

91345

DEED OF TRUST

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THIS DEED OF TRUST is made this 30 day of NOVEMBER, 1994
 BETWEEN DEWAYNE BARBER AND KATHERINE J. BARBER

_____ as Grantor,
 whose address is WAGON TRAIL RD, LA PINE, OR 97739
 and ASPEN TITLE AND ESCROW as Trustee,
 whose address is 525 MAIN STREET, KLANATH FALLS, OR 97601
 and SEATTLE-FIRST NATIONAL BANK, a national banking association as Beneficiary, whose address is
P.O. BOX 3828, SEATTLE, WA 98124

1. **Granting Clause.** Grantor irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, all Grantor's estate, right, title, interest, claim and demand, now owned or hereafter acquired, in and to the following:

(a) The property in DESCHUTES County, OREGON described in Schedule "A" attached hereto and incorporated herein by this reference (the "Property" which term shall include all or any part of the Property, any improvements thereon and all the property described in this section 1).

(b) All land lying in streets and roads adjoining the Property, and all access rights and easements pertaining to the Property.

(c) All the lands, tenements, privileges, reversions, remainders, irrigation and water rights and stock, oil and gas rights, royalties, minerals and mineral rights, hereditaments and appurtenances belonging or in any way pertaining to the Property.

(d) All buildings, structures, improvements, fixtures and property now or hereafter attached to or used in the operation of the Property including, but not limited to, heating and incinerating apparatus and equipment, boilers, engines, motors, dynamos, generating equipment, computers, computer workstations and terminals, telephone and other communication systems, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, irrigation equipment, carpeting, underpadding, elevators, escalators, partitions, mantles, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies, and shrubbery and plants. All property mentioned in this subsection (d) shall be deemed part of the realty and not severable wholly or in part without material injury to the Property.

(e) All rents, issues and profits of the Property, all existing and future leases of the Property (including extensions, renewals and subleases), all agreements for use and occupancy of the Property (all such leases and agreements whether written or oral are hereafter referred to as the "Leases"), and all guaranties of lessees' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including any income of any nature coming due during any redemption period) under the Leases or from or arising out of the Property including minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, all proceeds payable as a result of a lessee's exercise of an option to purchase the Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, and all proceeds from any rights and claims of any kind which Grantor may have against any lessee under the Leases or any occupants of the Property (all of the above are hereafter collectively referred to as the "Rents"). This subsection (d) is subject to the right, power and authority given to the Beneficiary in the Loan Documents (as defined herein) to collect and apply the Rents.

(f) All of Grantor's rights further to encumber said Property for debt except by such encumbrance which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Grantor hereby (i) representing as a special inducement to Beneficiary to make this loan that as of the date hereof there are no encumbrances to secure debt junior to this Deed of Trust and (ii) covenanting that there are to be none as of the date when this Deed of Trust becomes of record, except in either case encumbrances having the prior written approval of Beneficiary, and all Grantor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this Deed of Trust.

2. **Security Agreement.** This Deed of Trust shall constitute a security agreement under the Uniform Commercial Code between Grantor as debtor and Beneficiary as secured party. Grantor grants a security interest to Beneficiary in any of the Property which is personal property and also grants a security interest in the following property now owned or hereafter acquired by Grantor (the Property, as defined in section 1, and the property described in this section 2 are hereafter collectively referred to as the "Collateral"):

(a) All furniture, furnishings, appliances, machinery, vehicles, equipment and all other property of any kind now or hereafter located on the Property, used or intended to be used on the Property wherever actually located, or purchased with the proceeds of the Note (as defined herein), and all rights of Grantor as lessee of any property described in this section 2 and subsection 1(d) above.

(b) All compensation, awards, damages, rights of action and proceeds (including insurance proceeds and any interest on any of the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake or other casualty, injury or decrease in the value of the Property.

(c) All returned premiums or other payments on any insurance policies pertaining to the Property and any refunds or rebates of taxes or assessments on the Property.

(d) All plans, specifications, contracts, agreements and purchase orders pertaining or incidental to the design or construction of any improvements on the Property, Grantor's rights under any payment, performance, or other bond in connection with construction of improvements on the Property, and all construction materials, supplies, and equipment delivered to the Property or intended to be used in connection with the construction of improvements on the Property wherever actually located.

(e) All contracts and agreements pertaining to or affecting the Property including management, operating and franchise agreements and licenses.

(f) All commitments or agreements, now or hereafter in existence, which will provide Grantor with proceeds to satisfy the Note and the right to receive the proceeds due under such commitments or agreements including refundable deposits and fees.

(g) All additions, accessions, replacements, substitutions, proceeds and products of the Property described in this section 2 and of any of the Property which is personal property.

When and if Grantor and Beneficiary shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting property either referred to or described herein, or in any way connected with the use and enjoyment of these premises, this Deed of Trust shall be deemed a Security Agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Beneficiary's sole election. Grantor and Beneficiary agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Property that is the subject of this Deed of Trust and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Beneficiary, (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time.

3. Obligations Secured. This Deed of Trust is given for the purpose of securing the following:

(a) Payment of the sum of SIXTY THOUSAND EIGHT HUNDRED THIRTY & 00/100

DOLLARS

(\$ 60,830.00) 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 "Note" which term shall include all notes evidencing the indebtedness secured by this Deed of Trust including all renewals, modifications or extensions thereof);

(b) Payment of any further sums advanced or loaned by Beneficiary to Grantor, or any of its successors or assigns, if (1) the Note or other writing evidencing the future advance or loan specifically states that it is secured by this Deed of Trust or (2) the advance, including costs and expenses incurred by Beneficiary, is made pursuant to this Deed of Trust or any other documents executed by Grantor evidencing, securing, or relating to the Note and/or the Collateral, whether executed prior to, contemporaneously with, or subsequent to this Deed of Trust (this Deed of Trust, the Note and such other documents, including any construction or other loan agreement, are hereafter collectively referred to as the "Loan Documents") together with interest thereon at the rate set forth in the Note unless otherwise specified in the Loan Documents or agreed to in writing;

(c) Performance of each agreement, term and condition set forth or incorporated by reference in the Loan Documents, including without limitation the loan agreement or commitment dated NOVEMBER 3, 1994 and assignment of leases and/or rents of even date herewith, which are incorporated herein by reference, or contained herein.

GRANTOR REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

4. Performance of Obligations. Grantor shall promptly and timely pay all sums due pursuant to the Loan Documents and strictly comply with all the terms and conditions of the Loan Documents.

5. Warranty of Title. Grantor has good and marketable title to an indefeasible fee simple estate in the Property and good marketable title to the personal property Collateral, subject to no liens, encumbrances, easements, assessments, security interest, claims or defects of any kind except those listed in Schedule "A", Beneficiary's title insurance policy or approved by Beneficiary in writing (the "Exceptions") and real estate taxes for the current year. The Exceptions and the real estate taxes are not delinquent or in default. Grantor has the right to convey the Property to Trustee for the benefit of Beneficiary, and the right to grant a security interest in the personal property Collateral. Grantor will warrant and defend title to the Collateral and will defend the validity and priority of the lien of this Deed of Trust and the security interest granted herein against any claims or demands.

6. Prohibited Liens. Grantor shall not permit any governmental or statutory liens (including tax and mechanic's and materialmen's liens) to be filed against the Property except for real estate taxes and assessments not yet due and liens permitted by the Loan Documents or approved by Beneficiary in writing.

7. Payment of Taxes and Other Encumbrances. Grantor shall pay the real estate taxes and any assessments or ground rents at least 7 days prior to delinquency unless otherwise provided for in the reserve account. All other encumbrances, charges and liens affecting the Property, including mortgages and deeds of trust, whether prior to or subordinate to the lien of this Deed of Trust, shall be paid when due and shall not be in default. On request Grantor shall furnish evidence of payment of these items.

8. Maintenance — No Waste. Grantor shall protect and preserve the Collateral and maintain it in good condition and repair. Grantor shall do all acts and take all precautions which, from the character and use of the Collateral, are reasonable, proper or necessary. Grantor shall not commit or permit any waste of the Collateral.

9. Alterations, Removal and Demolition. Grantor shall not structurally alter, remove or demolish any building or improvement on the Property without Beneficiary's prior written consent. Grantor shall not remove any fixture or other item of property which is part of the Collateral without Beneficiary's prior written consent unless the fixture or item of property is replaced by an article of equal suitability owned by Grantor free and clear of any lien or security interest.

10. Completion, Repair and Restoration. Grantor shall promptly complete or repair and restore in good workmanlike manner any building or improvement on the Property which may be constructed or damaged or destroyed and shall pay all costs incurred therefor. Prior to commencement of any construction Grantor shall submit the plans and specifications for Beneficiary's approval and furnish evidence of sufficient funds to complete the work.

11. Compliance with Laws. Grantor shall comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, regulations, covenants, conditions, and restrictions.

12. Impairment of Collateral. Grantor shall not, without Beneficiary's prior written consent, change the general nature of the occupancy of the Property, initiate, acquire or permit any change in any public or private restrictions (including a zoning reclassification) limiting the uses which may be made of the Property, or take or permit any action which would impair the Collateral or Beneficiary's lien or security interest in the Collateral.

13. Inspection of Property. Beneficiary and/or its representative may inspect the Property at reasonable times after reasonable notice.

14. Grantor's Defense of Collateral. Grantor shall appear in and defend any action or proceeding which may affect the Collateral or the rights or powers of Beneficiary or Trustee.

15. Beneficiary's Right to Protect Collateral. Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Collateral or the rights or powers of Beneficiary or Trustee. Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien not listed as an Exception which in its judgment appears to be prior or superior to the lien of this Deed of Trust. If Grantor fails to make any payment or do any act required under the Loan Documents, Beneficiary, without any obligation to do so, without notice to or demand upon Grantor and without releasing Grantor from any obligations under the Loan Documents, may make the payment or cause the act to be performed in such manner and to such extent as Beneficiary may deem necessary to protect the Collateral. Beneficiary is authorized to enter upon the Property for such purposes. In exercising any of these powers Beneficiary may incur such expenses, in its absolute discretion, it deems necessary.

16. **Repayment of Beneficiary's Expenditures.** Grantor shall pay within 10 days after written notice from Beneficiary all sums expended by Beneficiary and all costs and expenses incurred by Beneficiary in taking any actions pursuant to the Loan Documents including attorneys' fees, accountants' fees, appraisal and inspection fees, and the costs for title reports. Expenditures by Beneficiary shall bear interest from the date of such advance or expenditure at the rate of four percent (4.0%) per annum above the note rate in effect at that time but not less than twelve percent (12.0%) per annum until paid, shall constitute advances made under this Deed of Trust and shall be secured by and have the same priority as the lien of this Deed of Trust. If Grantor fails to pay any such expenditures, costs and expenses and interest thereon, Beneficiary may, at its option, without foreclosing the lien of this Deed of Trust, commence an independent action against Grantor for the recovery of the expenditures and/or advance any undisbursed loan proceeds to pay the expenditures.

17. **Sale or Transfer.** If the Property or any part thereof is sold, conveyed, transferred, encumbered, or full possessory rights therein transferred, or if a controlling interest in Grantor (if a corporation) or a general partnership interest in Grantor (if a partnership) is sold, conveyed, transferred or encumbered, without the prior written consent of the Beneficiary, then Beneficiary may declare all sums secured by the Deed of Trust immediately due and payable. This provision shall apply to each and every sale, transfer, conveyance or encumbrance regardless of whether or not Beneficiary has consented or waived its rights, whether by action or nonaction, in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more.

18. Insurance.

(a) Grantor shall maintain insurance on the Property with premiums prepaid providing replacement cost coverage and insuring against loss by fire and such other risks covered by extended coverage insurance, flood, and such other perils and risks, including earthquake, loss of rents and business interruption as may be required by the Loan Documents. Grantor shall also maintain comprehensive general public liability insurance. All insurance shall be with companies satisfactory to Beneficiary and in such amounts as required by Beneficiary with lender's loss payable clauses in favor of and in form satisfactory to Beneficiary. At least 30 days prior to the expiration of the term of any insurance policy, Grantor shall furnish Beneficiary with written evidence of renewal or issuance of a satisfactory replacement policy. If requested Grantor shall deliver copies of all policies to Beneficiary.

(b) In the event of foreclosure of this Deed of Trust all interest of Grantor in any insurance policies pertaining to the Collateral and in any claims against the policies and in any proceeds due under the policies shall pass to Beneficiary.

(c) If under the terms of any Lease (as defined herein) the lessee is required to maintain insurance of the type required by the Loan Documents and if the insurance is maintained for the benefit of both the lessor and Beneficiary, Beneficiary will accept such policies provided all of the requirements of Beneficiary and the Loan Documents are met. In the event the lessee fails to maintain such insurance, Grantor shall promptly obtain such policies as are required by the Loan Documents.

19. **Condemnation and Insurance Proceeds.** Grantor shall give immediate notice to Beneficiary of any condemnation proceeding (including change of grade), or loss or damage to the Collateral or any right therein. Grantor authorizes Beneficiary, at Beneficiary's option, to make a claim for and to enter into a compromise or settlement with respect to any proceeds payable as a result of condemnation, loss or damage. All proceeds payable as a result of a condemnation, loss or damage shall be paid to Beneficiary. Beneficiary shall, at its option, after deducting its expenses including attorneys' fees,

(a) Apply all or part of the proceeds against the sums owed under the Loan Documents including the Note whether or not the sums are actually due or the Collateral for the Note is impaired and without affecting the due dates or amount of payments thereafter due under the Note, or

(b) Release all or any part of the proceeds to Grantor, or BENEFICIARY

(c) Permit all or any part of the proceeds to be used for repair and restoration of the Property on such conditions as Beneficiary may impose including evidence of sufficient funds to complete the work, approval of the plans and specifications and periodic disbursement of the proceeds during the course of repair and restoration.

20. Reserve Account.

(a) If Beneficiary so requires, Grantor shall pay to Beneficiary monthly, together with and in addition to any payments of principal and/or interest due under the Note, a sum, as estimated by the Beneficiary, equal to the ground rents, if any, the real estate taxes and assessments next due on the Property and the premiums next due on insurance policies required under the Loan Documents, less all sums already paid therefor, divided by the number of months to elapse before 2 months prior to the date when the ground rents, real estate taxes, assessments and insurance premiums will become delinquent. The monthly reserve account payments and any principal and/or interest payments due shall be paid in a single payment and applied by Beneficiary in the following order: (1) ground rents, real estate taxes, assessments and insurance premiums, (2) expenditures made pursuant to the Loan Documents and interest thereon, (3) interest on the Note, and (4) principal due on the Note. Grantor shall promptly deliver to Beneficiary all bills and notices pertaining to the ground rents, taxes, assessments and insurance premiums.

(b) The reserve account is solely for the protection of Beneficiary. Beneficiary shall have no responsibility except to credit properly the sums actually received by it. No interest will be paid on the funds in the reserve account and Beneficiary shall have no obligation to deposit the funds in an interest bearing account. Upon assignment of this Deed of Trust by Beneficiary, any funds in the reserve account shall be turned over to the assignee and any responsibility of Beneficiary with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the grantee all rights of Grantor to any funds in the reserve account.

(c) If the total of the payments to the reserve account exceeds the amount of payments actually made by Beneficiary, plus such amounts as have been reasonably accumulated in the reserve account toward payments to become due, such excess may be (1) credited by Beneficiary against sums then due and payable under the Loan Documents or (2) refunded to Grantor as appears on the records of Beneficiary. If, however, the reserve account does not have sufficient funds to make the payments when they become due, Grantor shall pay to Beneficiary the amount necessary to make up the deficiency within 15 days after written notice to Grantor. If this Deed of Trust is foreclosed or if Beneficiary otherwise acquires the Property, the Beneficiary shall, at the time of commencement of the proceedings or at the time the Property is otherwise acquired, apply the remaining funds in the reserve account, less such sums as will become due during the pendency of the proceedings, against the sums due under the Loan Documents and/or to make payments required under the Loan Documents.

21. **Leases.** Grantor shall fully comply with all of the terms, conditions and provisions of the Leases so that the same shall not become in default and do all that is needful to preserve all said Leases in force. With respect to any Lease of the whole or any part of the Property involving an initial term of three years or more, Grantor shall not, without the prior written consent of Beneficiary, (a) permit assignment or subletting of all or part of the lessee's rights under the Lease unless the right to assign or sublet is expressly reserved by the lessee under the Lease, (b) modify or amend the Lease for a lesser rental or term, and (c) accept surrender of the Lease or terminate the Lease except in accordance with the terms of the Lease providing for termination in the event of a default. Any proceeds or damages resulting from a lessee's default under any such Lease, at Beneficiary's option, shall be paid to Beneficiary and applied against sums owed under the Loan Documents even though such sums may not be due and payable. Except for real estate taxes and assessments, Grantor shall not permit any lien to be created against the Property which may be or may become prior to any Lease. If the Property is partially condemned or suffers a casualty, Grantor shall promptly repair and restore the Property in order to comply with the Leases.

22. **Assignment of Rents and Leases-Grantor's Right to Collect.** Grantor hereby absolutely and irrevocably assigns to Beneficiary all Grantor's interest in the Rents and Leases. This assignment shall be subject to the terms and conditions of any separate assignment of leases and/or rents, whenever executed, in favor of Beneficiary and covering the Property. Unless otherwise provided in any separate assignment of leases and/or rents, and so long as Grantor is not in default under the Loan Documents, Grantor may collect the Rents as they become due. Grantor shall use the Rents to pay normal operating expenses for the Property and sums due and payments required under the Loan Documents. No Rents shall be collected more than one month in advance of the due date. Grantor warrants that it

has made no prior assignment of the Rents or Leases and will make no subsequent assignment without the prior written consent of Beneficiary. Grantor's right to collect the Rents shall not constitute Beneficiary's consent to the use of cash collateral in any bankruptcy proceeding.

23. Beneficiary's Right to Collect Rents. If Grantor is in default under the Loan Documents, without notice to Grantor, Beneficiary or its agents, or a court appointed receiver, may collect the Rents. In doing so, Beneficiary may (a) evict lessees for nonpayment of rent, (b) terminate in any lawful manner any tenancy or occupancy, (c) lease the Property in the name of the then owner on such terms as it may deem best and (d) institute proceedings against any lessee for past due rent. The Rents received shall be applied to payment of the costs and expenses of collecting the Rents, including a reasonable fee to Beneficiary, a receiver or an agent, operating expenses for the Property and any sums due or payments required under the Loan Documents, in such order as Beneficiary may determine. Any excess shall be paid to Grantor, however, Beneficiary may withhold from any excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Beneficiary's failure to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Beneficiary of its rights to collect the Rents. The collection of the Rents shall not cure or waive any default under the Loan Documents. Beneficiary or a receiver shall have no obligation to perform any of Grantor's obligations under the Leases. In exercising its rights under this section Beneficiary shall be liable only for the proper application of and accounting for the Rents collected by Beneficiary or its agents. Any Rents paid to Beneficiary or a receiver shall be credited against the amount due from the lessee under the Lease. In the event any lessee under the Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Grantor covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Beneficiary; any check in payment of damages for rejection or termination of any such Lease will be made payable both to the Grantor and Beneficiary; and Grantor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary, it will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to any portion of the indebtedness secured hereunder in such manner as Beneficiary may elect.

24. Additional Security Documents. Grantor shall within 15 days after request by Beneficiary execute and deliver any financing statement, renewal, affidavit, certificate, continuation statement, or other document Beneficiary may request in order to perfect, preserve, continue, extend, or maintain security interests or liens previously granted and the priority of the security interests or liens. Grantor shall pay all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing, and refiling of any such document.

25. Financing Statement. This Deed of Trust is given to secure an obligation incurred for the construction of an improvement on the Property, including the acquisition of the Property or to secure an obligation incurred to refinance an obligation incurred for the construction of an improvement on the Property, including the acquisition of the Property. This Deed of Trust shall also serve as a financing statement filed for record in the real estate records as a fixture filing pursuant to the Uniform Commercial Code.

26. Late Charge. In the event that any payment or portion thereof is not paid within fifteen (15) days commencing with the date it is due, Beneficiary may collect, and Grantor agrees to pay with such payment, a "late charge" of 4% of the monthly payment so overdue. If the payment is not made on or before the fifteenth day of the first month following the month in which it is due, an additional 4% will be charged. An additional 4% will be charged for each successive month the payment remains fifteen (15) days past due. This late payment charge shall apply individually to all payments past due and there will be no daily pro rata adjustment. All late charges shall accrue to the benefit of the Beneficiary. This paragraph shall not relieve the Grantor of the obligation to make payments on or before the date on which they are due nor do the terms of this paragraph in any way effect Beneficiary's remedies pursuant to the terms of the Note secured hereby or this Deed of Trust.

27. Default Remedies. Grantor's failure to comply with any term or condition of the Loan Documents, including payments due on the Note, shall constitute a default. In the event of a default Beneficiary may declare all amounts owed under the Loan Documents immediately due and payable without demand or notice and/or exercise its rights and remedies under the Loan Documents and applicable law including foreclosure of this Deed of Trust judicially or non-judicially by the Trustee pursuant to the power of sale. Beneficiary's exercise of any of its rights and remedies shall not constitute a waiver or cure of a default. Beneficiary's failure to enforce any default shall not constitute a waiver of the default or any subsequent default. In the event the Loan Documents are referred to an attorney for enforcement of Beneficiary's rights or remedies, whether or not suit is filed or any proceedings are commenced, Grantor shall pay all Beneficiary's costs and expenses including Trustee's and attorneys' fees (including attorneys' fees for any appeal, bankruptcy proceeding or any other proceeding), accountant's fees, appraisal and inspection fees and cost of a title report.

28. Cumulative Remedies. All Beneficiary's and Trustee's rights and remedies specified in the Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available in law or equity. In order to obtain performance of Grantor's obligations under the Loan Documents, without waiving its rights in the Collateral, Beneficiary may proceed against Grantor or may proceed against any other security or guaranty for the Note, in such order and manner as Beneficiary may elect. The commencement of proceedings to enforce a particular remedy shall not preclude the discontinuance of the proceedings and the commencement of proceedings to enforce a different remedy.

29. Sale of Property After Default. The Collateral may be sold separately or as a whole, at the option of Beneficiary. In the event of a Trustee's sale of all the Collateral, Beneficiary hereby assigns its security interest in the personal property Collateral to the Trustee. Beneficiary may also realize on the personal property Collateral in accordance with the remedies available under the Uniform Commercial Code or at law. In the event of a foreclosure sale, Grantor and the holders of any subordinate liens or security interests waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation.

30. Appointment of Receiver. In the event of a default, Beneficiary shall be entitled, without notice, without bond, and without regard to the adequacy of the Collateral, to the appointment of a receiver for the Collateral. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Beneficiary by the Loan Documents.

31. Foreclosure of Lessee's Rights - Subordination. Beneficiary shall have the right, at its option, to foreclose this Deed of Trust subject to the rights of any lessees of the Property. Beneficiary's failure to foreclose against any lessee shall not be asserted as a claim against Beneficiary or as a defense against any claim by Beneficiary in any action or proceeding. Beneficiary at any time may subordinate this Deed of Trust to any or all of the Leases except that Beneficiary shall retain its priority claim to any condemnation or insurance proceeds.

32. Reconveyance After Payment. Upon written request of Beneficiary stating that all obligations secured by this Deed of Trust have been paid, Trustee shall reconvey, without warranty, the Property then subject to the lien of this Deed of Trust. The recitals in any reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto". Grantor shall pay any Trustee's fees or recording fees.

33. Release of Parties or Collateral. Without affecting the obligations of any party due under the Loan Documents and without affecting the lien of this Deed of Trust and Beneficiary's security interest in the Collateral, Beneficiary and/or Trustee may, without notice (a) release all or any Grantor and/or any other party now or hereafter liable for any sums due under the Loan Documents (including guarantors), (b) release all or any part of the Collateral, (c) subordinate the lien of this Deed of Trust or Beneficiary's security interest in the Collateral, (d) take and/or release any other security or guarantees for sums due under the Loan Documents, (e) grant an extension of time or accelerate the time for performance of the obligations owed under the Loan Documents, including payment of the Note, (f) modify, waive, forbear, delay or fail to enforce any obligations owed under the Loan Documents, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Collateral, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Property, and (j) join in the grant of any easement on the Property. Any subordinate lienholder shall be subject to all such releases, extensions or modifications without notice to or consent from the subordinate lienholder. Grantor shall pay any Trustee's, attorneys', title insurance or recording fees in connection with release of Collateral, the making of a map or plat or the grant of an easement.

34. **Nonwaiver of Terms and Conditions.** Time is of the essence with respect to performance of the obligations due under the Loan Documents. Beneficiary's failure to require prompt enforcement of any required obligation shall not constitute a waiver of the obligation due or any subsequent required performance of the obligation. No term or condition of the Loan Documents may be waived, modified or amended except by a written agreement signed by Grantor and Beneficiary. Any waiver of any term or condition of the Loan Documents shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

35. **Waivers by Grantor.** Without affecting any of Grantor's obligations under the Loan Documents, Grantor waives the following:

- (a) Notice of a default by any Grantor or any other party liable for sums due under the Loan Documents.
- (b) Any right to require Beneficiary to proceed against any specific party liable for sums due under the Loan Documents or to proceed or exhaust any specific security for sums due under the Loan Documents.
- (c) Diligence, demand for performance, notice of nonperformance, presentment, protest and notice of dishonor and notice of new or additional indebtedness of any Grantor or any other party liable for sums due under the Loan Documents to Beneficiary.
- (d) Any defense arising out of Beneficiary entering into additional financing or other arrangements with any Grantor or any party liable for sums due under the Loan Documents not relating to the Property and any action taken by Beneficiary in connection with any such financing or other arrangements or any pending financing or other arrangements not related to the Property.
- (e) Any defense arising out of the absence, impairment, or loss of any or all rights of recourse, reimbursement, contribution or subrogation or any other rights or remedies of Beneficiary against any Grantor or any other party liable for sums due under the Loan Documents or any Collateral.
- (f) Any obligation of Beneficiary to see to the proper use and application of any proceeds advanced pursuant to the Loan Documents.

36. **Right of Subrogation.** Beneficiary is subrogated to the rights, whether legal or equitable, of all beneficiaries, mortgagees, lienholders and owners directly or indirectly paid off or satisfied in whole or in part by any proceeds advanced by Beneficiary under the Loan Documents, regardless of whether these parties assigned or released of record their rights or liens upon payment.

37. **Use of Property.** The Property is not used principally, or at all, for agricultural or farming purposes.

38. **Joint and Several Liability.** If there is more than one Grantor of this Deed of Trust, their obligations shall be joint and several.

39. **Statement of Amount Owed.** Grantor upon request by Beneficiary will furnish a written statement duly acknowledged of the amount due under the Loan Documents and whether any offsets or defenses exist against the amount due.

40. **Operating and Financial Statements.** Grantor shall deliver to Beneficiary within 90 days following the end of each fiscal year during the term of the loan, at Grantor's expense, Grantor's certified financial statements and certified operating statements in form satisfactory to the Beneficiary covering the Property, including tenant lists and current rent schedule. Beneficiary or its authorized representative shall have access to the books and records of the Grantor and obtain such statements at Grantor's expense if Grantor fails to provide them as herein set forth, or at any time at the Beneficiary's option if Grantor is in default. Beneficiary shall have the option, within 60 days following receipt of the financial and operating statements from Grantor, to order a confirmatory examination of Grantor's books and records pertaining to the Property. Said examination shall be at Beneficiary's expense unless Grantor's statements are found to contain significant discrepancies, in which case the confirmatory audit will be at Grantor's expense. In default thereof Beneficiary shall, in addition to all other remedies, have the option of maturing the indebtedness hereby secured.

41. **Maximum Interest Rate.** If any payment made or to be made under the Loan Documents shall constitute a violation of the applicable usury laws, then the payment made or to be made shall be reduced so that in no event shall any obligor pay or Beneficiary receive an amount in excess of the maximum amount permitted by the applicable usury laws.

42. **Evasion of Prepayment Penalty.** If Grantor is in default, any tender of payment sufficient to satisfy all sums due under the Loan Documents made at any time prior to foreclosure sale shall constitute an evasion of the prepayment terms of the Note, if any, and shall be deemed a voluntary prepayment. Any such payment, to the extent permitted by law, shall include the additional payment required under the prepayment privilege in the Note or if at that time there is no prepayment privilege, then such payment, to the extent permitted by law, will include an additional payment of 5% of the then principal balance.

43. **Payment of New Taxes.** If any federal, state or local law is passed subsequent to the date of this Deed of Trust which requires Beneficiary to pay any tax because of this Deed of Trust or the sums due under the Loan Documents, then Grantor shall pay to Beneficiary on demand any such taxes if it is lawful for Grantor to pay them. If it is not lawful for Grantor to pay such taxes, then at its option Beneficiary may declare a default under the Loan Documents.

44. **Repairs During Redemption.** In the event of a judicial foreclosure, the purchaser during any redemption period may make such repairs and alterations to the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring of the Property. Any sums so paid, together with interest from the date of the expenditure at the rate provided in the judgment, shall be added to the amount required to be paid for redemption of the Property.

45. **Insolvency Proceedings.** Grantor or any party liable on the Note (including guarantors) shall not make any assignment for the benefit of creditors and shall not permit the institution of any proceedings under any federal or state statutes pertaining to bankruptcy, insolvency, arrangement, dissolution, liquidation or receivership, whether or not an order for relief is entered.

46. **Substitution of Trustee.** Beneficiary may at any time discharge the Trustee and appoint a successor Trustee who shall have all of the powers of the original Trustee.

47. If a Grantor executes this Deed of Trust but not the Note it secures, such Grantor shall be deemed a "Subordinating Grantor".

Each Subordinating Grantor hereby (i) waives presentment, demand, protest and notice of acceptance, demand, protest and nonpayment; (ii) waives any and all lack of diligence or delays in collection or enforcement, the right to plead laches and any and all statutes of limitations as a defense to any demand, or any other indulgence or forbearance whatsoever with respect to any and all obligations secured by this Deed of Trust; (iii) waives notice of acceptance hereof by Beneficiary or Trustee under this Deed of Trust; (iv) waives notice of any and all advances made under the Note secured by this Deed of Trust; (v) agrees that other security for the obligations secured by this Deed of Trust may be released or subordinated by Beneficiary including without limitation all or any part of the Property, without affecting the right of Beneficiary hereunder, and hereby waives notice thereof; and (vi) in any action or proceeding to recover any sum secured by this Deed of Trust, waives any defense or right that resort must first be had to other security or to any other person.

48. **Maturity Date.** Final payment of principal and interest hereunder, if not sooner paid, shall be due and payable on NOVEMBER 4, 2019, which shall be the date of maturity of this Deed of Trust.

customarily or last communicated with Grantor.

cessors and assigns. The terms Grantor, Trustee and Beneficiary include their successors and assigns.

Construction loan agreement which shall prevail over this deed of trust, the terms and conditions of this deed of trust shall pertain.

or condition.

clude corporations, partnerships and limited partnerships.

used to construe this Deed of Trust.

allowable by law, the law of the State of Washington shall apply to the transaction or which

WITNESS the hand(s) and seal(s) of the Grantor(s) on the day and year first above written.

DE JAYE BARBER

KATHERINE J. BARBER

DATE DESCRIPTION

00 51 114 2309-180 1L 1400

...AND THE PART THEREOF. IT SHALL NOT BE SEVERED NOR

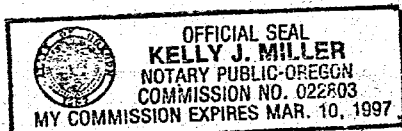
STATE OF OREGON
COUNTY OF DESCHUTES

35555

On this 3rd day of November, A.D., 19 94, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn personally appeared DeWayne Barber and Katherine J. Barber

to me personally known (or proven on the basis of satisfactory evidence) to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged to me that t he y signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



Kelly J. Miller
Notary Public in and for the State of
Oregon
residing at Deschutes County
my commission expires 03/10/97

STATE OF
COUNTY OF

On this _____ day of _____, A.D., 19____, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn personally appeared _____

to me personally known (or proven on the basis of satisfactory evidence) to be the _____ President and _____ Secretary, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath each stated that he was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of _____
residing at _____
my commission expires _____

REQUEST FOR FULL RECONVEYANCE

To be used only when all obligations have been paid under the Note
and this Deed of Trust.

TO: TRUSTEE.

The undersigned is the legal owner and holder of the Note and all other indebtedness secured by the within Deed of Trust. Said Note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said Note above mentioned and all other evidence of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

Dated _____, 19____

Mail reconveyance to _____

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 18th day
of Nov. A.D., 19 94 at 3:01 o'clock P M., and duly recorded in Vol. M94
of Mortgages on Page 35549

FEE \$40.00

Evelyn Biehn
By [Signature] County Clerk

PRINT IN
PERMANENT
BLACK INK

ATC#0642227

165463

I.D. TAG NO.

339-94

Local File Number

OREGON DEPARTMENT OF HUMAN RESOURCES
HEALTH DIVISION
CENTER FOR HEALTH STATISTICS
CERTIFICATE OF DEATH

136-

State File Number

DECEDENT

1

2

3

4

5

6

PARENTS

DISPOSITION

7

8

9

REGISTRAR

10

11

CERTIFIER

12

13

14

CONDITIONS
IF ANY
WHICH GAVE
RISE TO
IMMEDIATE
CAUSE
STANDING THE
UNDERLYING
CAUSE LAST

15

16

17

CAUSE OF
DEATH

1. DECEDENT'S NAME First: Redmond Middle: James Last: MOORE		2. SEX Male	3. DATE OF DEATH (Month, Day, Year) May 26, 1994
4. SOCIAL SECURITY NUMBER 090-01-0456	5a. AGE-Last Birthday (Years) 80	5b. Under 1 Year Days	5c. Under 1 Day Hours
6. BIRTHPLACE (City and State or Foreign Country) Canada		7. DATE OF BIRTH (Month, Day, Year) May 19, 1914	
8. WAS DECEDENT EVER IN U.S. ARMED FORCES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
9a. PLACE OF DEATH (Check only one) <input type="checkbox"/> Hospital <input type="checkbox"/> Impatient <input type="checkbox"/> ERO/Outpatient <input type="checkbox"/> DCA <input type="checkbox"/> Other <input checked="" type="checkbox"/> Nursing Home <input type="checkbox"/> Decedent's Home <input type="checkbox"/> Other (Specify)			
10. FACILITY NAME (If not institution, give street and number) 1610 Leonard Road Apt. B		11. COUNTY OF DEATH Josephine	
12. DECEASED'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.) Sheet Metal Worker		13. KIND OF BUSINESS/INDUSTRY Aircraft	
14. RESIDENCE - STATE Oregon		15. CITY, TOWN OR LOCATION Grants Pass	
16. INSIDE CITY LIMITS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		17. ZIP CODE 97527	
18. WAS DECEDENT OF HISPANIC ORIGIN? (Specify No or Yes. If yes, specify Cuban, Mexican, Puerto Rican, etc.) <input checked="" type="checkbox"/> No		19. RACE American Indian, Black, White, etc. (Specify) White	
20. FATHER - NAME first middle last James D. Moore		21. MOTHER - NAME first middle maiden Gertrude Bathurst	
22. METHOD OF DISPOSITION <input type="checkbox"/> Mausoleum <input checked="" type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Donation <input type="checkbox"/> Other (Specify) Hull & Hull Crematory		23. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place) Grants Pass, OR	
24. SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH Kendra G. Johnson		25. LICENSE NUMBER (OF Licensee) 53-0331	
26. DATE FILED (Month, Day, Year) May 31, 1994		27. NAME, ADDRESS AND ZIP OF FACILITY Hull & Hull Funeral Directors 612 NW "A" St., Grants Pass, OR 97526	
28. DID HOSPITAL/REPRESENTATIVE MAKE REQUEST FOR ANATOMICAL GIFT CONSENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A		29. REGISTRAR'S SIGNATURE Laveria J. Young	
30. TO BE COMPLETED BY CERTIFYING PHYSICIAN 27. TIME OF DEATH 5:55 p. 28. WAS MEDICAL EXAMINER NOTIFIED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 29. To the best of my knowledge, death occurred at the time, date, place and due to the cause(s) and manner stated. (Signature) James Lee Calvert		31. TO BE COMPLETED ONLY BY MEDICAL EXAMINER 31a. TIME OF DEATH 31b. DATE PRONOUNCED DEAD (Month, Day, Year, Hour) 32. On the basis of examination and/or investigation, in my opinion death occurred at the time, date, place and due to the cause(s) and manner stated. (Signature) 33. DATE SIGNED (Month, Day, Year) 34. NAME, TITLE, ADDRESS AND ZIP OF CERTIFIER-MEDICAL EXAMINER (Type or Print) James Lee Calvert, MD 181 NW Burnell Grants Pass, OR 97526 35. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)	
36. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c). Do not enter mode of dying, e.g. Cardiac or Respiratory Arrest.) PART I (a) CARDIOVASCULAR, congestive and atherosclerotic DUE TO, OR AS A CONSEQUENCE OF: (b) DUE TO, OR AS A CONSEQUENCE OF: (c) DUE TO, OR AS A CONSEQUENCE OF: PART II OTHER SIGNIFICANT CONDITIONS: Nursing dependent intake of pills 37. Did tobacco use contribute to the death? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Probably <input type="checkbox"/> Unknown 38. ALTOGETHER <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 39. If YES, were foreign substances or other causes of death? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A			
40. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Undetermined <input type="checkbox"/> Suicide <input type="checkbox"/> Legal Intervention <input type="checkbox"/> Homicide 41a. DATE OF INJURY (Month, Day, Year) 41b. TIME OF INJURY 41c. INJURY AT WORK? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 41d. PLACE OF INJURY - At home, farm, street, factory, office, building etc. (Specify) 41e. LOCATION (Street and Number or Rural Route Number, City or Town, State)			

ORIGINAL-VITAL STATISTICS COPY

45-2 Rev 11-82

THIS IS A TRUE AND EXACT REPRODUCTION OF THE DOCUMENT OFFICIALLY REGISTERED AT THE OFFICE OF THE JOSEPHINE COUNTY REGISTRAR.

DATE ISSUED

MAY 31 1994

LAVERIA J. YOUNG
COUNTY REGISTRAR
JOSEPHINE COUNTY OREGON

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 18th day of Nov. A.D. 19 94 at 3:02 o'clock P M., and duly recorded in Vol. M94 of Deeds on Page 35556

FEE \$10.00

Evelyn Biehn

By

Lynette County Clerk