

NC

25859

TRUST DEED

Vol. m96 Page 30815

THIS TRUST DEED, made this 15th day of September, 1996, between
D & S Properties Partnership

_____, as Grantor,
Aspen Title and Escrow, as Trustee, and
Ronald J. Sumner, as Beneficiary,

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in
Klamath County, Oregon, described as:

SEE ATTACHED EXHIBIT A

Subject to property taxes due and owing for 1993-94, 1994-95 and 1995-96

known as the Hot Springs Manor, 1949 Main Street, Klamath Falls, Oregon

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of Three hundred twenty-five thousand and no/100 (\$325,000.00)

_____, 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 September 15, 2021, ~~19XXXX~~

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 either agree to, attempt to, or actually sell, convey, or assign all (or any part) of the property or all (or any part) of grantor's interest in it 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. The execution 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:

1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of the property.
2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.
3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the beneficiary.
4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the property against loss or damage by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than \$ full insurable value 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 payments, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.
6. To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.
7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee; and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.

It is mutually agreed that:

8. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking.

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 696.505 to 696.585.

*WARNING: 12 USC 1701-3 regulates and may prohibit exercise of this option.

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

TRUST DEED

Gerrit A. DeGroot
 Ben DeGroot
 Arie C. DeGroot
 303 Pine Street
 Klamath Falls, OR 97601
 Ronald J. Sumner
 4635 Darwin Place
 Klamath Falls, OR 97603

Beneficiary

After Recording Return to (Name, Address, Zip):

Aspen Title and Escrow
 P. O. Box 1238
 Klamath Falls, OR 97601

SPACE RESERVED
 FOR
 RECORDER'S USE

STATE OF OREGON,

County of _____ } ss.

I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book/reel/volume No. _____ on page _____ or as fee/title/instrument/microfilm/reception No. _____, Record of _____ of said County.

Witness my hand and seal of County affixed.

NAME TITLE
 By _____ Deputy

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which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon beneficiary's request.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may (a) consent to the making of any map or plat of the property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.

10. Upon any default by grantor hereunder, beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as beneficiary may determine.

11. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the beneficiary may declare all sums secured hereby immediately due and payable. In such an event the beneficiary may elect to proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the event the beneficiary elects to foreclose by advertisement and sale, the beneficiary or the trustee shall execute and cause to be recorded a written notice of default and election to sell the property to satisfy the obligation secured hereby whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with trustee's and attorney's fees not exceeding the amounts provided by law.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The trustee may sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the grantor or to any successor in interest entitled to such surplus.

16. Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

17. Trustee accepts this trust when this deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

The grantor covenants and agrees to and with the beneficiary and the beneficiary's successor in interest that the grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto.

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) for the purchase of real property, or (b) for the payment of the indebtedness secured hereby.

(b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a beneficiary herein.

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

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

D & S Properties Partnership

By: [Signature]

Gerrit A. DeGroot

By: [Signature]

Ben DeGroot

By: [Signature]

Arie C. DeGroot

ss.

STATE OF OREGON, County of _____

This instrument was acknowledged before me on September 19, 1996

by Gerrit A. DeGroot, Ben DeGroot and Arie C. DeGroot

This instrument was acknowledged before me on _____, 19____

by _____

as _____

of _____



OFFICIAL SEAL
DOLORES DOWN
NOTARY PUBLIC - OREGON
COMMISSION NO. 034836
EXPIRATION DATE MAY 22, 1998

[Signature]

My commission expires 5-23-98

REQUEST FOR FULL RECONVEYANCE (To be used only when obligations have been paid.)

TO: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed the estate now held by you under the same. Mail reconveyance and documents to _____

DATED: _____, 19____

Do not lose or destroy this Trust Deed OR THE NOTE which it secures. Both must be delivered to the trustee for cancellation before reconveyance will be made.

APPROVED

Beneficiary

EXHIBIT "A" LEGAL DESCRIPTION

A parcel of land situated in the S 1/2 of the SE 1/4 of the SW 1/4 of Section 28, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

PARCEL 1:

Beginning at a point which is South 89 degrees 18' East a distance of 1141.5 feet along the Northerly line of Main Street from the Southeasterly corner of Block 57, Second Hot Springs Addition to the City of Klamath Falls, Oregon; thence North 0 degrees 42' East a distance of 174 feet, more or less, to a point which is 20 feet distant Southwesterly at right angles from the Southwesterly line of the U. S. Reclamation Service Main Canal right of way; thence in a Northwesterly direction and parallel with the Southwesterly line of said canal right of way and 20 feet distant at right angles therefrom a distance of 83 feet, more or less, to a point; thence South 0 degrees 42' West a distance of 191.25 feet, more or less, to a point on the Northerly line of Main Street; thence South 89 degrees 18' East a distance of 79.3 feet to the point of beginning, lying and being in the unplatted portion of Williams Addition to the City of Klamath Falls, Oregon. LESS that portion deeded to A. A. Soule and Eva Soule by Klamath County, as recorded in Volume 173, page 459, more particularly described as follows:

Beginning at a point which is South 89 degrees 18' East a distance of 1067.2 feet along the Northerly line of Main Street from the Southeasterly corner of Block 57, Second Hot Springs Addition to the City of Klamath Falls, Oregon; thence North 0 degrees 42' East a distance of 185.75 feet, more or less, to a point which is 20 feet distant Southwesterly at right angles from the Southwesterly line of the U. S. Reclamation Service Main Canal right of way; thence in a Northwesterly direction and parallel with the Southwesterly line of said Canal right of way and 20 feet distant at right angles therefrom a distance of 5.18 feet to the Northeast corner of that piece of land deeded to Eva Soule by Herbert Lang and Jennie Lang, as recorded in Volume 105, page 47; thence South 0 degrees 42' West a distance of 187.15 feet, more or less, to a point on the Northerly line of Main Street; thence South 89 degrees 18' East along the Northerly line of Main Street a distance of 5.0 feet to the point of beginning, lying and being in the unplatted portion of Williams Addition to the City of Klamath Falls, Oregon, and in the S 1/2 SE 1/4 SW 1/4, Section 28, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

ALSO INCLUDING THE FOLLOWING:

Beginning at a point which is South 89 degrees 18' East a distance of 1141.5 feet along the Northerly line of Main Street from the Southeasterly corner of Block 57, Second Hot Springs Addition to the City of Klamath Falls, Oregon; thence North 0 degrees 42' East a distance of 129.45 feet to the true point of beginning; thence South 89 degrees 18' East a distance of 99.06 feet, more or less, to a point which is 20 feet distant Southwesterly at right angles from the Southwesterly line of the U.S. Reclamation Service Main Canal right of way; thence in a Northwesterly direction and parallel with the Southwesterly line of said canal right of way and 20 feet distant at right angles therefrom along the arc of 224.62 feet radius curve to the left, whose long chord bears North 65 degrees 49' West a distance of 68.8 feet; thence continuing 20 feet distant at right angles from said canal right of way North 74 degrees 36' West a distance of 37.3 feet to the Northeast corner of that piece of land deeded to Emma Lightfoot by L.L. Low, as recorded in Volume 107, page 618; thence South 0 degrees 42' West a distance of 36.8 feet to the point of beginning, lying and being in the unplatted portion of Williams Addition to the City of Klamath Falls, Oregon and in the S 1/2 SE 1/4 SW 1/4, Section 28, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, TOGETHER WITH vacated alley way adjacent to said property on the North, said alley way lying between North line of above premises and the Southerly boundary of United States Bureau of Reclamation "A" Canal.

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 2:

Beginning at a point which is South 89 degrees 18' East a distance of 1248 feet Easterly along the Northerly line of Main Street from the Southeast corner of Block 57, Second Hot Springs Addition to Klamath Falls, Oregon; thence in a Northerly direction and at right angles to Main Street parallel to Mortimer Avenue a distance of 118.3 feet to a point which is 20 feet distant Southwesterly at right angles from the Southwesterly line of the U.S.R.S. Canal right of way; thence Southeasterly and 20 feet from the U.S.R.S. Canal right of way to a point on the Northerly line of Main Street 105.2 feet Easterly from the point of beginning; thence Westerly along the Northerly line of Main Street 105.2 feet to the place of beginning, lying and being in the unplatted portion of Williams Addition to the City of Klamath Falls, Oregon, and in the S 1/2 SE 1/4 SW 1/4, Section 28, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon (and described in that certain deed by The Klamath Development Co. to T. D. Jordan recorded in the office of the Clerk of Klamath County on February 26, 1923, in Volume 59, page 574). TOGETHER WITH the vacated alley lying Northerly and Easterly of and adjoining the herein described property, as disclosed by Vacation Ordinance No. 5526, recorded April 25, 1966, in Book M-66, page 3643, Microfilm Records of Klamath County, Oregon.

ALSO that portion of a vacated alley, as disclosed by Vacation Ordinance #5526, recorded April 25, 1966, in Book M-66, page 3643, Microfilm Records of Klamath County, Oregon, lying Northerly of the following described property:

Beginning at a point South 89 degrees 18' East a distance of 1205.4 feet from the Southeast corner of Block 57, Second Hot Springs Addition to the City of Klamath Falls, Oregon; thence North 0 degrees 42' East a distance of 129.45 feet; thence South 89 degrees 18' East a distance of 21.5 feet; thence in a Southerly direction 23.2 feet, more or less, parallel with the Southerly line of the U.S. Canal right of way to a line parallel with West line of property; thence South 0 degrees 42' West a distance of 118.3 feet; thence North 89 degrees 18' West a distance of 42.6 feet to the point of beginning, all lying in the S 1/2 SE 1/4 SW 1/4, Section 28, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

PROMISSORY NOTE

\$325,000.00

County of Klamath, State of Oregon

For value received, Gerrit A. DeGroot, Ben DeGroot and Arie C. DeGroot, jointly and severally, promise to pay Ronald J. Sumner, the principal sum of Three Hundred Twenty-Five Thousand Dollars (\$325,000.00), with interest at the rate of 8 and 1/2 percent (8.5%) per annum simple interest. Interest shall commence accruing on September 15, 1996, and continue thereafter until the note has been fully paid. The first payment of Two Thousand Six Hundred Sixteen and 98/100 Dollars (\$2,616.98) shall be due on October 15, 1996, with subsequent payments due on the 15th of every consecutive month thereafter until the note has been fully paid. Prepayment may be made at any time without penalty.

Demand, presentment, protest, notice of protest and notice of dishonor are hereby waived.

In the event of nonpayment when due under this note, and if such default continues for a period of ten (10) days, then, at the option of the holder of this note, all of the amounts then owing under this note shall immediately become due and payable. The failure to assert this right shall not be deemed a waiver.

In the event any suit is commenced to enforce payment of this note, the prevailing party shall recover from the other party, such sums as the trial court may adjudge reasonable as attorney's fees to be allowed in such suit or action, and in the event any appeal is taken from judgment or decree in such suit or action, such further sums as the Appellate Court shall judge reasonable as attorneys fees on such appeal, in addition to costs and disbursements allowed by law.

If the indebtedness evidenced by this Promissory Note is collected by or through an attorney, the holder of the note shall be entitled to recover reasonable attorney's fees to the extent permitted by law.

This note shall be governed by and construed in accordance with the laws of the State of Oregon.

Dated this 15th day of September, 1996.

Gerrit A. DeGroot
Gerrit A. DeGroot

Ben DeGroot
Ben DeGroot

Arie C. DeGroot
Arie C. DeGroot

PROMISSORY NOTE - 1

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 27th day of September A.D., 19 96 at 3:43 o'clock P M., and duly recorded in Vol. M96 of Mortgages on Page 30815.

FEE \$30.00

Bernetha G. Lettich County Clerk
By [Signature]