FORM No. 881—Oregon Trust Deed Series—TRUST DEED. 12-16-93P03:25 RCVD COPYRIGHT 1992 STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR 97204

NL Vol m93 Page 33575

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TRUST DEED

THIS TRUST DEED, made this 10 day of December, 1993, between TRUSTEES OF THE BARBARA J. DOWN LIVING TRUST, as Grantor, MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, as Trustee, and VINCENT K. NIHIPALI, SR. & CHARLES K. NIHIPALI, SR., as tenants in common, 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 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 the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of **FOURTEEN THOUSAND FIVE HUNDRED TWENTY SIX AND SIXTY THREE / 100ths***** 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 17, 1998.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of the 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 the property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of the property.

2. To complete or restore promptly and in good and habitable condition 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 the 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 buildings now or hereafter erected on the property 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 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 the policies to the beneficiary at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on the buildings, 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 the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the 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 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.

It is mutually agreed that:

8. In the event that any portion or all of the 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,

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.

TRUST DEED

THE BARBARA J. DOWN LIVING TRUST
610 UPHAM
KLAMATH FALLS, OR 97601
Grantor

VINCENT K. NIHIPALI, SR. & CHARLES K. NIHIPALI, SR.
91-444 KOMOHANA ST. BLDG A UNIT E
KAPOLEI, HI 96707
Beneficiary

After Recording Return to (Name, Address, Zip):
MOUNTAIN TITLE COMPANY
OF KLAMATH COUNTY
222 S. Sixth St.
Klamath Falls, OR 97601

SPACE RESERVED FOR RECORDER'S USE

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 .... of said County.

Witness my hand and seal of County affixed.

NAME TITLE

By .... Deputy

33576

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 the 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 the 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 the 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 grantor's 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 may elect to 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 a written notice of default and election to sell the 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 the sale may be postponed as provided by law. The trustee may sell the 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 any 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.

The grantor covenants and agrees to and with the beneficiary and the beneficiary's successor in interest that the grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto except as set forth on Exhibit "A"

and that the grantor 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 trust deed, it is understood that the grantor, trustee and/or beneficiary may each be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the grantor has executed this instrument the day and year first above written.

Barbara J Down Trustee
THE BARBARA J. DOWN LIVING TRUST

*** 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.

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on December 14, 1993, by BARBARA J. DOWN, Trustee of THE BARBARA J. DOWN LIVING TRUST

This instrument was acknowledged before me on ______, 19__,
by ______
as ______
of ______

OFFICIAL SEAL
KRISTI L. REDD
NOTARY PUBLIC - OREGON
COMMISSION NO. 010431
MY COMMISSION EXPIRES NOV. 16, 1995

Kristi L. Redd
Notary Public for Oregon
My commission expires 11/16/95

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 the 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 the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed the estate now held by you under the same. Mail reconveyance and documents to ______

DATED: ______, 19__

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.

______ Beneficiary

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

A portion of Lots 10 and 11, Block 6, CANAL ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the Southeasterly line of Lot 10, Block 6, CANAL ADDITION to the City of Klamath Falls, which lies Northeasterly along the Southeasterly line of said Block 6 a distance of 71.2 feet from the Southwest corner of said Block 6 and running thence in a Northeasterly direction along the Southeasterly line of Lots 10 and 11 of said Block 6 a distance of 30 feet to an iron pin in the Southeasterly line of the above mentioned Lot 11; thence in a Northwesterly direction a distance of 95.75 feet to an iron pin on the Northwesterly line of Lot 11, which is 129.6 feet Easterly along the Northerly line of Lots 8 to 11 from the most Westerly corner of Lot 8; thence Southwesterly along the Northwesterly line of Lots 10 and 11, Block 6 a distance of 30 feet to a point on the Northwesterly line of Lot 10, Block 6; thence in a Southeasterly direction a distance of 94.67 feet, more or less, to the point of beginning.

PARCEL 2:

Lots 8 and 9, and a portion of Lot 10 in Block 6 of CANAL ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at the most Southerly corner of said Lot 8, thence Easterly along the Southerly line of Lots 8, 9 and 10, a distance of 71.2 feet to the Southwest corner of that certain parcel of land conveyed by Martha A. Barron to Carl Michelson, et ux, by deed recorded on page 417 of Volume 178 of Deed Records of Klamath County, Oregon, thence in a Northwesterly direction, along the Westerly line of said parcel, a distance of 94.67 feet, more or less, to a point on the Northwesterly line of said Lot 10, which is distant 99.8 feet Easterly along the Northerly line of Lots 8, 9 and 10 from the most Westerly corner of Lot 8; thence Westerly along the said Northerly line, 99.8 feet to the most Westerly corner of Lot 8, thence Southerly along the Westerly line of said Lot 8, 95.02 feet to the point of beginning.

SUBJECT TO: Real Estate Contract, recorded March 24, 1977 in Volume M77, page 4954, Microfilm Records of Klamath County, Oregon in favor of Edwin L. Kurth and Merline A. Kurth, husband and wife, as Vendors; Trust Deed recorded March 25, 1982, in Volume M82, page 3701, Microfilm Records of Klamath County, Oregon in favor of Raymond G. Budden and Rose Ellen Budden, husband and wife, as Beneficiary; Trust Deed recorded April 17, 1987 in Volume M87, page 6558 and rerecorded May 6, 1987 in Volume M87, page 7759, Microfilm Records of Klamath County, Oregon in favor of Jackson County Federal Savings and Loan Association of which the Grantors herein DO NOT agree to assume nor pay and the Beneficiary agree to hold said Grantors harmless therefrom. FURTHER SUBJECT TO: Trust Deed recorded November 2, 1990 in Volume M90, page 22284, Microfilm Records of Klamath County, Oregon in favor of Richard T. Dudy and Jearne S. Dudy, husband and wife, as Beneficiary which the Grantors named herein hereby agree to assume and pay in full.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title co the 16th day of Dec. A.D., 19 93 at 3:25 o'clock P M., and duly recorded in Vol. M93, of Mortgages on Page 33575.

Evelyn Biehn County Clerk

By Pauline Mullendore

FEE $20.00