

36805

TRUST DEED

Vol. 194 Page 26562

THIS TRUST DEED, made this 28 day of July, 1994, between DONALD M. DAVIS and JANICE L. DAVIS, husband and wife, as Grantor, MOUNTAIN TITLE COMPANY OF KUMATH COUNTY, as Trustee, and TURNSTONE, INC., an Oregon corporation, as Beneficiary, WITNESSETH: Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in KUMATH County, Oregon, described as:

Lot 14, Block 3, Tract 1260 - MATE VISTA RANCH, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter accruing, 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 NINETEEN THOUSAND AND NO 00/100ths Dollars, with interest thereon according to the terms of a promissory note or even cash 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

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. Should the grantor or her/his estate, without first obtaining 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. This extension by grantor of an earnest money agreement\*\* does not constitute a sale, conveyance or assignment.

To protect the security of this trust deed, grantor agrees 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.

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.

To comply with all laws, ordinances, regulations, covenants and restrictions affecting the property; if the beneficiary requests, to join in executing such financial 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.

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 require, 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 any policy of insurance now or hereafter placed on the buildings, the beneficiary may procure any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such case the beneficiary may determine, or at option of beneficiary the entire amount so collected, shall be applied to or release shall not be required or waived any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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 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 or any of the covenants hereof and for such payments, 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 obligation herebefore 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.

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.

To appear in and defend any action or proceeding brought 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 reasonable 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 each 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:

3. 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 or lender 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.

\*WARNING: 12 USC 1701j-3 regulates and prohibits exercise of this option.

\*\*The publisher suggests that such an agreement address the issue of obtaining beneficiary's consent in complete detail.

TRUST DEED

DONALD M. DAVIS and JANICE L. DAVIS  
27 W 351 CHURCHHILL ROAD  
WINDFIELD, OR 97520

TURNSTONE, INC. Grantor  
2250 RANCH ROAD  
ASHLAND, OR 97520

MOUNTAIN TITLE COMPANY  
OF KUMATH COUNTY

SPACE RESERVED  
FOR  
RECORDER'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 \_\_\_\_\_ of said County. Witness my hand and seal of County affixed.

By \_\_\_\_\_, Deputy



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 enforcement (in case of future recoveries, 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 other agreement affecting this deed or the land or charge thereof; (d) convey, without warranty, all or any part of the property. The grantee in any recovery may be described as the "person or persons legally entitled thereto," and the recital therein of any matter or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall not be 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 of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name, and sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, its costs and expenses, to the satisfaction of the indebtedness secured hereby, and in such or as beneficiary.

11. The entering upon and taking possession of the property, or the proceeds of fire insurance policies or compensation for awards for 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 by grantor or beneficiary 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

12. Upon default by grantor in payment of the indebtedness secured hereby, 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. In the event the beneficiary elects to foreclose by advertisement and sale, the beneficiary 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 in 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 86.753 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 privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay when due, 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 the 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 shall 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 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 act 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.

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), and (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 as 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 Z by making required disclosures; for this purpose use Stevens-New Form No. 1319, or equivalent. If compliance with the Act is not required, disregard this notice.

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

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

by DONALD M. DAVIS and JANICE DAVIS

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

by \_\_\_\_\_,

as \_\_\_\_\_,

of \_\_\_\_\_.

"OFFICIAL SEAL"  
VICKIE A. SANDOZ  
Notary Public, State of Illinois  
My Commission Expires 12/29/94

DONALD M. DAVIS  
Janice Davis  
JANICE DAVIS

Notary Public for Oregon  
My commission expires 12-29-94

STATE OF OREGON: COUNTY OF KLAMATH: ss

Filed for record at request of \_\_\_\_\_ Mountaintop Title Co the 25th day of Aug A.D., 1994 at 1:45 o'clock P.M. and duly recorded in Vol. M94 of \_\_\_\_\_ Mortgage: \_\_\_\_\_ on page 26562

Fee \$15.00

Evelyn B. Lehn County Clerk

By Shirley M. Mendenhall