

70079

MTC 30774
DEED OF TRUST

Vol. 93 Page 27608

THIS DEED OF TRUST, made this 20th day of October, 1993, between **RICH MCINTYRE and KAREN GREENE**, husband and wife, as Grantor, **AMERICAN PACIFIC TITLE AND ESCROW COMPANY**, appointed as Trustee by Beneficiary, and the persons set forth on Exhibit "B" attached hereto and by this reference incorporated herein, 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:

See Exhibit "A" attached hereto and incorporated herein by reference.
specifically excluding any improvements situated thereon.

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 Twenty Thousand Dollars (\$20,000) by each Beneficiary named above pursuant to a membership agreement between each Beneficiary and Grantor.

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

3.2.1 To protect, preserve and maintain said property and not commit any waste thereon.

3.2.2 To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property.

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 total sum of all membership agreements 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

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

Return:
American Pacific Title & Escrow
P.O. Box 1804
Medford, OR 97501

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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 pay all taxes, assessments and other charges that may be levied or assessed upon or against said property.

SECTION 4. NOTICE.

4.1 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: See Exhibit "B" attached hereto and incorporated herein by reference.

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

SECTION 5. ORS DISCLOSURE.

5.1 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 6. DEFAULT.

6.1 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 thirty (30) 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 7. REMEDIES.

7.1 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.

SECTION 8. WAIVER.

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8.1 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 9. INTERPRETATION.

9.1 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 10. SUCCESSORS IN INTEREST.

10.1 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 11. MISCELLANEOUS PROVISIONS.

11.1 **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.

11.2 **Attorney's Fees and Costs.** In the event that any suit, action or arbitration proceeding is filed concerning this note, 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. Any dispute, claim or controversy between the parties concerning this Agreement, including to but not limited to its interpretation, application, enforcement or validity, shall be arbitrated under Chapter 13 of the Uniform Trial Court Rules effective August 1, 1990 as adopted in the State of Oregon, and/or as amended thereafter. The cost of arbitration shall be shared equally between the parties; However, the prevailing party shall be entitled to recover its reasonable attorneys fees incurred concerning the arbitration and/or any appeal thereof. In any suit or action, judicial or otherwise, concerning this agreement or any of its terms, including arbitration, the venue and forum for the same shall be in Klamath County, Oregon.

11.3 **Restriction against Assignment.** Beneficiary shall not assign, transfer, convey or alienate its interest in this trust deed or any portion thereof except pursuant to the terms of the membership agreement with Grantor and any assignment in violation of said membership agreement shall be void.

11.4 Upon the sale of the real property, Beneficiary will receive back his/her initial investment of \$20,000 and in addition, the sum of one percent (1%) of the net sales price of the real property. Any said sale shall be at a minimum gross sales price of \$700,000, but Grantor may sell the real property at any time.

11.5 Beneficiary may, after eight (8) years from date of this agreement, upon written request, receive back the initial investment of \$20,000 and also the additional sum of one percent (1%) of the appraised value of the real property only, exclusive of any improvements thereon; provided, however, that the Beneficiary requesting said repayment shall be responsible for obtaining and paying for the cost of said appraisal, which shall be by a licensed appraiser in the State of Oregon and from a list of such appraisers provided by Grantor;

11.6 Beneficiary will have a first right of refusal on the sale of the improvements and real property.

11.7 Grantor may obtain future advances from additional persons signing membership agreements with Grantor and said persons shall become additional Beneficiaries under this deed of trust and shall have the same priority as all Beneficiaries named herein as and from the date of recording of this deed of trust provided that a memorandum of the membership agreement is recorded specifically referring to the recording number of this trust deed and/or the date said document is recorded.

11.8 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:

Juliann L. Hofmann
Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON,

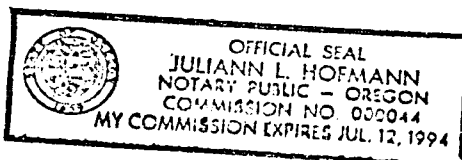
County of JACKSON) ss.

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.



Juliann L. Hofmann
Notary Public for Oregon
My commission expires _____

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 $\frac{1}{3}$ chains; thence North 15 chains; thence West 3 and $\frac{1}{3}$ 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.

EXHIBIT A

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EXHIBIT "B"

\$20,000.00 From Denis Bürger, P. O. BOX 1248, Portland, OR 97207
\$10,000.00 From Alan Cochran, 17725 Rolling Hill Lane, Beaverton, OR 97006
\$10,000.00 From George and Karen Darcy, 10318 Pine Ridge Drive, Elliott City, MD 21042
\$20,000.00 From Robert Gilbert, 11955 Warnerville Road, Oakdale, CA 95361
\$20,000.00 From Paul V. Palmer, M.D., 6051 Folsom Drive, La Jolla, CA 92037
\$20,000.00 From Garry Shapiro, 20941 Nez Perce Trail, Las Gatos, CA. 95030

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 27608.

FEE \$60.00

Evelyn Biehn -County Clerk

By Pauline Mueller