

36925

Vol. 1797 Page 13229

"SECOND TRUST DEED"

J. Gardner & J. Gardner Corp.

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/real/volume No. _____ on page _____ and/or as fee/file/instrument/microfilm/reception No. _____, Record of _____ of said County. Witness my hand and seal of County affixed.

SPACE RESERVED FOR RECORDS USE

Grantor's Name and Address
Theodore A. DeVries, Trustee et al

Beneficiary's Name and Address
Theodore A. DeVries
4575 N.E. 81st
Portland, Oregon 97218

By _____, NAME _____, TITLE _____, Deputy.

MTC 40881-KR

THIS TRUST DEED, made this 28th day of April, 1997, between J. Gardner & J. Gardner Corporation, an Oregon Corporation

AmeriTitle Insurance Company, as Grantor, THEODORE A. DeVRIES, Trustee or Successor Trustees of Pacific Cove Trust, as Trustee, and _____, 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:

LEGAL DESCRIPTION AS PER EXHIBIT "A" ATTACHED HERETO

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

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of TWO HUNDRED TEN THOUSAND AND NO/100 (\$210,000.00)

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 July 30, 1997.

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:

- 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, 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.
- 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.
- To keep the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinafter described, as well as the grantor, shall be bound in 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.
- 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 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 but not limited to its validity and/or enforceability, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney fees; the amount of attorney 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 fees on such appeal. It is mutually agreed that:
- 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 in this state, its subsidiaries, affiliates, agents or brokers, the United States or any agency thereof, or an escrow agent licensed under ORS 626.205 to 626.255.

WARNING: 12 USC 1701-5 regulates and may prohibit exercise of this option.

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

which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees reasonably 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 action and execute such instruments as shall be necessary in obtaining such compensation, previously upon beneficiary's request.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyance, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may (a) consent to 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 and 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, except as may be set forth in an addendum or exhibit attached hereto, and that the grantor will warrant and forever defend the same against all persons whomsoever.

WARNING: Unless grantor provides beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, beneficiary may purchase insurance at grantor's expense to protect beneficiary's interest. This insurance may, but need not, also protect grantor's interest. If the collateral becomes damaged, the coverage purchased by beneficiary may not pay any claim made by or against grantor. Grantor may later cancel the coverage by providing evidence that grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by beneficiary, which cost may be added to grantor's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date grantor's prior coverage lapsed or the date grantor failed to provide proof of coverage. The coverage beneficiary purchases may be considerably more expensive than insurance grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are:

(a) primarily for grantor's personal, family or household purposes (see Important Notice below),

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

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

In construing this 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 applied 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; (c) is applicable and the beneficiary is a creditor as such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures; for this purpose use Stevens-Naza Form No. 1919, or equivalent. If compliance with the Act is not required, disregard this notice.

J. GARDNER & J. GARDNER COMPANY
CAROL E. GARDNER, VICE-PRESIDENT

ATTEST IN FACT FOR JAMES L. GARDNER, SEC.

by attorney in fact

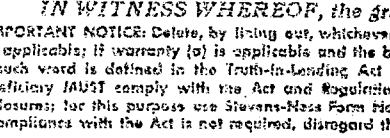
STATE OF OREGON, County of Multnomah

This instrument was acknowledged before me on April 28, 1997,

by Carol E. Gardner

This instrument was acknowledged before me on April 29, 1997,

by James L. Gardner



James L. Gardner, Sec.

James L. Gardner Company

Notary Public for Oregon My commission expires Jan. 11, 2001

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. Full 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.

Beneficiary

EXHIBIT "A" **LEGAL DESCRIPTION**

The following described real property situate in Klamath County, Oregon:

A tract of land situated in the NW1/4 SW1/4 of Section 7, Township 38 South, Range 9 East, Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the West 1/4 corner of said Section 7; thence South 89 degrees 49' East 799.00 feet to the Westerly right of way line of Highway 97 (Dallies-California Highway); thence South 11 degrees 36' East along said right of way line 506.29 feet; thence South 78 degrees 24' West 99.36 feet to the True Point of Beginning of this description; thence continuing South 78 degrees 24' West 286.05 feet; thence South 07 degrees 55' 20" East 272.69 feet; thence South 85 degrees 03' 50" West 92.90 feet; thence South 00 degrees 06' 00" East 37.00 feet; thence South 69 degrees 30' 10" East 475.00 feet (South 69 degrees 29' East 474.8 feet by recorded Survey No. 2148, as recorded in the office of the Klamath County surveyor); thence North 11 degrees 36' West 37.00 feet; thence North 78 degrees 24' East 73.15 feet; thence North 11 degrees 36' West 13.00 feet; thence North 78 degrees 24' East 27.00 feet to the Westerly right of way line of said Highway; thence North 11 degrees 36' West along said right of way line, 132.35 feet; thence South 85 degrees 27' 15" West 92.51 feet; thence North 11 degrees 54' 47" West 74.84 feet; thence North 74 degrees 21' 03" East 45.98 feet; thence North 11 degrees 30' 13" West 57.41 feet to the Southerly edge of a concrete sidewalk; thence along the Southerly and Westerly edge of said sidewalk, South 78 degrees 16' 22" West 43.47 feet and North 16 degrees 40' 10" West 125.02 feet; thence North 73 degrees 19' 50" East 5.50 feet; thence North 16 degrees 40' 10" West 46.06 feet to the True Point of Beginning; with bearings based on said recorded Survey No. 2148.

Subject to the following:

1. Contract of Sale, including the terms and provisions thereof, as disclosed by Memorandum of Contract of Sale, between Mehmet Ahmet and Donna Ahmet, as sellers, and Harry L. Bonome and Dolores M. Bonome, as buyers, dated May 15, 1978 and recorded May 16, 1978, in Volume M-78 on page 10145, Deed Records of Klamath County, Oregon.

By Assignment for Security Purposes, recorded April 4, 1980, in Volume M-80 on page 6284, Deed Records of Klamath County, Oregon.

Mehmet Ahmet and Donna Ahmet assigned their interest in above mentioned Contract to Enver Bozgor, Conservator of the Estate of Shirlene Ann Norwest.

2. Contract of Sale, including the terms and provisions thereof, as disclosed by Memorandum of Contract of Sale, between Harry L. Bonome and Dolores M. Bonome, as sellers, to J. Gardner Co., dated January 1, 1990, in Volume M-90 on page 3055, Deed Records of Klamath County, Oregon.

TRUST DEED NOTE

\$210,000.00

Portland, Oregon April 30, 1997

WE, jointly and severally, promise to pay to the order of, THEODORE A. DEVRIES, Trustee or Successor Trustee of the Pacific Cove Trust at 4575 N. E. 81st, Portland, Oregon 97218 the sum of TWO HUNDRED TEN THOUSAND AND NO/100----- on or before July 30, 1997. Not payable in monthly payments. Interest is payable at maturity and is included in the above amount, if not is not paid on maturity of July 30, 1997 there will be an additional 2% interest accruing monthly from July 31, 1997 on \$210,000.00. If this note is placed in the hands of an attorney for collection, We will promise and agree to pay the reasonable attorney's fee and collection costs of the holder hereof and if suit or action is filed hereon, also promise to pay holder's reasonable attorney's fees to be fixed by the trial court and if any appeal is taken from any decision of the trial court, such further sum may be fixed by the appellate court, as the holder's reasonable attorney's fees in the appellate court.

J. GARDNER & J. GARDNER ~~CONSORTIUM~~*Carol E. Gardner*

CAROL E. GARDNER, VICE PRESIDENT

ATTORNEY IN FACT FOR JAMES L. GARDNER, SEC.

Alice M. Randall by Power of Attorney

ALICE M. RANDALL, BY POWER OF ATTORNEY

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle the 30th day
of April A.D. 19 97 at 3:49 o'clock P.M. and duly recorded in Vol. 897
of Mortgages on Page 13229

FEE \$25.00

Bernetha G. Lersch, County Clerk

by *Kathleen Kean*