

K-41682  
TRUST DEED

Vol. 1490 Page 1875

10680

December 28th, 1989, between

THIS TRUST DEED, made this 28th day of December, 1989, between

JAMES T. MATHEWS AND JUDITH E. MATHEWS, husband and wife  
as Grantor, KLAMATH COUNTY TITLE COMPANY  
GARY L. WENDELL AND MERRY ANNEWENDELL, husband and wife, with full  
rights of survivorship  
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 HERETO AND BY THIS REFERENCE MADE A PART  
HEREOF.

THIS TRUST DEED IS AN ALL-INCLUSIVE TRUST DEED AND IS BEING RECORDED  
SECOND AND JUNIOR TO A FIRST TRUST DEED IN FAVOR OF WESTERN BANK.

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 connec-  
tion with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor contained and payment of the  
sum of NOTE OF EVEN DATE

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 JANUARY 5, 1995

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 taxes, ordinances, regulations, covenants, condi-

3. To comply with all laws, ordinances, regulations, covenants, condi-  
tions and restrictions affecting said property; if the beneficiary so requests, to  
join in executing such financing statements pursuant to the Uniform Commer-  
cial 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 require, in writing, in  
an amount not less than \$..... Insurable value....., written in  
companies acceptable to the beneficiary, with loss payable to the beneficiary as insured;  
policies of insurance shall be delivered to the beneficiary as soon as insured;  
if the grantor shall fail or for any reason to procure any such insurance and to  
deliver said policies to the beneficiary at least fifteen days prior to the expira-  
tion 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 fire or other insurance policy may be applied by benefi-  
ciary upon any indebtedness secured hereby and in such order as benefi-  
ciary may determine, or 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.

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, assess-  
ments, 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 6 and 7 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 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 prop-  
erty hereinafter described, as well as the grantor, shall be bound to the  
same extent that all such payments shall be immediately due and payable with-  
out notice, and all such payments 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 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  
action or proceeding in which the beneficiary or trustee's attorney's fees; the  
any suit for the foreclosure of the beneficiary's or trustee's interest in the  
cluding evidence of the beneficiary's or trustee's interest in the property  
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 ap-  
pellate court shall adjudge reasonable as the beneficiary's or trustee's attor-  
ney'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 amount required  
as compensation for such taking, which are in excess of the amount paid or  
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  
applied by it first upon any reasonable costs and expenses and attorney's fees,  
both in the trial and appellate courts, necessarily paid 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 com-  
pensation, promptly upon beneficiary's request.

9. At any time and from time to time upon written request of bene-  
ficiary, payment of its fees and presentation of this deed and the note for  
endorsement (in case of full reconveyances, 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  
thereof; (d) reconvey, without warranty, all or any part of the property to 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 ap-  
pointed by a court, and without regard to the adequacy of any security for  
the indebtedness hereby secured, enter upon and take possession of said prop-  
erty 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 attor-  
ney's fees upon any indebtedness secured hereby, and in such order as bene-  
ficiary 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 an  
event the beneficiary may proceed to foreclose this trust deed by either  
in equity as a mortgage or direct the trustee to pursue any other right or  
advertisements, either at law or in equity, which the beneficiary may have. In the event  
the beneficiary elects to foreclose this trust deed to satisfy the obligation  
the trustee 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 default or defaults by the trust deed, the cure other than such portion as would  
sums secured by the trust deed, 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 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 form as required by law conveying  
the property so sold, but without any covenant or warranty, express or im-  
plied. 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, in-  
cluding 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 succes-  
sors to any trustee named herein or to any successor trustee appointed here-  
under. 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 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 896.505 to 896.585.

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

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, 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.)

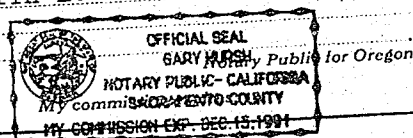
STATE OF OREGON,

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

This instrument was acknowledged before me on \_\_\_\_\_, 19\_\_\_\_, by

JAMES T. MATHEWS AND  
JUDITH E. MATHEWS

(SEAL)



STATE OF OREGON,

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

This instrument was acknowledged before me on \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_

as \_\_\_\_\_

of \_\_\_\_\_

Notary Public for Oregon

My commission expires: \_\_\_\_\_

(SEAL)

### GENERAL ACKNOWLEDGMENT

State of California \_\_\_\_\_

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

SACRAMENTO

SS.

On this the 10<sup>th</sup> day of JANUARY, 1990 before me,

GARY HURSH  
the undersigned Notary Public, personally appeared

JAMES T. MATHEWS/JUDITH E. MATHEWS

☒ personally known to me

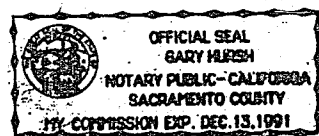
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) IS subscribed to the

within instrument, and acknowledged that HE executed it.

WITNESS my hand and official seal.

Notary's Signature



SPACE RESERVED  
FOR  
RECORDER'S USE

Grantor

Beneficiary

AFTER RECORDING RETURN TO

KCS

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/tile/instru-  
ment/microfilm/reception No. \_\_\_\_\_,  
Record of Mortgages of said County.  
Witness my hand and seal of  
County affixed.

NAME

TITLE

By \_\_\_\_\_ Deputy

## EXHIBIT "A"

## DESCRIPTION OF PROPERTY

The following described real property situate in Klamath County, Oregon:

## PARCEL 1:

The North 250 feet of the West 210 feet of Lot 1 in Block 6 of Tract 1080, Washburn Park, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

## PARCEL 2:

A tract of land situated in Tract 49, Enterprise Tracts, a duly recorded subdivision, also being in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 4, Township 39 S., R. 9 E.W.M., Klamath County, Oregon, more particularly described as follows: Beginning at the Northwest corner of Lot 1, Block 6, Tract 1080, Washburn Park, a duly recorded subdivision, said point being S. 47°30'05" W. 692.61 feet from the East  $\frac{1}{4}$  corner of said Section 4; thence N. 89°55'10" W. 26.85 feet; thence S. 00°04'50" W. 50.00 feet; thence along the arc of a curve to the left (central angle = 21°06'45" and radius = 170.00 feet) 62.64 feet; thence along the arc of a curve to the right (central angle = 21°06'45" and radius = 230.00 feet) 64.75 feet to a point on the West line of said Lot 1, Block 6; thence N. 00°04'50" E. 194.08 feet to the point of beginning, containing 3446 square feet, with bearings based on said Tract 1080, Washburn Park.

## PARCEL 3:

The South 169.56 feet of the West 210 feet of Lot 1, Block 6 of Tract 1080, Washburn Park, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 26th day  
of Jan. A.D., 19 90 at 1:56 o'clock PM., and duly recorded in Vol. M90,  
of Mortgages on Page 1875.  
By Evelyn Biehn County Clerk  
Pauline M. Mulendire

FEE \$18.00