

26304

## TRUST DEED

Vol. 99 Page 3466

THIS TRUST DEED, made this 14 day of February, 1991, between JON K. O'DONNELL, MICHAEL E. RONTVEDT, and JOHN F. NOWASKI, all doing business as Basin Tire & Service, Inc. of Merrill, ASPEN TITLE & ESCROW, INC. as Grantor, ALLEN B. CARTER and MARGUERITE J. CARTER, husband and wife with full rights of survivorship, as Trustee, and as Beneficiary,

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Klamath County, Oregon, described as:

SEE LEGAL DESCRIPTION MARKED EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF AS THOUGH FULLY SET FORTH HEREIN...

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 THIRTY THREE THOUSAND SIXTEEN AND 58/100—\$33,016.58—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 maturity of Note.

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, 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 said premises may from time to time require, in an amount not less than \$1,000,000.00.

5. To deliver said policies to the beneficiary, with loss payable to the latter; if the grantor shall fail for any reason to procure any such insurance and to the beneficiary any policy of insurance now or hereafter placed on said buildings, collected upon any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of beneficiary the entire amount so collected, or not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. 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, 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 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 same extent to be described, as well as the grantor, shall be bound to the same extent to be described, and all such payments shall be bound to the same extent to be described, 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.

7. 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.

8. 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 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:

1. 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 monies payable as compensation for such taking, which are in excess of the amount required 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 grantor in such proceedings, and the balance paid or incurred by beneficiary in such proceedings, and the balance paid or incurred by beneficiary 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.

2. 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 thereon; (d) reconvey, without warranty, all or any part of the property 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 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 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 nullify 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 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 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 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, then due, entire amount due by the trust deed, the default, may be cured by paying the same at the time of the cure or other than such portion as would be cured may be cured by tendering the performance which is capable of curing the default. 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 implied, of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When the 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, having secured liens subsequent to the trust deed; (2) to all persons as deeded as their interests may appear in the interest of the trustee in the trust deed, 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 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 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

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.

JON K. O'DONNELL

MICHAEL E. RONTVEDT

JOHN F. NOWASKI

STATE OF OREGON, County of Klamath ) ss.

This instrument was acknowledged before me on FEBRUARY 25, 1991, by JON K. O'DONNELL, MICHAEL E. RONTVEDT, and JOHN F. NOWASKI.

This instrument was acknowledged before me on February 25, 1991,

by

as

of

Charlotte Honez

Notary Public for Oregon

My commission expires 9-20-93

#### 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, OREGON

Grantor

Beneficiary

AFTER RECORDING RETURN TO:

Aspen Title & Escrow  
Collection Dept.

SPACE RESERVED

FOR

RECORDER'S USE

TRUST DEED

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" SUBMITTED AT TRIAL

PARCEL 1:

A portion of the NW 1/4 of Section 12, Township 41 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows: Beginning at the Northwest corner of Section 12, Township 41 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon; thence East 372 feet; thence South 40 feet to the true point of beginning; thence East parallel to the North line of Section 12, a distance of 16.5 feet; thence South to the North Bank of Lost River; thence Southwesterly along said river to a point lying South of the true point of beginning; thence North to the true point of beginning.

(TL #1000)

PARCEL 2:

The following described real property is situated in the County of Klamath, State of Oregon, being more particularly described as follows: Beginning at a point on the North line of Section 12, 332 feet East of the Northwest corner of said Section 12, Township 41 South, Range 10 East of the Willamette Meridian, running thence East 40 feet; thence South to the meander line on the North Bank of Lost River; thence up stream following said meander line, to a point due South of the Initial Point; thence due North to the Initial Point, or Place of Beginning, on the North line of said Section 12 and there terminating. Being a portion of Lot 2, Section 12, Township 41 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon, and being a portion of the property commonly known as the Anchor Flouring Mill Property.

EXCEPTING THEREFROM a strip of land 28 feet wide and 70 feet deep along the South side of Front Street in the City of Merrill, Klamath County, Oregon, being a portion of Lot 2, Section 12, Township 41 South, Range 10 East of the Willamette Meridian and being more particularly described and bounded as follows: Beginning at a point 40 feet South and 332 feet East of the North-West corner of said Section 12, Township 41 South, Range 10 East of the Willamette Meridian, running thence East 28 feet; thence South 70 feet; thence West 28 feet; thence North 70 feet back to the point of beginning.

(TL #1100)

Continued on next page

## EXHIBIT "A" CONTINUED

## PARCEL 3:

A Strip of land 28 feet by 70 feet along the South side of Front Street, in the City of Merrill, being a portion of Lot 2, Section 12, Township 41 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon, and more particularly described as follows:

Beginning at a point 40 feet South and 332 feet East of the Northwest corner of said Section 12; thence East 28 feet; thence South 70 feet; thence West 28 feet; thence North 70 feet to the point of beginning, in the County of Klamath, State of Oregon. (TL #1200)

## PARCEL 4:

A portion of Lot 2, Section 12, Township 41 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows:

Beginning at a point which is 40 feet South and 277 feet East of the corner common to Sections 1, 2, 11 and 12, Township 41 South, Range 10 East of the Willamette Meridian; thence East along the South line of Front Street in the City of Merrill a distance of 55 feet; thence South to the North Bank of Lost River; thence Southwesterly along said river to a point lying South of the true point of beginning; thence North to the true point of beginning. (TL #1301)

NOTE: The following legal description is a consolidation of the above described 4 Parcels of land.

A portion of Lot 2, Section 12, Township 41 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows:

Beginning at a point which is 40 feet South and 277 feet East of the corner common to Sections 1, 2, 11 and 12, Township 41 South, Range 10 East of the Willamette Meridian; thence East along the South line of Front Street in the City of Merrill a distance of 111.5 feet; thence South to the North bank of Lost River; thence Southwesterly along said river to a point lying South of the true point of beginning; thence North to the true point of beginning.

CODE 14 MAP 4110-12BB TL 1301  
CODE 14 MAP 4110-12BB TL 1000  
CODE 14 MAP 4110-12BB TL 1100  
CODE 14 MAP 4110-12BB TL 1200

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Co. the 26th day  
of Feb. A.D., 19 91 at 11:07 o'clock A.M., and duly recorded in Vol. M91  
of Mortgages on Page 3466.

Evelyn Biehn, County Clerk

By Debra M. Mueland

FEE \$23.00