

70078

MTC 30774

ALL INCLUSIVE DEED OF TRUST

THIS ALL INCLUSIVE DEED OF TRUST, made this 20th day of October, 1993, between **RICH MCINTYRE and KAREN GREENE, husband and wife, of Forth Klamath, Oregon, doing business as THE WILLIAMSON RIVER CLUB**, as Grantor, **AMERICAN PACIFIC TITLE & ESCROW COMPANY**, appointed as Trustee by Beneficiary, and **KARL CONRAD WENNER and ANNE WENNER, husband and wife, of Klamath Falls, Oregon, and KARL CONRAD WENNER, Trustee of the KLAMATH ORTHOPEDIC CLINIC, P.C. PENSION AND PROFIT SHARING PLAN**, 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 follows on Exhibit "A" attached hereto and incorporated herein by reference, together with all improvements, if any, situated thereon, and all tenements, mineral rights and appurtenances thereto or in anyway now or hereafter appertaining, and the rents and issues and profits thereof and all fixtures now or hereafter attached to or used in connection with said real estate.

The following personal property is also included as part of this transaction: seven (7) half beds, all dishes on premises, one older type chest freezer, one dining table, chairs and bar stools.

SECTION 1. TAX STATEMENT:

1.1 Until a change is requested, all tax statements shall be sent to:

Rich McIntyre and Karen Greene
P. O. Box 469
Fort Klamath, OR 97626

SECTION 2. ACKNOWLEDGEMENT AND RECORDING.

2.1 Grantor and Beneficiary are aware that ORS 93.635 requires that all instruments contracting to convey fee title to any real property, anytime more than twelve (12) months from the date that instrument is executed, shall be recorded or a memorandum thereof shall be recorded, by the Beneficiary not later than fifteen (15) days after the instrument is executed. Beneficiary covenants to so record.

SECTION 3. SECURITY.

3.1 For the purposes of securing performance of each agreement of Grantor herein contained and payment of the sum of One Hundred Fifty Thousand Dollars (\$150,000), with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order and made by Grantor.

3.2 To protect the security of this trust deed, Grantor agrees:

3.2.1 To protect, preserve and maintain said property in good condition and repair; not to commit or permit any waste of said property.

3.2.2 To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property and to keep said property free from construction liens and to pay all taxes,

- 1 - ALL INCLUSIVE TRUST DEED
Law Offices of Carlyle F. Stout III
215 Laurel Street, Medford, OR 97501
Telephone (503) 776-2020

Return:
American Pacific Title & Escrow
PO Box 1804
Medford, OR 97501

assessments and other charges that may be levied or assessed upon or against said property in a timely manner.

3.2.3 To provide and continuously maintain insurance on the improvements, if any, now or hereafter erected on the said premises against loss or damage by fire, theft or vandalism, in an amount not less than the unpaid balance of the promissory note referred to herein or the maximum insurable value, whichever is less if said improvements are insurable in said amount, at Grantor's expense with loss payable to Grantor and Beneficiary. Grantor shall have the right to use the insurance proceeds paid for any damage or loss to repair and/or restore the improvements to their condition prior to said loss or damage; provided that any insurance proceeds remaining after said repair and/or restoration shall be applied on the unpaid balance of the promissory note secured by this trust deed. Grantor shall provide Beneficiary with evidence of said insurance, now or hereafter placed on the property or any of the improvements, upon written request from Beneficiary.

3.2.4 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. Grantor shall pay all real property and personal property taxes concerning the property annually when due and before the same become delinquent. 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 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.

SECTION 4. PRIOR ENCUMBRANCE DISCLOSURE.

4.1 Grantor and Beneficiary understand that Grantor is purchasing the within described real property under the terms of a trust deed dated September 14, 1979, including the terms and provisions thereof, and recorded the September 14, 1979, in Volume M79, Page 21900, Microfilm Records of Klamath County, Oregon. Grantor and Beneficiary agree that their contract is subject and subordinate to the document referred to immediately above.

4.2 Said document is now current and Grantor is not in default and there is now presently due and unpaid under the terms of said trust deed, the sum of One Hundred Eighty-Five Thousand Five Hundred Twelve and 65/100th Dollars (\$185,512.65) as of the 10th day of September, 1993. Grantor covenants to perform all terms and conditions of said trust deed and not to allow, voluntarily or involuntarily, any default thereunder.

4.3 This all inclusive trust deed between Grantor and Beneficiary secures the payment of the principal indebtedness of the contract of sale referenced above, together with interest paid on the unpaid balance thereof.

4.4 Grantor shall not modify or extend the above-referenced note and/or trust deed without the prior written consent of Beneficiary, which shall not be unreasonably withheld.

SECTION 5. NOTICE.

27602

5.1 Any notice, whether required or not to be given under this trust deed, shall be deemed given when actually delivered or when mailed to either party at their respective addresses given below if deposited in the U. S. Mails, Certified Mail, Return Receipt Requested.

Beneficiary:

Karl Conrad Wenner and Anne Wenner
1608 Cove Point Road
Klamath Falls, OR 97601

Grantor:

Rich McIntyre and Karen Greene
P. O. Box 469
Fort Klamath, OR 97626

SECTION 6. ORS DISCLOSURE.

6.1 THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

SECTION 7. TITLE INSURANCE.

7.1 Grantor shall furnish, at Grantor's expense, an ALTA lender's title insurance policy with extended coverage in the amount of the purchase price stated herein, within fifteen (15) days from close of escrow or recording of this trust deed, whichever occurs first, insuring Beneficiary against loss or damage sustained by reason of the unmarketability of Grantor's title or liens or encumbrances thereon, excepting matters contained herein.

SECTION 8. DEFAULT.

8.1 Time is of the essence of this agreement regarding all terms, conditions and covenants herein. A default shall occur by reason of Grantor failing to perform any of the terms, covenants or conditions of this agreement if such default remains uncorrected by Grantor for fifteen (15) days after written notice of said default has been given; provided, however, that Grantor shall not be deemed in default if said default cannot reasonably be cured within the time period prescribed herein and Grantor shall have commenced in good faith to cure said default within the time period after written notice of said default has been given.

SECTION 9. REMEDIES.

9.1 Upon default by Grantor and notice of the same as set forth above, 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. In the latter event 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 obligations 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 86.740 to 86.795.

9.2 Should the Beneficiary elect to foreclose by advertisement and sale then after default at any time prior to five days before the date set by the trustee for the trustee's sale, the Grantor or other person

so privileged by ORS 86.760, may pay to the Beneficiary or his successors in interest, respectively, the entire amount then due under the terms of the trust deed and the obligation secured thereby (including costs and expenses actually incurred in enforcing the terms of the obligation and trustee's and attorney's fees as provided by law) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default, in which event all foreclosure proceedings shall be dismissed by the trustee.

9.3 Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale. 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.

9.4 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.

9.5 For any reason permitted by law 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, containing reference to this trust deed and its place of record, which, when recorded in the office of the County Clerk or Recorder of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

9.6 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.

SECTION 10. WAIVER.

10.1 No waiver of a breach of any covenant, term or condition of this agreement shall be a waiver of any other or subsequent breach of the same, or any other term, covenant, or condition, or as a waiver of the term, covenant or condition itself; nor shall such waiver require any notice of any kind to be given to reinstate the defaulted term, covenant or condition, or to make time and strict performance again of the essence.

SECTION 11. INTERPRETATION.

11.1 The paragraph headings herein are intended only as a reference index and shall not control the interpretation or limit or enlarge the meaning of any term of this agreement. In construing this agreement it is understood that Beneficiary and/or Grantor may be more than one person or entity and if the context so requires, the singular shall mean and include the plural, the masculine shall mean and include the feminine and neuter and all grammatical changes shall be made, implied and construed to apply equally to corporations, partnerships and individuals.

SECTION 12. SUCCESSORS IN INTEREST.

12.1 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.

SECTION 13. PREPAYMENTS.

13.1 The promissory note secured by this trust deed may be prepaid at any time upon mutual agreement of Grantor and Beneficiary; otherwise the terms of the promissory note govern prepayment.

SECTION 14. TAXES AND LIENS.

14.1 **OBLIGATION TO PAY.** Grantor shall pay when due all taxes and assessments which are levied against the property after the date of closing.

14.2 **TAX STATEMENTS.** Grantor shall provide Beneficiary with written evidence reasonably satisfactory to Beneficiary that all taxes and assessments have been paid when due upon written request by Beneficiary.

14.3 In the event the property is presently zoned so as to qualify for deferred taxes, such as exclusive farm use for property tax purposes, Grantor agrees to maintain and care for said property to preserve said tax status and agrees to be responsible for and immediately pay any additional taxes or assessments levied against the property as a result of the loss of said deferred tax status and agrees that failure to do so shall be a default, unless said loss is caused by Beneficiary, his agents and/or assigns.

SECTION 15. CLOSING.

15.1 **CLOSING DATE.** As used in this agreement, close of escrow means the date on which all funds are disbursed pursuant to this agreement and the date on which all documents are recorded, required to be recorded pursuant to this agreement or Oregon Law. This agreement shall close on the 20th day of October, 1993, or as soon thereafter as all contingencies are met, closing documents prepared and marketable title tendered by Beneficiary. Said closing shall occur in escrow at the offices of American Pacific Title and Escrow, Medford, Oregon.

15.2 **PRORATES AND CLOSING COSTS.** Except as otherwise provided in this contract, all items to be prorated shall be prorated as of the date of closing. Grantor shall be responsible for payment of the title insurance premiums and one-half of the escrow fee.

SECTION 16. COLLECTION ESCROW.

16.1 As soon as practicable after the execution of this agreement, Beneficiary shall deliver to Mountain Title Company of Klamath County, Klamath Falls, Oregon, as escrow agent, the following documents:

- (a) Original deed of trust;
- (b) The original promissory notes which this deed of trust secures;
- (c) A copy of the title insurance policy, which Grantor is required to furnish to Grantor, pursuant to this agreement;

(d) Beneficiary and Grantor shall split equally the set up fee for collection escrow; however, Grantor shall pay any fee for disbursements from the escrow after the same is set up.

(e) The parties shall sign collection escrow instructions which are consistent and in harmony with this contract, and specifically including, but not limited to, the provisions regarding default and time for making payments.

(f) Beneficiary and Grantor instruct the above named escrow agent to receive for collection the installments provided for herein and to first make all payments due under the above-referenced promissory note and trust deed and then to remit the difference, if any, to Beneficiary as Beneficiary may, from time to time, direct.

SECTION 17. COSTS AND ATTORNEY'S FEES.

17.1 In the event that either party shall take any action concerning this agreement, including but not limited to judicial, non-judicial, arbitration or any action in the court, whether state, federal or bankruptcy, the prevailing party shall be entitled to recover from the other party all costs, disbursements, and expenses and attorney's fees incurred both at trial and/or on appeal.

SECTION 18. ORS 93.040 DISCLOSURE.

18.1 THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

SECTION 19. MISCELLANEOUS PROVISIONS.

19.1 **Severability.** The parties agree that should any provisions, terms or conditions herein be declared by any Court to be invalid, void, unenforceable or illegal, the validity of the remainder of this agreement shall not be affected, impaired or invalidated thereby and shall remain in full force and effect. The rights and obligations of the parties shall be treated, enforced and regarded as if the contract did not contain the provision, term or condition declared invalid, void, unenforceable or illegal.

19.2 **Assignment.** In executing this trust deed, the Beneficiary has relied on Grantor's credit, interest in the real property, personality and trustworthiness and the real property and financial market conditions existing at the time of this agreement; therefore, Grantor may not assign, either voluntarily or involuntarily, their interest or any portion thereof, or rights hereunder, in this agreement or in the real property and/or personal property secured by this trust deed without the prior written consent of Beneficiary being first obtained. Said consent shall not be unreasonably withheld by Beneficiary.

SECTION 20. ENTIRE AGREEMENT.

20.1 This document is the entire, final and complete agreement of the parties and supersedes and replaces all written and/or oral agreements heretofore made or existing, if any, by and between the parties. This document may not be altered, amended, changed or modified unless done in writing and executed by the parties hereto. There are no representations, inducements, promises or agreements, oral or written, other than those set forth in this agreement and it is the intent of the parties that the terms of this agreement shall control over any conflicting provisions of any prior agreement.

IN WITNESS WHEREOF, said Grantor has hereunto set his hand the day and year first above written.

Rich McIntyre
Rich McIntyre

Karen Greene
Karen Greene

STATE OF OREGON)
County of Jackson) ss. October 20, 1993

Personally appeared the above named Rich McIntyre and Karen Greene and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

Julian L. Hoffmann
Notary Public for Oregon
My Commission Expires: _____

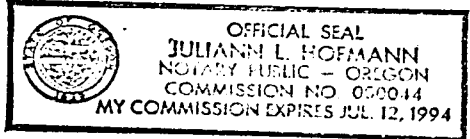
STATE OF OREGON,
County of JACKSON } ss.

FORM No. 23—ACKNOWLEDGMENT.
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BE IT REMEMBERED, That on this 20th day of October, 1993, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within named RICH MCINTYRE AND KAREN GREENE

known to me to be the identical individual S. described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Julian L. Hoffmann
Notary Public for Oregon
My commission expires _____

27607

PARCEL 1

The E $\frac{1}{2}$ SW $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, Township 34 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 2

The NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, Township 34 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon.

ALSO the following described tract of land: Beginning at the Northwest corner of the NE $\frac{1}{4}$ of Section 35, Township 34 South, Range 6 East of the Willamette Meridian; thence South 15 chains; thence East 3 and 1/3 chains; thence North 15 chains; thence West 3 and 1/3 chains to the point of beginning.

EXCEPTING THEREFROM the following: Beginning at a point on the section line between Section 26 and Section 35, Township 34 South, Range 6 East of the Willamette Meridian, 675.7 feet West of the Quarter Section corner; thence South along the West line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35 and of the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35 a distance of 990 feet; thence East on the South line of the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, a distance of 530 feet; thence North a distance of 330 feet; thence West a distance of 135 feet; thence North a distance of 660 feet to intersect the above mentioned section line 395 feet East of point of beginning; thence West along the section line 395 feet to point of beginning.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title co the 21st day
of Oct. A.D., 19 93 at 1:14 o'clock P.M., and duly recorded in Vol. M93
of Mortgages on Page 27600.

FEE \$45.00

Evelyn Biehn. County Clerk

By Charles J. KullendaleEXHIBIT A