BY: *Daryl Kollman*

Daryl Kollman
DARYL KOLLMAN (INDIVIDUALLY ALSO)

Marta C. Kollman
MARTA KOLLMAN (INDIVIDUALLY ALSO)

STATE OF OREGON,

County of _____

ss.

This instrument was acknowledged before me on _____, 19____, by _____

Notary Public for Oregon

(SEAL)

My commission expires: _____

STATE OF OREGON,

County of Jackson

ss.

This instrument was acknowledged before me on October 10th, 1989, by DARYL KOLLMAN AND MARTA KOLLMAN as Secretary and Treasurer of THE NEW EARTH COMPANY, AN OREGON CORPORATION.

Notary Public for Oregon

My commission expires: 12/15/91

(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 PUBL. CO., PORTLAND, ORE.

THE NEW EARTH COMPANY,
DARYL & MARTA KOLLMAN

JOHN WILSON

Grantor

Beneficiary

AFTER RECORDING RETURN TO
AMERICAN PACIFIC TITLE & ESCROW CO.
33 N. FIRST STREET, SUITE #3
ASHLAND, OR 97520
ATTN: EVA ESCROW #Klamath-

SPACE RESERVED
FOR
RECORDER'S USE

STATE OF OREGON,

County of _____

ss.

I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., 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"

PROPERTY DESCRIPTION

A parcel of land lying in the southwest one-quarter of Section 33, Township 38 South, Range 9, East of Willamette Meridian, Klamath Falls, Oregon; more particularly described as follows:

Commencing at the West one-quarter corner of Section 33, and running along the Section line North 00°44'52"; West 69.16 feet to the old southerly right-of-way line of South Sixth Street; thence South 55°27'00" East along said line 407.10 feet to the most northerly corner of Central Pacific Railway Company lands as described in Vol 85, Page 120, Klamath County deed records, thence South 10°46'30" West 10.93 feet, along the westerly line of the above-described lands, to the Point of Beginning; thence continuing along said westerly line, South 10°46'30" West 392.29 feet; thence South 78°29'48" East 54.42 feet; thence North 34°33'00" East 211.60 feet; thence 107.04 feet along a 467.68 foot radius curve left, the long chord of which bears North 27°59'33" East 106.81 feet to the southwesterly right-of-way line of South Sixth Street; thence along said line North 49°37'43" West 197.04 feet to the Point of Beginning.

Containing 0.99 Acres, more or less.

1332-02
9/25/89

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 11th day
of Oct. A.D. 19 89 at 12:57 o'clock P.M., and duly recorded in Vol. M89
of Mortgages on Page 19269
FEE \$18.00
Evelyn Biehn County Clerk
By Quilene Muelenders