

74328

TRUST DEED

Vol. m94 Page 1088

THIS TRUST DEED, made this 11th day of January, 1994, between
MICHAEL G. MOORE

as Grantor,

KLAMATH COUNTY TITLE COMPANY, as Trustee, and

See EXHIBIT "A"

as Beneficiary,

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 "B"

* For Assignment of Rents Provision, see EXHIBIT "C", which is attached hereto and made apart hereof.

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 Forty Thousand

note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, it not sooner paid, to be due and payable July 1, 2000

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 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 cause the grantor to execute 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 the beneficiary or searching agencies as may be deemed desirable by the beneficiary.

4. To provide and continuously maintain insurance on the buildings and other structures on the said premises against loss or damage by fire and other hazards as the beneficiary may from time to time require, in an amount not less than \$ Replacement Value written in companies acceptable to the beneficiary, with loss payable to the latter; all of the insurance policy 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 policy to the beneficiary at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on said buildings, the beneficiary may procure the same at grantor's expense. The amount of any such 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 not cured or waived 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 thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, 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 payment, 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 debt secured by the trust deed, 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 less actually incurred, in connection with or in enforcing this obligation and trustee's attorney's fees.

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 including evidence of title and the beneficiary's or trustee's attorney's fees, in amount of attorney's fees mentioned in this paragraph 7 in all cases shall be decreed by 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 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 monies payable to beneficiary 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 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 action 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 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 grantor in any conveyance 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 premises 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 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 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 sums secured by the trust deed, the default may be cured by paying the 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 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 by grantor, is 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 676.505 to 676.585.

RETURN TO: KLAMATH COUNTY TITLE, 422 MAIN ST., KLAMATH FALLS, OR. 97601

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 any leases or tenancies not of record.

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

Notwithstanding any provision herein to the contrary, no prepayment shall be allowed without the written consent of all beneficiaries hereunder:

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.

(If the signer of the above is a corporation, use the form of acknowledgement opposite).

STATE OF OREGON,

County of Klamath

This instrument was acknowledged before me on January 11, 1994, by Michael G. Moore

(SEAL)

My commission expires: 12-19-96

STATE OF OREGON,

County of

This instrument was acknowledged before me on

19, by

as

of



Notary Public for Oregon

My commission expires:

(SEAL)

REQUEST FOR FULL RECONVEYANCE

To be used only when obligations have been paid.

TO:

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: 12-19-96

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.

MICHAEL G. MOORE

Grantor

See EXHIBIT "A"

Beneficiary

AFTER RECORDING RETURN TO

SEE EXHIBIT "A"

SPACE RESERVED

FOR

RECORDEN'S USE

STATE OF OREGON,

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

EXHIBIT "A"

JAMES F. STILWELL, as to an undivided 40% interest,
MICHAEL J. SCHMIDT, as to an undivided 10% interest,
RYAN F. SCHMIDT, as to an undivided 10% interest,
WENDY L. STILWELL, as to an undivided 10% interest,
KIMBERLY A. STILWELL, as to an undivided 10% interest,
TERI A. SCHMIDT, as to an undivided 10% interest,
MICHAEL J. STILWELL, as to an undivided 10% interest,

ALL TENANTS IN COMMON

EXHIBIT "A"

Page 1 of 1

EXHIBIT "B"

The following described real property situated in Klamath County, Oregon to-wit:

The Westerly 75 feet of that parcel of land situated in Lots 33A and 36, of Enterprise Tracts, more particularly described as follows:

Starting at the Northwest corner of Section 3, Township 39 South, Range 9 E.W.M., and running thence South $00^{\circ}00'30''$ East along the Westerly Boundary of said Section 3, 826.8 feet, more or less to its intersection with a line parallel with and 75.0 feet distant at right angles Northeasterly from the center line of the Dalles-California Highway, also known as South Sixth Street, as the same is now located and constructed, thence South $55^{\circ}52\frac{1}{2}'$ East along said parallel line being also the Northeasterly boundary of South Sixth Street, 1016.2 feet, more or less to an iron pin marking the true point of beginning of this description, said point also marking boundary between lands of First National Bank of Oregon and Alfred D. Collier, from which point the witness monument cross chiseled in the concrete sidewalk by the Oregon State Highway Department on July 15, 1947, bears South $34^{\circ}07\frac{1}{2}'$ West 10.0 feet; running thence from said true beginning point South $55^{\circ}52\frac{1}{2}'$ East along the Northeasterly boundary of South Sixth Street 150.0 feet to an iron pin marking the boundary between the lands of Alfred D. Collier and Frank P. Drew and the center line of the party wall between these lands covered by party wall agreement dated June 1, 1948 and filed January 25, 1949, in Klamath County, Deed Records, in Volume 228 page 196, from which said pin the witness monument cross chiseled in the concrete sidewalk by the Oregon State Highway Department on July 15, 1947, bears South $34^{\circ}07\frac{1}{2}'$ West 10.0 feet; thence following center line of said party wall and its extension North $34^{\circ}07\frac{1}{2}'$ East at right angles to South Sixth Street 175.0 feet to an iron pin set in the Southwesterly boundary of the County Road know as Pershing Way; thence North $55^{\circ}52\frac{1}{2}'$ West along said boundary parallel to South Sixth Street 150.0 feet to an iron pin marking the boundary between lands of the First National Bank of Oregon and Alfred D. Collier; thence South $34^{\circ}07\frac{1}{2}'$ West at right angles to South Sixth Street along said boundary 175.0 feet to the true point of beginning.

EXHIBIT " B "

Page 1 of 1

EXHIBIT "C"**Assignment of Leases, Rents, Issues, and Profits**

1.01 Assignment. Grantor assigns and transfers to Beneficiary (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). This assignment is intended by Grantor and Beneficiary to create a present and unconditional assignment to Beneficiary, subject only to the license set forth in Section 1.04 below.

1.02 Rights of Beneficiary. Subject to the provisions of Section 1.04 below giving Grantor a revocable, limited license, Beneficiary shall have the right, power, and authority to:

(1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not Beneficiary has taken possession of the Trust Property;

(2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to Beneficiary;

(3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Grantor or Beneficiary, with respect to any and all Leases and Rents; and

(4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

1.03 Application of Receipts. Beneficiary shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of Beneficiary, and in collecting any Rents; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses, and after Beneficiary shall have set up such reserves as it shall deem

necessary in its sole discretion for the proper management of the Trust Property, Beneficiary shall apply all remaining Rents collected and received by it to the reduction of the Note in such order as Beneficiary shall determine. The exercise or failure by Beneficiary to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Grantor under this Trust Deed, or the Note.

1.04 License. Beneficiary hereby grants to Grantor a revocable license to collect and receive the Rents. Such license may be revoked by Beneficiary, without notice to Grantor, upon the occurrence of any event of default under this Trust Deed. Unless and until such license is revoked, Grantor agrees to apply the proceeds of Rents to the payment of the Obligations and to the payment of taxes, assessments, governmental charges, insurance premiums, and other obligations in connection with the Trust Property, and to the maintenance of the Trust Property, before using such proceeds for any other purpose. Grantor agrees to (1) observe and perform every obligation of Grantor under the Leases; (2) enforce or secure at its expense the performance of every obligation to be performed by any lessee or other party under the Leases; (3) promptly give notice to Beneficiary of any default by any such lessee or other party under any of the Leases, and promptly provide Beneficiary a copy of any notice of default given to any such lessee or other party; (4) not collect any Rents more than 30 days in advance of the time when the same shall become due, or anticipate any other payments under the Leases, except for bona fide security deposits not in excess of an amount equal to two months' rent; (5) not further assign or hypothecate any of the Leases or Rents; (6) except with Beneficiary's prior written consent, not waive, release, or in any other manner discharge any lessee or other party from any of its obligations under any of the Leases; (7) except with Beneficiary's prior written consent, not modify or amend any of the Leases; (8) except with Beneficiary's prior written consent, not cancel, terminate, or accept surrender of any of the Leases unless Grantor shall have entered into a Lease for the space to be vacated on terms at least as favorable to Grantor, commencing within 30 days after such cancellation, termination, or surrender; (9) obtain Beneficiary's prior written approval as to the form and content of all future leases and any modifications of any present or future leases; (10) deliver copies of all present and future leases to Beneficiary promptly; and (11) appear in and defend, at Grantor's sole cost and expense, any action or proceeding arising out of or in connection with the Leases or the Rents.

1.05 Limitation of Beneficiary's Obligations. Notwithstanding the assignment provided for in this Article III, Beneficiary shall not be obligated to perform or discharge, and Beneficiary does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon Beneficiary, or to make Beneficiary responsible for any condition of the Property.

Beneficiary shall be accountable to Grantor only for the sums actually collected and received by Beneficiary pursuant to this assignment. Grantor shall hold Beneficiary fully harmless from, indemnify Beneficiary for, and defend Beneficiary against any and all claims, demands, liabilities, losses, damages, and expenses, including attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against Beneficiary on account of this assignment or any obligation or undertaking alleged to arise therefrom.

1.06 Termination. This assignment shall continue in full force and effect until all the Obligations of Grantor have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Grantor to Beneficiary shall cease and terminate.

1.07 Attorney-in-Fact. Grantor irrevocably constitutes and appoints Beneficiary, and each of its officers, as its true and lawfully attorney-in-fact, with power of substitution, to undertake and execute any and all of the rights, powers, and authorities described in this Assignment with the same force and effect as if undertaken or performed by Grantor, and Grantor ratifies and confirms any and all such actions that may be taken or omitted to be taken by Beneficiary, its employees, agents, and attorneys.

1.08 The Assignment Provisions of this Article are intended to be an absolute assignment, and not an assignment only for security purposes.

STATE OF OREGON: COUNTY OF KLAMATH: §3.

Filed for record at request of Klamath County Title co the 11th day
of Jan A.D. 19 94 at 2:25 o'clock PM., and duly recorded in Vol. M94
of Mortgages on Page 1088

FEE \$40.00

Evelyn Biehn County Clerk

By Christine Wickendare