

97 OCT 23 AIO:40

After recording, return to:
Ms. Karen Smith
Resort Resources, Inc.
P. O. Box 1466
Bend, OR 97709

m9c 1396-8641
TRUST DEED AND FIXTURE FILING

THIS TRUST DEED AND FIXTURE FILING is dated this 16th day of October, 1997, between **THE PENNBROOK COMPANY**, an Oregon corporation, whose address is 869 N.W. Wall Street, Suite 204, Bend, Oregon 97701 ("**Grantor**") and **RUNNING Y RESORT, INC.**, an Oregon corporation, whose address is 5119 Running Y Road, Klamath Falls, OR 97601 ("**Beneficiary**"), and **AMERITITLE**, 222 S. 6th Street, Klamath Falls, OR 97601 ("**Trustee**").

Under an Option Agreement dated June 10, 1997 between Grantor and Beneficiary (the "**Agreement**"), Beneficiary is selling the real property in Klamath County, Oregon described on attached Exhibit A to Grantor on credit. Payment for such real property shall be payable according to the terms of a Payment Agreement given to evidence such indebtedness, dated the same as this trust deed, under which the final payment will be due no later than the fifth anniversary of this trust deed. The Payment Agreement, and any agreement given in renewal, modification, substitution or addition to the Payment Agreement, is referred to as the "**Payment Agreement**."

The term "**Indebtedness**" as used in this trust deed shall mean (a) the amount payable under the Payment Agreement, (b) any future amounts that Beneficiary may in its discretion loan to Grantor and by the terms of which are to be secured by this trust deed, and (c) any amounts expended or advanced by Beneficiary to discharge obligations of Grantor or expenses incurred by Beneficiary or Trustee to enforce obligations of Grantor, as permitted under this trust deed, with interest thereon as provided below to the extent Beneficiary specifically elects by written notice to Grantor to include such amounts in the Indebtedness.

FOR VALUE RECEIVED, Grantor conveys to Trustee in trust with power of sale the real property in Klamath County, Oregon described on the attached **Exhibit A**, together with all existing and subsequently erected or affixed improvements and fixtures (the "**Property**").

This trust deed is given to secure payment of the Indebtedness and performance of all obligations of Grantor under this trust deed and are given and accepted on the following terms and conditions which Grantor will promptly and faithfully observe and perform:

AMERITITLE, has recorded this instrument by request as an accommodation only, and has not examined it for regularity and sufficiency or as to its effect upon the title to any real property that may be described therein.

Running Y Ranch Resort / Pennbrook Trust Deed

1. PAYMENT AND PERFORMANCE

Grantor shall pay to Beneficiary promptly when due all amounts payment of which is secured by this trust deed and shall strictly perform all obligations imposed upon Grantor by this trust deed.

2. POSSESSION AND MAINTENANCE OF THE PROPERTY

2.1 Possession. Until in default, Grantor may remain in possession and control of and operate and manage the Property.

2.2 Duty to Maintain. Grantor shall maintain the Property in first class condition and promptly perform all repairs and maintenance necessary to preserve its value.

2.3 Nuisance, Waste. Grantor shall not conduct or permit any nuisance and shall not commit or suffer any strip or waste on the Property.

2.4 Alteration or Removal of Improvements. Grantor shall not construct, alter, demolish or remove any Improvements from the Property without the prior written approval of Beneficiary. "Improvements" shall include all existing and future buildings, structures and parking facilities.

2.5 Beneficiary's Right to Enter. Beneficiary and its agents and representatives may enter upon the Property at all reasonable times to attend to Beneficiary's interest and to inspect the Property.

2.6 Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Beneficiary's interest in the Property is not jeopardized.

2.7 Duty to Protect. Grantor shall do all other acts, in addition to those set forth in this trust deed, that from the character and use of the Property are reasonably necessary to protect and preserve the security.

2.8 Construction Costs. Grantor shall pay in full all costs and expenses in connection with all construction on the Property.

3. TAXES AND LIENS

3.1 Payment. Grantor shall pay when due all taxes and assessments levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Beneficiary under this trust deed, except as otherwise provided in Section 3.2.

3.2 **Right to Contest.** Grantor may withhold payment of any tax, assessment or claim in connection with a good faith dispute over the obligation to pay, so long as Beneficiary's interest in the Property is not jeopardized. If the Property is subjected to a lien which is not discharged within 15 days, Grantor shall deposit with Beneficiary cash, a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest proceedings, Grantor will defend itself and Beneficiary and will name Beneficiary as an additional obligee under any surety bond, and Grantor shall satisfy any final adverse judgment before enforcement against the Property.

3.3 **Evidence of Payment.** Grantor shall promptly furnish evidence of payment of taxes and assessments to Beneficiary on its demand and shall authorize the appropriate county official to deliver to Beneficiary at any time a written statement of the taxes and assessments against the Property.

4. **PROPERTY DAMAGE INSURANCE**

4.1 **Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement cost basis covering all improvements on the Property, in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Beneficiary. Policies shall be written in amounts, in form, on terms and with companies reasonably acceptable to Beneficiary. Grantor shall deliver to Beneficiary certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days' written notice to Beneficiary.

4.2 **Application of Proceeds.** Grantor shall promptly notify Beneficiary of any loss or damage of the Property. Beneficiary may make proof of loss if Grantor fails to do so within 15 days of the casualty. Beneficiary may, at its election, apply the proceeds to the reduction of the Indebtedness or the restoration and repair of the Property. If Beneficiary elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Beneficiary. Upon satisfactory proof of such expenditure, Beneficiary shall pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. Any proceeds which have not been paid out within 180 days after their receipt and which Beneficiary has not committed to the repair or restoration of the Property shall be used to prepay first accrued interest and then principal of Grantor's Indebtedness. If Beneficiary holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor.

4.3 **Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this trust deed at any trustee's sale or any foreclosure sale of the Property.

5. **WARRANTIES OF GRANTOR**

5.1 **Title.** Grantor warrants that it holds title to the Property in fee simple free of all encumbrances created or suffered by Grantor.

5.2 **Defense of Title.** Subject to the exceptions in the paragraph above, Grantor warrants and will forever defend the title against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Beneficiary or Trustee under this trust deed, Grantor shall defend the action at its expense.

5.3 **Not Residential Trust Deed.** Grantor warrants that this trust deed is not and will not at any time constitute a "residential trust deed" (as that term is defined in ORS 86.705(3) or its successor statutes). Grantor warrants that Grantor is engaging in this transaction exclusively for business, commercial, or investment purposes.

6. CONDEMNATION

6.1 **Application of Net Proceeds.** If all or any part of the Property is condemned, Beneficiary may elect to require that all or any portion of the net proceeds of the condemnation be applied on the Indebtedness. The "net proceeds" shall mean the total amount available after payment of all reasonable costs, expenses, and attorneys' fees necessarily paid or incurred by Grantor, Beneficiary, and Trustee in connection with the taking by condemnation. Sale of all or any part of the Property to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power shall be treated as a taking by condemnation to which this Section shall apply.

6.2 **Proceedings.** If any proceedings in condemnation are filed, Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award.

7. IMPOSITION OF TAX BY STATE

7.1 **State Taxes Covered.** The following shall constitute state taxes to which this Section applies:

(a) A specific tax upon trust deeds or upon all or any part of the indebtedness secured by a trust deed.

(b) A specific tax on a grantor which the taxpayer is authorized or required to deduct from payments on the indebtedness secured by a trust deed.

(c) A tax on a trust deed chargeable against the beneficiary or the holder of the note secured.

(d) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by a grantor.

7.2 **Remedies.** If any state tax to which this Section applies is enacted subsequent to the date of this trust deed, this shall have the same effect as a default, and Beneficiary may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met:

- (a) Grantor may lawfully pay the tax or charge imposed by the state tax, and
- (b) Grantor pays or offers to pay the tax or charge within 30 days after notice from Beneficiary that the tax law has been enacted.

8. **POWERS AND OBLIGATIONS OF TRUSTEE**

8.1 **Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the request of Beneficiary and Grantor:

- (a) Join in preparing and filing a map or plat of the Property, including the dedication of streets or other rights in the public.
- (b) Join in granting any easement or creating any restriction on the Property.
- (c) Join in any subordination or other agreement affecting this trust deed or the interest of Beneficiary under this trust deed.
- (d) Reconvey, without warranty, all or any part of the Property.

8.2 **Obligations to Notify.** Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

9. **TRANSFER BY GRANTOR**

9.1 **Prohibition of Transfer Without Consent.** Grantor shall not sell, agree to sell, assign, convey, subcontract, hypothecate, encumber or otherwise transfer any part or all of the Property or any interest in the Property, without the prior written consent of Beneficiary except as provided in Section 9.3. If Grantor or a prospective transferee applies to Beneficiary for consent to a transfer other than a transfer permitted under Section 9.3, Beneficiary may require such information as may be reasonably necessary for Beneficiary to assess the prospective transferee's prior business experience, reputation and financial ability to perform Grantor's obligations under this trust deed. Beneficiary may consider any requested transfer and evaluate the general credit standing, management ability and other factors deemed material by Beneficiary and will either approve or decline the requested transfer, but such approval or otherwise will be at the reasonable discretion of Beneficiary.

9.2 **Effect of Consent.** Consent by Beneficiary to one transfer shall not constitute a consent to other transfers or a waiver of this section. No transfer by Grantor shall relieve Grantor of liability for payment of the Indebtedness. Following a transfer, Beneficiary may agree to any extension of time for payment or modification of the terms of this trust deed or the Payment Agreement or waive any right or remedy under this trust deed or the Payment Agreement.

without relieving Grantor from liability. Grantor waives notice, presentment, and protest with respect to the Indebtedness.

9.3 **Sale of Lot or Townhome to Third Party.** Grantor may sell a Lot or Townhome as those terms are defined under the Payment Agreement to a third party without Beneficiary's consent, provided that Grantor must make the payment due to Beneficiary at the closing of the sale of such Lot or Townhome from escrow.

10. **FIXTURE FILING**

This instrument constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to any and all fixtures included within the term Property as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

11. **RECONVEYANCE ON FULL PERFORMANCE**

11.1 **Full Performance.** If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this trust deed, Beneficiary shall execute and deliver to Trustee a request for full reconveyance. The reconveyance fees shall be paid by Grantor.

11.2 **Partial Performance.** If Grantor pays the amount due to Beneficiary upon the sale of a Lot or Townhome under the Payment Agreement and Grantor is not in default of any obligation imposed upon Grantor under this trust deed, Beneficiary shall execute and deliver to Trustee a request for partial reconveyance with respect to such Lot or Townhome. The reconveyance fees shall be paid by Grantor.

12. **DEFAULT**

The following shall constitute events of default:

- (a) Failure of Grantor to pay any portion of the Indebtedness when it is due.
- (b) Failure of Grantor within the time required by this trust deed to make any payment for taxes, insurance or for reserves for such payment, or any other payment necessary to prevent filing of or discharge of any lien.
- (c) Transfer or agreement to transfer any part or interest in the Property without the prior written consent of Beneficiary, as required under Section 9 above.
- (d) Dissolution, termination of existence, insolvency on a balance sheet basis or business failure of Grantor; the commencement by Grantor of a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Grantor in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law

relating to insolvency or debtor's relief; the appointment or the consent by Grantor to the appointment of a receiver, trustee, or custodian of Grantor or of any of Grantor's property; an assignment for the benefit of creditors by Grantor; the making or suffering by Grantor of a fraudulent transfer under applicable federal or state law; concealment by Grantor of any of its property in fraud of creditors; the making or suffering by Grantor of a preference within the meaning of the federal bankruptcy law; the imposition of a lien through legal proceedings or distraint upon any of the property of Grantor which is not discharged or bonded in the manner permitted by Section 3.2 above; or Grantor's failure generally to pay its debts as such debts become due. The events of default in this paragraph shall apply and refer to Grantor and to each of the individuals or entities that are collectively referred to as "Grantor."

(e) Failure of Grantor to perform any other obligation under this trust deed within 30 days after receipt of written notice from Beneficiary specifying the nature of the default or, if the default cannot be cured within 30 days, failure within such time to commence and pursue curative action with reasonable diligence. No notice of default and no opportunity to cure shall be required if during the prior 12 months Beneficiary has already sent a notice to Grantor concerning default in performance of the same obligation.

13. RIGHTS AND REMEDIES ON DEFAULT

13.1 **Remedies.** Upon the occurrence of any event of default and at any time thereafter, Trustee or Beneficiary may exercise any one or more of the following rights and remedies:

(a) Beneficiary may declare the entire Indebtedness immediately due and payable, including any prepayment premium which Grantor would be required to pay.

(b) The Trustee shall have the right to foreclose by notice and sale, and Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law.

(c) If this trust deed is foreclosed by judicial procedure, Beneficiary will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the obligations secured by this trust deed exceeds the net sale proceeds payable to Beneficiary.

(d) Beneficiary shall have the right, without notice to Grantor, to take possession of the Property and collect all rents, revenues, income, issues and profits from the Property (the "Income"), including amounts past due and unpaid, and apply the net proceeds, over and above Beneficiary's costs, against the Indebtedness. In furtherance of this right, Beneficiary may require any tenant or other user to make payments of rent or use fees directly to Beneficiary. If the Income is collected by Beneficiary, then Grantor irrevocably designates Beneficiary as Grantor's attorney in fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect

the proceeds. Payments by tenants or other users to Beneficiary in response to Beneficiary's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Beneficiary may exercise its rights under this paragraph either in person, by agent or through a receiver.

(e) Beneficiary shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect the Income from the Property and apply the proceeds, over and above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Beneficiary shall not disqualify a person from serving as a receiver.

(f) In the event Grantor remains in possession of the Property after the Property is sold as provided above or Beneficiary otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at will of Beneficiary or the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Grantor's possession.

(g) Trustee and Beneficiary shall have any other right or remedy provided in this trust deed, the Payment Agreement or any other instrument delivered by Grantor in connection therewith, or available at law, in equity or otherwise.

13.2 Rights of Receiver or Mortgagee Possession. Upon taking possession of all or any part of the Property, the receiver or Beneficiary may:

- (a) Use, operate, manage, control and conduct business on the Property and make expenditures for all maintenance and improvements as in its judgment are proper;
- (b) Collect the Income from the Property and apply such sums to the expenses of use, operation, and management;
- (c) At Beneficiary's option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans or specifications as Beneficiary deems appropriate.

If the revenues produced by the Property are insufficient to pay expenses, the receiver may borrow, from Beneficiary (if Beneficiary, in its sole discretion, agrees to lend) or otherwise, or Beneficiary may borrow or advance, such sums as the receiver or Beneficiary may deem necessary for the purposes stated in this paragraph. The amounts borrowed or advanced shall bear interest from the date of expenditure until repaid at the same interest rate as provided in Section 14.3 below. Such sums shall become a part of the Indebtedness secured by this trust deed and shall be payable by Grantor on demand.

13.3 **Sale of the Property.** In exercising its rights and remedies, the Trustee or Beneficiary may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Beneficiary may bid at any public sale on all or any portion of the Property.

13.4 **Waiver; Election of Remedies.** A waiver by either party of a breach of a provision of this trust deed shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Beneficiary to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Beneficiary under this trust deed are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Grantor shall not affect Beneficiary's right to declare a default and exercise its remedies under this trust deed.

13.5 **Attorneys' Fees; Expenses.** In the event of default under this trust deed, Grantor agrees to pay all reasonable costs and expenses which may be incurred by Beneficiary with respect to such default, including without limitation all costs and expenses of investigating the same and circumstances and events surrounding or relating thereto, reasonable fees charged by and expenses of professional consultants and advisers, including attorneys and accountants, costs of searching records, obtaining title reports, surveyor's reports, attorney's opinions, title insurance, trustee's fees, and all other reasonable expenses incurred by Beneficiary that are necessary at any time in Beneficiary's opinion for the protection of its interest and the enforcement of its rights. Attorneys' fees shall include costs and expenses of legal advice with respect to the event of default, rights and remedies, negotiations with the Grantor and any other parties in interest, such as guarantors, other encumbrancers, receivers, trustees and the like, and reasonable attorneys' fees and expenses with respect to any action which Beneficiary may commence or in which it might appear, whether for the purpose of protecting or preserving Beneficiary's rights or to realize upon the lien of any security interest upon real or personal property, or both, by foreclosure or otherwise (including, without limitation, bankruptcy proceedings and proceedings for special relief therein), and all attorneys' fees and expenses in any review of or appeal from any such action. All such amounts shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the same interest rate as provided in Section 14.3 below.

14. MISCELLANEOUS

14.1 **Time of Essence.** Time is of the essence of this trust deed.

14.2 **Binding Upon Successors and Assigns.** Subject to the limitations stated in this trust deed on transfer of Grantor's interest and subject to the provisions of applicable law with respect to successor trustees, this trust deed shall be binding upon and inure to the benefit of the parties, their successors and assigns.

14.3 **Expenditure by Beneficiary.** If Grantor fails to comply with any provision of this trust deed, Beneficiary may elect to take the required action on Grantor's behalf, and any amount that Beneficiary expends in so doing shall be added to the Indebtedness. Amounts so added shall be payable on demand with interest from the date of expenditure at the Default Rate

under the Payment Agreement, but not in any event at a rate higher than the maximum rate permitted by law. Such action by Beneficiary shall not constitute a cure or waiver of the default or any other right or remedy which Beneficiary may have on account of Grantor's default.

WARNING

Unless you (Grantor) provide us (Beneficiary) with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effect date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

14.4 **Notices.** Any notice under this trust deed shall be in writing and shall be effective when either delivered in person or, if mailed, shall be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, addressed to the party at the address stated in this trust deed. Any party may change its address for notices by written notice to the other.

14.5 **Invalid Provisions to Affect No Others.** If any of the provisions contained in the Payment Agreement or this trust deed shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions in this trust deed and the Payment Agreement shall not be affected.

14.6 **Changes In Writing.** This trust deed and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Grantor or Beneficiary relating to this trust deed shall be superior to the rights of the holder of any intervening lien or encumbrance.

14.7 **Applicable Law.** This trust deed shall be construed in accordance with and governed by the laws of the State of Oregon.

14.8 **Joint and Several Liability.** If Grantor consists of more than one person or entity, the obligations imposed upon Grantor under this trust deed shall be joint and several.

34875

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS
MADE BY BENEFICIARY AFTER OCTOBER 3, 1989 CONCERNING LOANS AND
OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR
HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE
MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY
BENEFICIARY TO BE ENFORCEABLE.

GRANTOR:

THE PENNBROOK COMPANY, an Oregon
corporation

BY

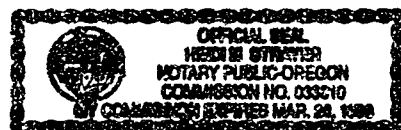
Its

STATE OF OREGON)

)ss.

COUNTY OF KLAMATH)

This instrument was acknowledged before me on Oct 16, 1997 by
Donald N. Bauhofer as President of THE PENNBROOK
COMPANY, an Oregon corporation.



Heidi M. Strayer
Notary Public for Oregon

My commission expires: 3-28-98

34876

EXHIBIT "A"
to the Trust Deed

Real Property Description

All of the following described property as shown on Running Y Resort, Phase 4 plat recorded
September 24, 1997 in the office of the County Recorder, Klamath County, Oregon:

Residential Lots: Lots 289 through 308

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle the 23rd day
of October A.D., 19 97 at 10:40 o'clock A.M., and duly recorded in Vol. M97
of Mortgages on Page 34865

FEE \$70.00

By Kathleen Rose Bernetha G. Letsch, County Clerk