

NE

38493

TRUST DEED

Vol. 99 / Page 25826

THIS TRUST DEED, made this 4th day of December, 1991, between ERNEST KIRKPATRICK and BARBARA L. KIRKPATRICK, husband and wife

as Grantor, MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY as Trustee, and RAYMOND E. THOMAS, as to an undivided 40% interest; S. DAVID BUTZ and I. JANE BUTZ, husband and wife, as to an undivided 33.3% interest; and GUY W. NOWELS and BETSY R. NOWELS, husband as Beneficiary, /and wife, as to an undivided 26.7% interest

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 ON EXHIBIT "A" WHICH IS MADE A PART HEREOF BY THIS REFERENCE.

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 FORTY-FOUR THOUSAND FIVE HUNDRED 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 December 10, 2011.

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 trust deed property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit any act which would detract from the value 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 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 \$ full insurable value, written in companies acceptable to the beneficiary, with loss payable to the latter; all policies 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, contract or hereafter placed on said buildings, the beneficiary may procure the same at grantor's expense.
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 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 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 hereinbefore 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 adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.
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 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 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 thereon; (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.

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 86.735 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, 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 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. 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, 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 except none

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.

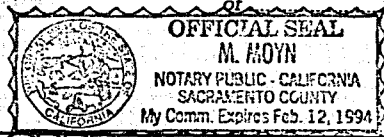
This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or 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.

Ernest Kirkpatrick  
Barbara L. Kirkpatrick

CALIFORNIA  
STATE OF OREGON, County of Sacramento ) ss.  
This instrument was acknowledged before me on December 9, 1991,  
by Ernest Kirkpatrick and Barbara L. Kirkpatrick  
This instrument was acknowledged before me on \_\_\_\_\_, 19\_\_\_\_,  
by \_\_\_\_\_,  
as \_\_\_\_\_  
of \_\_\_\_\_



Notary Public for OREGON  
My commission expires Feb. 12, 1994 /California

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.  
ERNEST KIRKPATRICK et ux  
7960 Highland Ave.  
Citrus Heights, CA 95610  
Grantor  
S. DAVID BUTZ et al  
18820 NW Vista Lane  
Portland, OR 97231  
Beneficiary  
AFTER RECORDING RETURN TO  
MOUNTAIN TITLE COMPANY  
OF KLAMATH COUNTY  
32103

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/file/instrument/microfilm/reception No. \_\_\_\_\_, Record of Mortgages of said County.  
Witness my hand and seal of County affixed.  
NAME TITLE  
By \_\_\_\_\_ Deputy

MTC NO. 26593-KR

EXHIBIT A  
LEGAL DESCRIPTION

## PARCEL 1

A parcel of land situated in the SE 1/4 SW 1/4 of Section 7, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the Westerly line of the right of way of the Old Dalles California Highway, which point bears North 89 degrees 42' West a distance of 770.8 feet and thence North 6 degrees 02' East a distance of 176.5 feet from the quarter section corner common to Sections 7 and 18 Township and Range aforesaid, the said point being at the Southeast corner of the tract herein described; thence North 6 degrees 02' East along said Westerly right of way line a distance of 114.4 feet; thence North 89 degrees 42' West to a point that is South 89 degrees 42' East 200 feet from the Easterly boundary line of the new The Dalles-California Highway; thence Southerly parallel to said Easterly boundary and 200 feet distant therefrom a distance of 113.8, more or less, to a point that is North 89 degrees 42' West from the point of beginning; thence South 89 degrees 42' East to the point of beginning.

EXCEPTING that portion described as follows: Commencing at the one quarter corner common to Sections 7 and 18, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; thence North 89 degrees 42' West 770.80 feet to a point on the Westerly right of way line of the former Dalles California Highway, now a County Road; thence North 06 degrees 02' East along said Westerly right of way line, 280.90 feet to the point of beginning for this description; thence North 89 degrees 42' West 260.00 feet; thence North 06 degrees 02' East 10.00 feet; thence South 89 degrees 42' East 260.00 feet to a point on the Westerly right of way line of the aforementioned County Road; thence South 06 degrees 02' West 10.00 feet to the point of beginning.

## PARCEL 2

A parcel of land situated in the SE 1/4 SW 1/4 of Section 7, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the Westerly right of way line of the old The Dalles-California Highway which bears North 89 degrees 42' West 770.8 feet and North 6 degrees 02' East 20.1 feet from the quarter section corner common to Sections 7 and 18 Township 38 South, Range 9 East of the Willamette Meridian; continuing thence North 6 degrees 02' East a distance of 156.4 feet to a point; thence North 89 degrees 42' West to

(continued)

HTC NO: 26593-KR

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
(continued)

(Parcel 2 continued)

a point that is South 89 degrees 42' East 200 feet from the Easterly boundary of the new The Dalles-California Highway; thence Southerly parallel to and 200 feet distant from said Easterly boundary a distance of 155.63 feet, more or less, to a point that is North 89 degrees 42' West of the point of beginning; thence South 89 degrees 42' East, to the point of beginning.

TOGETHER WITH that portion of a vacated road as disclosed by County Commissioners Journal 20-411.

**PARCEL 3**

A parcel of land situated in the SE 1/4 SW 1/4 of Section 7, Township 38 South, Range 9, East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point which is on the Westerly line of the right of way of the old The Dalles-California Highway, which point bears North 89 degrees 42' West a distance of 770.8 feet and thence North 6 degrees 02' East a distance of 290.9 feet from the quarter section corner common to Sections 7 and 18 Township and Range aforesaid; thence North 89 degrees 42' West to a point which is South 89 degrees 42' East 200 feet from the Easterly boundary line of the new The Dalles-California Highway which point is the true point of beginning; thence continuing North 89 degrees 42' West a distance of 200 feet to the Easterly boundary line of said Highway; thence Southerly along said Easterly boundary to a point which is North 89 degrees 42' West of a point which is North 89 degrees 42' West 770.8 feet and North 6 degrees 02' East 20.1 feet from said section corner common to Sections 7 and 18; thence South 89 degrees 42' East 200 feet to a point; thence Northerly parallel to said Easterly boundary and 200 feet distant therefrom to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon by and through its State Highway Commission by Deed dated January 30, 1941 and recorded February 13, 1941 in Book 135 at page 326 of Deed Records of Klamath County, Oregon.

TOGETHER WITH that portion of a vacated road as disclosed by County Commissioners Journal 20-411.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain title Co. the 11th day  
of Dec. A.D., 19 91 at 11:41 o'clock A M., and duly recorded in Vol. M91  
of Mortgages on Page 25826.

Evelyn Biehn County Clerk

By Dorlene M. Mendenhall

FEE \$23.00