

83493

06-29-94 10:59 RCVD

TRUST DEED

Vol 94 Page 20172

THIS TRUST DEED, made this 10th day of MAY, 1994, between

HAROLD J. KELLY & SHARON A. KELLY, Husband & wife, as Grantor,

ASPEN TITLE & ESCROW COMPANY, INC., as Trustee, and

ROBERT V. WETHERN, Sr., 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:

ALL OF LOT 11, EXCEPT THE NORTHERLY 415 FEET AND THE EASTERLY 1035 FEET, BLOCK 7, KLAMATH PALES FOREST ESTATES - SYCAN UNIT, (ALSO KNOWN AS LOT 11D, BLOCK 7 OF SAID SUBDIVISION.)

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereto 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 Eight thousand 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 per terms of note;

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 \$           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 decides, 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 the 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

HAROLD & SHARON KELLY

5170 4TH ST.

ROCKLYN, CA. 95617

Grantor

ROBERT WETHERN

Rural Rt. 2, Box 323

Bonanza, Oregon 97623

After Recording Return to (Name, Address, Zip)

ROBERT WETHERN

Rural Rt. 2, Box 323

Bonanza, Oregon 97623

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            of said County.

Witness my hand and seal of County affixed.

NAME

TITLE

By            Deputy

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 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 thereon; (d) reconvey in any reconveyance may be deemed 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 or otherwise, collect the rents, issues and profits, including those not due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness recovered hereby, and in such order as beneficiary may determine, to the collection of such rents, issues and profits, or the proceeds of fire or other insurance, or the proceeds of sale of the property, or the proceeds of any other source, for the satisfaction or release thereof as may be required.

**-11.** The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire insurance received by him, and in each case as hereinafter more fully determined.

12. Upon default by grantor in payment of any indebtedness secured hereby or in grantor's performance of any agreement hereunder, the 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 of remedy. 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.

tion secured hereby whereupon the trustee shall fix the time and place for the sale of the property to foreclose this trust deed in the manner provided in ORS 86.72 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 86.75, 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 specified in the notice of sale or the time to which the obligation is to be paid on the date and at the time and place designated in the notice of sale or the time to which the obligation is to be paid.

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 the form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The trustee, in addition to the usual proof of the validity thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale. The trustee shall apply the proceeds of sale to payment of (1) the expenses of the sale, (2) the costs and charges of the sale, (3) the debts and liabilities of the estate, and (4) the balance to the beneficiary.

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 named herein. 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 his 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.

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

and that the grantor will warrant and defend the title to the property described in the above described note and this trust deed and the grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are for the purchase of a new home for the grantor's use and occupancy as a residence.

(b) ~~for all purposes of this deed, the term "beneficiary" shall mean the holder and owner, including pledgee, of the contract~~  
 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.  
 (c) ~~for all purposes of this deed, the term "beneficiary" shall mean the holder and owner, including pledgee, of the contract~~  
 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 for the sake of convenience to conform to corporations and to individuals.

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.

\* **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, delete this notice.

Harold G. Kelley

HAROLD J. KELLEY

Theron A. Kelly

SHARON A. KELLEY

STATE OF OREGON, County of \_\_\_\_\_) ss

This instrument was acknowledged before me on \_\_\_\_\_, 19\_\_.

by \_\_\_\_\_ This instrument was acknowledged before me on See attached 19

by \_\_\_\_\_

as

1

*Notary Public for Oregon*

## My commission expires

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 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 hereuntogether 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 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 recorded here will be made.

### Beneficiary

44-38861-5

20174

No. 5193

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIACounty of PLACEROn 5-13-94 before me, SANDRA OLMSTED, NOTARY PUBLIC

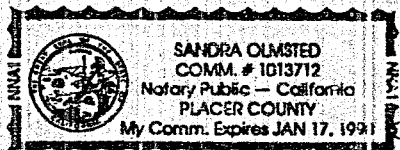
DATE

NAME, TITLE OF OFFICE - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Harold J. Kelley and Sharon A. Kelley

NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*Sandra Olmsted*  
SIGNATURE OF NOTARY

## OPTIONAL SECTION

## CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☒ INDIVIDUAL☐ CORPORATE OFFICER(S)

TITLE(S)

☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL
☐ ATTORNEY-IN-FACT☐ TRUSTEE(S)☐ GUARDIAN/CONSERVATOR☐ OTHER: \_\_\_\_\_

## SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

## OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT: Oregon Deed of Trust

NUMBER OF PAGES: \_\_\_\_\_ DATE OF DOCUMENT: \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE: \_\_\_\_\_

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Co the 29th day  
of June A.D., 19 94 at 10:59 o'clock A.M., and duly recorded in Vol. M94  
of Mortgages on Page 20172

FEE \$20.00

By Evelyn Biehn - County Clerk*Evelyn Biehn*