

34465

TRUST DEED

Vol. 99 Page 18292

THIS TRUST DEED, made this 2nd day of September, 1991, between WARREN H. BYERS

as Grantor, MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, as Trustee, and LESNICK DEVELOPMENT CO., LTD.

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 LEGAL DESCRIPTION attached hereto, marked Exhibit A, and by this reference incorporated herein as if fully set forth

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 sixty seven thousand (\$167,000.00)

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 September 2, 2001.

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.

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.
 4. To provide and continuously maintain insurance on the building now or hereafter erected on the said premises against loss or damage by fire and such other hazards as the beneficiary may require, in an amount not less than \$100,000.00 FULL INSURABLE VALUE. The amount of insurance shall be delivered to the beneficiary as soon as insured. If the grantor shall fail for any reason to procure 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 building, the beneficiary may procure the same at grantor's expense. The amount collected under 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 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 thereon, and the amount so paid, with interest at the rate of 12% per annum 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 property herebefore described, as well as the grantor, shall be bound to the 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, 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.
 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 evidence of title 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 adjudicate 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, the 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 it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary 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 thereof; (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 fire and other 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 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 or 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 86.715 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, sums 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 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 a 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. 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 upon any trustee herein named or appointed hereunder, in the order of their priority and (4) the 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, 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 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, EXCEPTING reservations, easements and restrictions presently of record.

and that he will warrant and forever defend the same against all persons whomsoever.

Incorporated into the within Trust Deed are certain Provisions for Partial Release denominated on Exhibit A, attached hereto, and by this reference incorporated herein as if fully set forth.

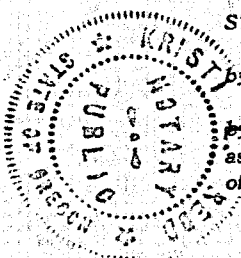
The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are:
(a)* primarily for grantor's personal, family or household purposes (see Important Notice below),
(b) for an organization, or (even if grantor is a natural person) are for business or commercial 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.

Warren H. Byers
WARREN H. BYERS



STATE OF OREGON, County of Klamath

This instrument was acknowledged before me on August 26, 1991

Warren H. Byers
This instrument was acknowledged before me on _____, 19____,

Kristin L. Redd
Notary Public for Oregon
My commission expires 11/16/91

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. 881-1)

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

WARREN H. BYERS

P.O. Box 5188
Klamath Falls, OR 99601
Grantor

SPACE RESERVED
FOR
RECORDER'S USE

LESNICK DEVELOPMENT CO., LTI

P.O. Box 936, Newbury Park, CA 91319

AFTER RECORDING RETURN TO

Mountain Title
Company

STATE OF OREGON, } ss.
County of _____

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/title/instrument/microfilm/reception No. _____, Record of Mortgages of said County.

Witness my hand and seal of County affixed.

NAME _____ TITLE _____
By _____ Deputy

All of the following described real property situate in Klamath County, Oregon:

Township 39 South, Range 8 East of the Willamette Meridian

SECTION 10: W1/2 SE1/4, SE1/4 SW1/4

SECTION 15: W1/2 NE1/4, E1/2 NW1/4, SW1/4, W1/2 SE1/4, SE1/4 SE1/4

SECTION 16: SE1/4

SECTION 21: W1/2 NE1/4, SE1/4 NE1/4

SECTION 22: NE1/4, S1/2 NW1/4, NE1/4 SW1/4, SE1/4

EXCEPTING that part of Section 22 lying Southeasterly of Highway and also EXCEPTING the following:

Beginning at the quarter section corner between Sections 22 and 27, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon; thence East 327 feet; thence North 54 degrees West, 400 feet; thence South to the point of beginning.

ALSO SAVING AND EXCEPTING a tract of land lying within the SE1/4 NE1/4 and the NE1/4 SE1/4 of Section 22, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon; said tract being particularly described as follows:

Beginning at the 1/4 section corner common to Sections 22 and 23, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon; thence South along the section line a distance of 409.3 feet to a point on the Northerly right of way boundary of the Klamath Falls-Ashland Highway (Oregon 66); thence South 39 degrees 17' West a distance of 174.4 feet along said right of way to an angle point of same; thence South 40 degrees 06' West a distance of 254 feet along same right of way to a point; thence South 39 degrees 31' West along said right of way boundary, a distance of 428.7 feet to a 3/4" galvanized iron pipe; thence leaving said highway and bearing North 14 degrees 44' West a distance of 2411.9 feet to a 3/4" galvanized iron pipe set in an old existing fence line; thence North 89 degrees 25' 45" East along said fence line a distance of 1168.7 feet to a point on the section line marked with a 3/4" galvanized iron pipe; thence South along the said section line a distance of 1303.0 feet, more or less to the point of beginning.

ALSO SAVING AND EXCEPTING that portion of the NE1/4, Section 21, Township 39 South, Range 8 East of the Willamette Meridian, lying South and West of Round Lake County Road.

PROVISIONS FOR PARTIAL RELEASE: The beneficiary herein agrees to cause the trustee to partially release property from the terms and conditions of the within Trust Deed and Note upon the following conditions:

A. Property selected by the Grantor for partial release shall be released upon payment by the Grantor at the rate of two hundred dollars (\$200.00) per acre, and provided further that the release price for property in Section 22, Township 39 South, Range 8 East of the Willamette Meridian shall be three hundred dollars (\$300.00) per acre.

B. All property to be released shall be in parcels containing not less than forty (40) acres, shall be in 1/4 1/4 sections, and shall follow an orderly pattern.

C. Grantor shall, at Grantor's expense, provide easements to the property to be so released, as well as to any other of the property subject to this Trust Deed so as to assure that no property is either legally or physically landlocked.

D. Grantor shall be responsible to obtain any necessary county, state, or other governmental permits in order to assure that any such releases are not in conflict with any law or ordinance in existence at the time of such release.

WHS

E. All payments made on account of releases shall be applied to the amount of principal due under the within Trust Deed and Note. However, any payment for releases shall not excuse the requirement that Grantor pay, on or before the date due, the regular monthly payment.

F. Grantor shall be responsible to assume and to pay the reasonable trustee's fees, attorney's fees, escrow fees, and title fees necessary for the completion of any partial releases requested.

W H 17

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co the 11 day
of Sept A.D., 19 91 at 3:40 o'clock P M., and duly recorded in Vol. M91,
of Mtgs on Page 18292

Evelyn Biehn - County Clerk

By Debra M. Mendenhall

FEE 23.00