

99 APR 21 P3 40

Vol 1199 Page 14680

AFTER RECORDING RETURN TO:

Washington Mutual Bank
851 S.W. Sixth Avenue, Suite 375 CRE0228
Portland, Oregon 97204

Attention: Commercial Real Estate Department

[Loan No. 04-752-1387936-6]

ATE 05049018

**BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS TRUST DEED
PROVIDES FOR A VARIABLE RATE OF INTEREST.**

**TRUST DEED, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS
AND FIXTURE FILING**

THIS TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Trust Deed"), is made this 1st day of APRIL, 1999 among D & S PROPERTIES, a Partnership, an estate in fee simple, the address of which is 1041 Wild Plum Drive, Klamath Falls, Oregon 97601 ("Grantor"); ASPEN TITLE & ESCROW, INC., a Oregon corporation, the address of which is 525 Main Street, Klamath Falls, Oregon 97601, and its successors in trust and assigns ("Trustee"), and WASHINGTON MUTUAL BANK, a Washington corporation, the address of which is 851 S.W. Sixth Avenue, Suite 375, Portland, Oregon 97204 ("Beneficiary").

1. GRANTING CLAUSE. Grantor, in consideration of the acceptance by Trustee of the trust hereunder, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the obligations described on Section 3 below, grants, bargains, sells, and conveys to Trustee and its successors in trust and assigns, forever, in trust, with power of sale, all of Grantor's estate, right, title, interest, claim and demand in and to the property in the county of Klamath, state of Oregon, described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 is herein called the "Property"):

1.1 Land and Appurtenances. The land described on Exhibit A hereto, and all tenements, hereditaments, rights-of-way, easements, appendages and appurtenances thereto belonging or in any way appertaining, including without limitation all of the right, title and interest of Grantor in and to any avenues, streets, ways, alleys, vaults, strips or gores of land adjoining that property, and all claims or demands of Grantor either in law or in equity in possession or expectancy of, in and to that property, and

1.2 Improvements and Fixtures. All buildings, structures and other improvements now or hereafter erected on the property described in 1.1 above, and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, inventory, furniture and other properties of whatsoever nature (including without limitation all heating, ventilating, air conditioning, plumbing and electrical equipment, all elevators and escalators, all sprinkler systems, all engines and motors, all lighting, laundry, cleaning, fire prevention and fire extinguishing equipment, all ducts and compressors, all refrigerators, stoves and other appliances, attached cabinets, partitions, rugs, carpets and draperies, all building materials and supplies, and all construction forms, tools and equipment), now or hereafter located in or used or procured for use in connection with that property, it being the intention of the parties that all property of the character hereinabove described which is now owned or hereafter acquired by Grantor and which is affixed or attached to, stored upon or used in connection with the property described in 1.1 above shall be, remain or become a portion of that property and shall be covered by and subject to the lien of this Trust Deed, together with all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the construction of the existing or any future improvements on the Property, any and all rights of Grantor in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future improvements on the Property, and any performance and/or payment bonds issued in connection therewith, together with all trademarks, trade names, copyrights, computer software and other intellectual property used by Grantor in connection with the Property; and

1.3 Enforcement and Collection. Any and all rights of Grantor without limitation to make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, royalties, and profits, including mineral, oil and gas rights and profits, insurance proceeds, condemnation awards and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement (including those described in Section 1.2 above) affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for the collection of such moneys or for the specific or other enforcement of any such agreement, award or judgment, in the name of Grantor or otherwise, and to do any and all things which Grantor is or may be or become entitled to do with respect thereto, provided, however, that no obligation of Grantor under the provisions of any such agreements, awards or judgments shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon Trustee or Beneficiary; and

1.4 Accounts and Income. Any and all rights of Grantor in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements and general intangibles relating to any of the Property, including, without limitation, income and profits derived from the operation of any business on the Property or attributable to services that occur or are provided on the Property or generated from the use and operation of the Property; and

1.5 Leases. All of Grantor's rights as landlord in and to all existing and future leases and tenancies, whether written or oral and whether for a definite term or month to month or otherwise, now or hereafter demising all or any portion of the property described in 1.1 and 1.2 above, including all renewals and extensions thereof and all rents, deposits and other amounts received or receivable thereunder. In accepting this Trust Deed neither Beneficiary nor Trustee assumes any liability for the performance of any such lease.

1.6 Books and Records. All books and records of Grantor relating to the foregoing in any form and all computer software necessary or useful to reading such books and records.

2. **SECURITY AGREEMENT.** To the extent any of the property described in Section 1 is personal property, Grantor, as debtor, grants to Beneficiary, as secured party, a security interest therein together with a security interest in all other personal property of whatsoever nature which is located on or used or to be used in connection with any of the property described in Section 1, and any products or proceeds of any thereof, pursuant to the Uniform Commercial Code of the state of Oregon (the "UCC"), on the terms and conditions contained herein. Beneficiary hereby assigns such security interest to Trustee, in trust, for the benefit of Beneficiary to be dealt with as a portion of the "Property" except as otherwise specified herein.

3. **OBLIGATIONS SECURED.** This Trust Deed is given for the purpose of securing:

3.1 **Performance and Payment.** The performance of the obligations contained herein and the payment of ONE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$125,000) with interest thereon and all other amounts payable according to the terms of a promissory note of even date herewith made by Grantor payable to Beneficiary or order, having a maturity date of MAY 1, 2024, and any and all extensions, renewals, modifications or replacements thereof, whether the same be in greater or lesser amounts (the "Note"), which Note contains provision for a variable rate of interest; and

3.2 **Future Advances.** The repayment of any and all sums advanced or expenditures made by Beneficiary subsequent to the execution of this Trust Deed for the maintenance or preservation of the Property or advanced or expended by Beneficiary pursuant to any provision of this Trust Deed subsequent to its execution, together with interest thereon.

4. **WARRANTIES AND COVENANTS OF GRANTOR.** Grantor warrants, covenants, and agrees:

4.1 **Warranties.**

(a) Grantor has full power and authority to grant the Property to Trustee. If Grantor is a corporation, partnership, limited liability company or trust: (i) Grantor is duly organized, validly existing and in good standing under the jurisdiction of its organization; (ii) the execution, delivery and performance of this Trust Deed and the other Loan Documents (as defined in Section 18.3 of this Trust Deed) have been duly authorized by all necessary action on the part of Grantor and its shareholders, partners, members, managers, trustees and/or beneficiaries; and (iii) the individual(s) executing this Trust Deed on behalf of Grantor are fully authorized to do so.

(b) Grantor warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those securing real property taxes and assessments which are not yet due and payable.

(c) None of the Property is used principally or at all for agricultural or farming purposes.

(d) The Property is free from damage and no matter has come to Grantor's attention (including, but not limited to, knowledge of any construction defects or nonconforming work) that would materially impair the value of the Property as security.

(e) The loan evidenced by the Note and secured by this Trust Deed is primarily for commercial, industrial or business purposes and is not primarily for personal, family or household purposes.

Trust Deed

(f) Grantor holds all licenses, certificates and permits from all applicable federal, state and local governmental authorities necessary to conduct Grantor's business.

(g) No litigation, investigation or administrative proceedings before any court, arbitrator or governmental authority, are pending or threatened against Grantor with respect to (i) the loan secured by this Trust Deed, (ii) any of Grantor's assets, including the Property, or (iii) the results of which might have a material adverse effect on the business operation, assets or financial condition of Grantor or impair the ability of Grantor to perform Grantor's obligations under the Loan Documents.

(h) No license or permit from, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any government authority is required by Grantor in connection with the loan secured by this Trust Deed or the execution, delivery, validity or enforceability of this Trust Deed or the other Loan Documents.

(i) The execution, delivery and performance of the Loan Documents, and the use or proposed use of the Property, will not constitute or result in a breach of: (i) any federal, state or local statute, code, regulation or rule; or (ii) any judgment, decree, or order; or (iii) any contract or other agreement to which Grantor is a party. Furthermore, Grantor is not aware of any threatened or outstanding actions or proceedings against or affecting Grantor or the Property before any court or any administrative agency, authority or bureau.

(j) As of the date hereof, Grantor is not insolvent or bankrupt, nor have there been any material adverse changes in the financial condition of Grantor since the date of the most recent financial statements provided to Beneficiary.

4.2 Preservation of Lien. Grantor will preserve and protect the priority of this Trust Deed as a first lien on the Property.

4.3 Repair and Maintenance of Property. Grantor will keep the Property in good condition and repair, which duty shall include but is not limited to continual cleaning, painting, landscaping, repairing and refurbishing of the Property; will complete and not remove or demolish, alter, or make additions to any building or other improvement which is part of the Property without the express written consent of Beneficiary; will underpin and support when necessary any such building or other improvement and protect and preserve the same; will complete or restore promptly and in good and workmanlike manner any such building or other improvement which may be damaged or destroyed and pay when due all claims for labor performed and materials furnished therefor; will not commit, suffer or permit any act upon the Property in violation of law; and will do all other acts which from the character or use of the Property may be reasonably necessary for the continued operation of the Property in a safe and legal manner, the specific enumerations herein not excluding the general.

4.4 Insurance.

4.4.1 Hazard. Grantor will provide, maintain and deliver to Beneficiary, as further security for the faithful performance of this Trust Deed, insurance covering fire, casualty and such other hazards as may be specified by Beneficiary (including insurance against flood, if the Property is situated in a designated flood zone) in an amount equal to one hundred percent (100%) of the replacement cost of the Property and naming Beneficiary as first loss payee pursuant to a standard first-mortgage endorsement on Form 438BFU or on a loss-payee form substantially equivalent to the New York standard mortgage endorsement, with such deductibles as approved by Beneficiary but that are, in any event, not more than \$10,000. Grantor shall be responsible for any uninsured losses and any deductibles. All existing and future policies for such insurance,

1/8/99

Trust Deed

and the proceeds thereof, are hereby assigned to Beneficiary, but no such assignment shall be effective to invalidate or impair any insurance policy. Should the Property or any part thereof be damaged by reason of any cause covered by insurance, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such damage, and obtain all proceeds, or other relief therefor, and Grantor agrees to pay Beneficiary's costs and reasonable attorneys' fees in connection therewith. No insurance proceeds at any time assigned to or held by Beneficiary shall be deemed to be held in trust, and Beneficiary may commingle such proceeds with its general assets and shall not be liable for the payment of any interest thereon. The amount collected under any insurance policies required to be maintained by Grantor pursuant to this Section 4.4.1 may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Grantor. Beneficiary shall in no case be obligated to see to the proper application of any amount paid over 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.

4.4.2 Liability. Grantor will maintain comprehensive general liability insurance covering the legal liability of Grantor against claims for bodily injury, death, or property damage occurring on, in, or about the Property with coverage of One Million Dollars (\$1,000,000) combined single limit, and naming Beneficiary an additional insured.

4.4.3 Rental Interruption. Grantor will maintain rental or business interruption insurance in an amount equal to at least twelve (12) months' gross rental income from the Property, and naming Beneficiary as first loss payee, provided that Grantor may collect and retain any payments under said policies so long as it is not in default hereunder; provided, however, Grantor will not be required to maintain rental or business interruption insurance if the Property is used exclusively as a mobile home park.

4.4.4 Insurance Survey. During the last thirty (30) days of every third year computed from the date hereof, Grantor will have an insurance survey of the Property made. Grantor shall at these times obtain such additional coverages or make such increases in the amounts of existing coverage as may be requested by Beneficiary on the basis of such survey.

4.4.5 General Provisions. All policies of insurance required to be maintained by Grantor pursuant to this Section 4.4 shall be in form and substance and with companies acceptable to Beneficiary and which have a current rating of A-/10 or better from the current Best Key Rating Guide, and contain waiver of any co-insurance clauses. Beneficiary reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time. Grantor shall deliver to Beneficiary an original of all policies of insurance and shall obtain renewals of any policies which expire and deliver evidence of such renewals to Beneficiary no later than ten (10) days prior to the expiration date of the policy being replaced. All policies and renewals thereof shall contain provision for thirty (30) days' notice to Beneficiary prior to any cancellation thereof. Notwithstanding any of the foregoing, neither Trustee nor Beneficiary shall be responsible for any such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of and pass to the purchaser of the Property at any trustee's or sheriff's sale held hereunder.

4.5 Right of Inspection. Grantor shall permit Beneficiary or its agents, at all reasonable times, to enter upon and inspect the Property.

4.6 Preservation of Licenses, Etc. Grantor shall observe and comply with all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges,

Trust Deed

franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits.

4.7 Further Assurances. Grantor will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Trustee or Beneficiary deems necessary or advisable to grant to Trustee the Property or to carry out more effectively the purposes of this Trust Deed.

4.8 Legal Actions. Grantor will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and will pay all costs and expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and others, incurred by Beneficiary or Trustee, in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary or Trustee to foreclose this Trust Deed and in any non-judicial foreclosure of this Trust Deed.

4.9 Taxes, Assessments and Other Liens. Grantor will pay not later than when due all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof, which at any time appear to be or are alleged to be prior and superior hereto, including but not limited to any tax on or measured by rents of the Property, the Note, this Trust Deed, or any obligation or part thereof secured hereby.

4.10 Trust Expenses. Grantor will pay all costs, fees and expenses reasonably incurred by Beneficiary or Trustee in connection with this Trust Deed.

4.11 Repayment of Expenditures. Grantor will pay immediately and without demand all amounts secured by this Trust Deed, other than principal or interest on the Note, with interest from date of expenditure at the default rate of interest specified in the Note (the "Default Rate") and the repayment thereof shall be secured hereby.

4.12 Financial & Operating Information. Grantor will, within sixty (60) days of the close of Grantor's fiscal year, furnish to Beneficiary in such form as it may request, financial statements and balance sheets of Grantor and the entities and individuals who are liable for repayment of the Note, and itemized annual statements of income and expense in connection with the operation of the Property, including but not limited to utilization and property inspection reports, and such other financial and operating statements of Grantor as Beneficiary may from time to time require and such operating statements, occupancy reports, variance reports and financial information for the Property as Beneficiary may from time to time require.

If Grantor defaults in its obligation to provide Beneficiary with any of the financial and operating information required to be provided under this subsection 4.12 within the time periods required under this subsection 4.12 and such default continues after Beneficiary has provided Grantor with thirty (30) days' notice and opportunity to cure such default, Grantor shall pay to Beneficiary, as liquidated damages for the extra expense in servicing the loan secured hereby, Five Hundred Dollars (\$500) on the first day of the month following the expiration of such thirty (30) day period and One Hundred Dollars (\$100) on the first day of each month thereafter until such default is cured. All such amounts shall be secured by this Trust Deed.

4.13 Sale, Transfer, or Encumbrance of Property. Grantor shall not, without the prior written consent of Beneficiary, further encumber the Property or any interest therein, cause or permit any

Trust Deed

change in the entity, ownership or control of Grantor or agree to do any of the foregoing without first repaying in full the Note and all other sums secured hereby.

Grantor shall not, without the prior written consent of Beneficiary (which consent shall be subject to the conditions set forth below), sell, transfer or otherwise convey the Property or any interest therein or agree to do any of the foregoing without first repaying in full the Note and all other sums secured hereby.

Beneficiary will not unreasonably withhold its consent to a sale, transfer or other conveyance of the Property, provided however, that:

- (a) Beneficiary may consider the factors normally used in the process of determining whether or not to loan funds;
- (b) Beneficiary may specifically evaluate the financial responsibility and real estate operations experience of any potential transferee;
- (c) Beneficiary may as a condition to granting its consent to a sale, transfer or other conveyance of the Property require: (i) the payment by Grantor of a fee of one percent (1.00%) of the unpaid principal balance of the Note, and (ii) that the unpaid principal balance of the Note be reduced to an amount not to exceed seventy-five percent (75%) of the sales price of the Property; and
- (d) There shall be a Debt Service Coverage Ratio (as hereinafter defined) of no less than 1.15 to 1 and a Loan to Value Ratio (as hereinafter defined) of no greater than seventy-five percent (75%). "Debt Service Coverage Ratio" shall mean the ratio that Annual Net Operating Income (as hereinafter defined) from the Property bears to the sum of all payments of principal and interest on the loan secured hereby and all other loans secured by the Property or its revenues that must be made during the twelve (12) month period following the sale, transfer or other conveyance. "Annual Net Operating Income" shall mean gross rental income from the Property actually received during the twelve (12) month period immediately preceding the date on which Grantor has requested Beneficiary's consent, less Operating Expenses (as hereinafter defined). "Operating Expenses" shall mean the greater of: (i) actual operating expenses incurred for the Property (based on operating statements delivered by Grantor to Beneficiary at the time Grantor requests Beneficiary's consent in form and substance satisfactory to Beneficiary) during the twelve (12) month period ending no earlier than thirty (30) days immediately preceding the date on which Grantor has requested Beneficiary's consent, and (ii) an amount determined by Beneficiary in Beneficiary's sole discretion. "Loan to Value Ratio" shall mean the ratio that the amount of the unpaid principal balance of the Note and of all other loans secured by the Property or its revenues bears to the value of the Property, as such value is determined by: (x) the sales price for the Property (provided that the sale of the Property is a bona fide arms-length sale) or if such sales price is not available, (y) a current appraisal of the Property prepared for Beneficiary at Grantor's cost by an appraiser who is state certified in form and substance acceptable to Beneficiary in its sole discretion.

In connection with any sale, transfer or other conveyance of the Property to which Beneficiary is asked to consent, Grantor agrees to pay to Beneficiary, in addition to any sums specified above, for Beneficiary's expenses incurred in reviewing and evaluating such matter, the following amounts: (i) \$1,500, which amount shall be paid by Grantor to Beneficiary upon Grantor's request for Beneficiary's consent and shall be applied to the one percent (1.00%) fee described in subparagraph (c) above if Beneficiary's consent is given to a sale, transfer or other conveyance of the Property, and (ii) Beneficiary's reasonable attorneys' fees.

Trust Deed

Consent to any one such occurrence shall not be deemed a waiver of the right to require consent to any future occurrences.

In each instance in which a sale, transfer or other conveyance of the Property occurs and regardless of whether Beneficiary's consent thereto is given, waived or denied or whether Beneficiary elects to accelerate the maturity date of the Note, Grantor and its successors shall be jointly and severally liable to Beneficiary for the payment of a transfer fee (the "Transfer Fee") of one percent (1.00%) of the unpaid principal balance of the Note as of the date of such sale, transfer or other conveyance. Such fee shall be payable on demand, shall bear interest from ten (10) days after such demand to and including the date of collection at the Default Rate (as defined in the Note), and shall be secured by this Trust Deed. Beneficiary's waiver of such fee in whole or in part for any one sale, transfer or other conveyance shall not preclude the imposition thereof in any other transaction.

Notwithstanding the foregoing, Beneficiary's consent will not be required, and neither the one percent (1.00%) fee referred to in subparagraph 4.13(c)(i) above nor the one percent (1.00%) Transfer Fee will be imposed, for the transfer of not more than twenty-five percent (25%) in the aggregate during the term of the Note of partnership interests in Grantor, if Grantor is a partnership, or of member interests in Grantor, if Grantor is a limited liability company, or of shares of stock of Grantor, if Grantor is a corporation; provided that none of the persons or entities liable for the repayment of the Note is released from such liability.

4.14 Information for Participants. Grantor agrees to furnish such information and confirmation as may be required from time to time by Beneficiary on request of potential loan participants and agrees to make adjustments in this Trust Deed, the Note, and the other documents evidencing or securing the loan secured hereby to accommodate such participant's requirements, provided that such requirements do not vary the economic terms of the loan secured hereby.

4.15 Grantor Existence. Except as otherwise provided in Section 4.13:

(a) If Grantor is a corporation, Beneficiary is making this loan in reliance on Grantor's continued existence, ownership and control in its present corporate form. Grantor will not alter such corporate structure, ownership or control without the prior written consent of Beneficiary, and will do all things necessary to preserve and maintain said corporate existence and to insure its continuous right to carry on its business, including but not limited to, filing within the prescribed time all corporate tax returns and reports, and paying when due all such taxes.

(b) If Grantor is a partnership, Beneficiary is making this loan in reliance on the continued existence of Grantor partnership and upon the business and financial reputation of Grantor partnership as a business entity and each of the general partners thereof. Therefore, the general partners of Grantor hereby agree that they will take no action to dissolve Grantor partnership and will do all things within their power to prevent the dissolution and winding up of Grantor partnership, notwithstanding the death, withdrawal or expulsion of any general partner. They further agree that without the prior written consent of Beneficiary, none of the general partners of Grantor will withdraw or be removed as a general partner of Grantor. The withdrawal or expulsion of any general partner from Grantor partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

(c) If Grantor is a limited liability company, Beneficiary is making this loan in reliance on Grantor's continued existence, ownership and control in its present limited liability company form. Grantor will not alter such limited liability company structure, ownership or control without the prior written consent of Beneficiary and will do all things necessary to preserve and maintain said limited liability company existence and to insure its continuous right to carry on its business.

Trust Deed

14888

4.16 Tax and Insurance Reserves. In addition to the payments required by the Note, Grantor agrees to pay Beneficiary, at Beneficiary's request, such sums as Beneficiary may from time to time estimate will be required to pay, at least 30 days before due, the next due taxes, assessments, insurance premiums, and similar charges affecting the Property, less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become delinquent, such sums to be held by Beneficiary without interest or other income to the Grantor to pay such taxes, assessments and premiums. Should this estimate as to taxes, assessments and premiums prove insufficient, the Grantor upon demand agrees to pay Beneficiary such additional sums as may be required to pay them before delinquent.

If the total of the above-described payments in any one year shall exceed the amounts actually paid by Beneficiary for taxes, assessments and premiums, such excess may be credited by Beneficiary on subsequent payments under this section. If there shall be a default hereunder for which Beneficiary elects to realize upon this Trust Deed, then at any time after default and prior to the trustee's sale or sheriff's sale, Beneficiary may apply any balance of funds it may hold pursuant to this Section 4.16 to any amount secured by this Trust Deed and in such order as Beneficiary may elect. If Beneficiary does not so apply such funds at or prior to the trustee's sale or sheriff's sale, the purchaser at such sale shall be entitled to all such funds. If Beneficiary acquires the Property in lieu of realizing on this Trust Deed, the balance of funds it holds shall become the property of Beneficiary.

Any transfer in fee of all or a part of the Property shall automatically transfer to the grantee all or a proportionate part of Grantor's rights and interest in the fund accumulated hereunder.

4.17 Leases.

(a) Grantor will in all respects promptly and faithfully keep, perform and comply with all of the terms, provisions, covenants, conditions and agreements in each of the agreements pursuant to which any tenant of any part of the Property is occupying the Property (the "Leases") to be kept, performed and complied with by the lessor therein, and will require, demand and strictly enforce, by all available means, the prompt and faithful performance of and compliance with all of the terms, provisions, covenants, conditions and agreements in the Leases to be performed and complied with by the lessees therein.

(b) Grantor shall not receive or collect any rents from any present or future tenant of the Property or any part thereof in advance in excess of five percent (5.00%) of gross annual rental income from the Property or collect a security deposit in excess of two (2) months' rent.

(c) Grantor shall promptly deposit and maintain all security deposits or other deposits received by Grantor from tenants in a segregated trust account in a federally insured bank or savings and loan association and shall notify and direct in writing each and every present or future tenant or occupant of the Property or any part thereof that any security deposit or other deposit heretofore delivered to Grantor have been retained by Grantor or assigned and delivered to Beneficiary as the case may be.

4.18 Hazardous Waste.

(a) For purposes of this Trust Deed, "hazardous substance" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any

Trust Deed

applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) poly- chlorinated biphenyls, (iv) defined as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste" or "hazardous substance" under Hazardous Substances, Radiation Sources, ORS Chapters 453.001, et seq., Solid Waste Control, ORS Chapters 459.005, et seq., Hazardous Waste and Hazardous Materials, ORS Chapters 466.005, et seq., Pollution Control, ORS Chapters 468.005, et seq., Oregon Drinking Water Quality Act, ORS Chapters 448.123, et seq., and Ground Water Act of 1955, ORS Chapters 537.505, et seq., (v) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), (vi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6903, or (vii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq. (42 U.S.C. §9601), all as amended, replaced or succeeded, and any other substance or matter defined as a toxic or hazardous substance or material or pollutant or contaminant under any other federal, state or local laws, ordinances or regulations or under any reported decision of a state or federal court, or any substance or matter imposing liability for clean-up costs or expenses on any person or entity under any statutory or common law theory.

(b) To Grantor's best knowledge and after due and diligent inquiry, Grantor represents and warrants that neither Grantor nor any previous owner or user of the Property has used, generated, stored or disposed of above, in, on, under or around the Property any hazardous substance and that there is not now, nor have there ever been tanks or facilities on, under or at the Property which contained materials which, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under any federal, state or local law or regulation. Grantor hereby covenants and agrees that Grantor will not conduct, permit or authorize the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance, and neither Grantor or any agent, servant or employee shall generate, store, bury or dispose of any hazardous substance on or in a location that will adversely affect the Property. Grantor shall promptly and diligently comply with all requirements of federal, state or local laws, statutes, ordinances or regulations, or court or administrative orders or decrees, or private agreements pertaining to hazardous substances.

(c) If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance: (i) gives rise to liability (including but not limited to, a response action, remedial action or removal action) under RCRA, CERCLA, state toxic waste laws, or otherwise, or (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Grantor shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the hazardous substance, whether or not required by law. If Grantor fails to perform its obligations under this subsection 4.18(c), any funds advanced by Beneficiary to pay for any and all remedial and removal action to clean up the Property and mitigate exposure to liability from the hazardous substance shall be repaid to Beneficiary by Grantor upon demand and shall be secured by the lien of this Trust Deed.

(d) Grantor shall promptly give Beneficiary: (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government authority regarding hazardous substances on the Property or hazardous substances which affect or will affect the Property, (ii) written notice of any knowledge or information Grantor obtains regarding hazardous substances on the Property or hazardous substances which will affect the Property or expenses or losses incurred or expected to be incurred by Grantor or any government agency to study, assess, contain or remove any hazardous substances on or near the Property, and (iii) written notice of any knowledge or information Grantor obtains regarding the release or discovery of hazardous substances on the Property or on other property owned by Grantor or for which Grantor is or may be responsible.

1/8/99

Trust Deed

(e) In the event Beneficiary requires, from time to time, Grantor to implement an operations and maintenance plan because of the presence or potential presence of asbestos, or lead containing paint or other hazardous substances on the Property, Grantor shall implement and follow the requirements of any such operations and maintenance plan, maintain records of such compliance at the Property and make such records immediately available to Beneficiary upon request by Beneficiary. If Grantor defaults in its obligation to provide Beneficiary with any information or reports required to be provided under the operations and maintenance plan or this subsection 4.18(e) and such default continues after Beneficiary has provided Grantor with thirty (30) days' notice and opportunity to cure such default, Grantor shall pay to Beneficiary, as liquidated damages for the extra expense in servicing the loan secured hereby, Five Hundred Dollars (\$500) on the first day of the month following the expiration of such thirty (30) day period and One Hundred Dollars (\$100) on the first day of each month thereafter until such default is cured. All such amounts shall be secured by this Trust Deed.

(f) Grantor and, if Grantor is a partnership, each general partner of Grantor, jointly and severally (collectively, the "Indemnitors"), agree to indemnify, protect, defend (with counsel satisfactory to Beneficiary) and hold Beneficiary, and Beneficiary's successors and assigns, and the directors, officers, shareholders, employees, agents and contractors of Beneficiary, and of Beneficiary's successors and assigns, harmless from any claims (including without limitation third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), interest or losses, including reasonable attorneys' and paralegals' fees and expenses (including any such fees and expenses incurred in enforcing this paragraph or collecting any sums due hereunder), consultant fees, and expert fees, together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly from or in connection with the presence, suspected presence, release or suspected release of any hazardous substance in the Property or in or into the air, soil, groundwater or surface water at, on, about, above, under or within the Property, or any portion thereof. The indemnification provided in this paragraph shall specifically apply to and include claims or actions brought by or on behalf of employees of Grantor or of any past or present tenants, occupants or other users of the Property, and Grantor hereby expressly waives any immunity to which Grantor may otherwise be entitled under any industrial or worker's compensation laws. In the event Beneficiary shall suffer or incur any such Costs, the Indemnitors shall pay to Beneficiary the total of all such Costs suffered or incurred by Beneficiary upon demand therefor by Beneficiary. Without limiting the generality of the foregoing, the indemnification provided by this paragraph shall specifically cover Costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any clean-up, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any nongovernmental entity or person because of the presence, suspected presence, release or suspected release of any hazardous substance in the Property or in or into the air, soil, groundwater or surface water at, on, about, above, under or within the Property (or any portion thereof) and any claims of third parties for loss or damage due to such hazardous substance. In addition the indemnification provided by this paragraph shall include, without limitation all loss or damage sustained by Beneficiary or any third party due to any hazardous substance: (i) that is present or suspected to be present in the Property or in the air, soil, groundwater or surface water at, on, about, above, under or within the Property (or any portion thereof) on or before the date of this Trust Deed, or (ii) that migrates, flows, percolates, diffuses or in any way moves onto, into or under the air, soil, groundwater or surface water at, on, about, above, under or within the Property (or any portion thereof) after the date of this Trust Deed, irrespective of whether such hazardous substance shall be present or suspected to be present in the Property or in the air, soil, groundwater or surface water at, on, about, above, under or within the Property (or any portion thereof) as a result of any release, discharge, disposal, dumping, spilling or leaking

Trust Deed

(accidental or otherwise) onto the Property (or any portion thereof) occurring before, on or after the date of this Trust Deed or caused by any person or entity.

(g) If Grantor fails to perform its obligations under this Section 4.18, Beneficiary shall be subrogated to any rights Grantor may have against any present, future or former owners, tenants, occupants or other users of the Property (or any portion thereof), relating to the matters covered by this Section 4.18.

(h) The obligations of the Indemnitors under this Section 4.18 shall survive the consummation of the loan transaction secured by this Trust Deed, the repayment of such loan, the reconveyance of this Trust Deed and, to the maximum extent now or hereafter permitted by applicable law, the foreclosure of this Trust Deed.

4.19 Year 2000. Unless Beneficiary has provided Grantor with a written waiver of the following "Year 2000" provisions, the following provisions shall apply:

Grantor represents, warrants and covenants that it has, or will have by a date that is acceptable to Beneficiary: (i) undertaken a detailed inventory, review, and assessment of all areas within its business and operations that could be adversely affected by the failure of Grantor to be Year 2000 compliant on a timely basis, (ii) developed a detailed plan and timeline and committed adequate resources for becoming Year 2000 compliant on a timely basis, and (iii) implemented that plan in accordance with that timetable in all material respects. Grantor covenants and agrees that Grantor shall from time to time upon Beneficiary's request furnish periodic updates to Beneficiary regarding Grantor's progress on its Year 2000 compliance efforts, and provide copies to Beneficiary of any internal and third-party assessments of Grantor's Year 2000 compliance efforts. Grantor covenants to be and reasonably anticipates that it will be Year 2000 compliant on a timely basis.

Grantor has made (or will make, by a date acceptable to Beneficiary) written inquiry (or, if acceptable to Beneficiary, oral inquiry) of each of its key suppliers, vendors, and customers as to whether such persons will be Year 2000 compliant in all material respects on a timely basis. Based on that inquiry, and to the best of Grantor's knowledge only, Grantor believes that all such persons will be Year 2000 compliant in all material respects on a timely basis. For purposes of this provision, "key suppliers, vendors, and customers" refers to those suppliers, vendors, and customers of Grantor whose business failure would, with reasonable probability, result in a material adverse change in the business, properties, condition (financial or otherwise), or prospects of Grantor, or Grantor's ability to repay the indebtedness secured by this Trust Deed.

"Year 2000 compliant" means, with regard to any entity, that all software, embedded microchips, and other processing capabilities utilized by, and material to the business operations or financial condition of, such entity are able to interpret and manipulate data on and involving all calendar dates correctly and without causing any abnormal ending scenario, including in relation to dates in and after the Year 2000.

It shall be an event of default under this Trust Deed if (x) any of Grantor's representations and warranties regarding Year 2000 shall cease to be true (whether or not true when made) and, as a result, Beneficiary reasonably believes that Grantor's financial condition or its ability to pay its debts as they become due will thereby be materially impaired, (y) Grantor fails to comply with any of its Year 2000 covenants, or (z) Grantor fails to be Year 2000 compliant in any material respect on a timely basis.

Trust Deed.

5. DEFAULT.

5.1 **Definition.** Any of the following shall constitute an "Event of Default" as that term is hereinafter used:

- (a) Any representation or warranty made by or for the benefit of Grantor herein or elsewhere in connection with the loan secured hereby, including but not limited to any representations in connection with the security therefor, shall prove to have been incorrect or misleading in any material respect;
- (b) Grantor or any other person or entity liable therefor shall fail to pay when due any indebtedness secured hereby;
- (c) Grantor or any other signatory thereto shall default in the performance of any covenant or agreement contained in this Trust Deed, the Note, or any other agreement securing the indebtedness secured hereby;
- (d) Grantor or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they mature, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding;
- (e) Grantor or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage or deed of trust encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness evidenced thereby; or
- (f) A tax, charge or lien shall be placed upon or measured by the Note, this Trust Deed, or any obligation secured hereby which Grantor does not or may not legally pay in addition to the payment of all principal and interest as provided in the Note.

5.2 **Beneficiary's and Trustee's Right to Perform.** Upon the occurrence of any Event of Default, Beneficiary or Trustee, but without the obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligations hereunder, may: make any payments or do any acts required of Grantor hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien in accordance with the following paragraph; and in exercising any such powers, pay necessary expenses, employ counsel and pay a reasonable fee therefor. All sums so expended shall be payable on demand by Grantor, be secured hereby and bear interest at the Default Rate from the date advanced or expended until repaid.

Beneficiary or Trustee in making any payment herein and hereby authorized, in the place and stead of the Grantor, in the case of a payment of taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Property, may make such payment in reliance on any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; in the case of any apparent or threatened adverse claim of title, lien, statement of lien, encumbrance, deed of trust, claim or charge Beneficiary or Trustee, as the case may be,

1/8/99

Trust Deed

shall be the sole judge of the legality or validity of same; and in the case of a payment for any other purpose herein and hereby authorized, but not enumerated in this paragraph, such payment may be made whenever, in the sole judgment and discretion of Trustee or Beneficiary, as the case may be, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, provided further, that in connection with any such advance, Beneficiary at its option may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expenses of which shall be repayable by the Grantor without demand and shall be secured hereby.

5.3 Remedies on Default. Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Beneficiary and Beneficiary may:

(a) Have a receiver appointed as a matter of right, without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security, such receiver shall take possession and control of the Property and shall collect and receive all of the rents, issues and profits thereof;

(b) Foreclose this Trust Deed as a mortgage or otherwise realize upon the Property;

(c) Cause Trustee to exercise its power of sale; or

(d) Sue on the Note according to law.

5.4 No Waiver. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to do so.

5.5 Remedies Cumulative. The rights and remedies accorded by this Trust Deed shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Trust Deed or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any default shall not constitute a waiver of any subsequent or other default. Beneficiary shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the loan proceeds hereof.

6. CONDEMNATION. Any award of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property, for public or private use, or for injury to any portion of the Property is hereby assigned and shall be paid to Beneficiary which may apply such moneys received by it in the same manner and with the same effect as provided in Section 4.4.1 above for disposition of proceeds of hazard insurance. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all compensation, awards or other relief therefor, and Grantor agrees to pay Beneficiary's costs and reasonable attorneys' fees incurred in connection therewith. No condemnation award at any time assigned to or held by Beneficiary shall be deemed to be held in trust, and Beneficiary may commingle such award with its general assets and shall not be liable for the payment of any interest thereon.

1/8/99

Trust Deed

7. TRUSTEE.

7.1 General Powers and Duties of Trustee. At any time or from time to time, without liability therefor and without notice and without affecting the liability of any person for the payment of the indebtedness secured hereby, upon written request of Beneficiary, payment of its own fees and presentation of this Trust Deed and the Note for endorsement (in case of full reconveyance, for cancellation or retention), 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 Trust Deed or the lien or charge thereof; or
- (d) Reconvey, without warranty, all or any part of the Property.

7.2 Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Deed and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in any reconveyance executed under this Trust Deed of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

7.3 Powers and Duties on Default. Upon written request therefor by Beneficiary specifying the nature of the default, or the nature of the several defaults, and the amount or amounts due and owing, Trustee shall execute a written notice of default and of its election to cause the Property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to law.

Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, Trustee, without demand on Grantor, shall sell the Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Grantor agrees that such a sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Property which may be personal property Trustee shall have and exercise, at Beneficiary's sole election, all the rights and remedies of a secured party under the UCC. Whenever notice is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Property, and from time to time thereafter may postpone such sale, as provided by statute. Trustee shall deliver to the purchaser its deed and bill of sale conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person other than Trustee, including Grantor or Beneficiary, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title search, title insurance and reasonable counsel fees in connection with sale, Trustee shall

Trust Deed

apply the proceeds of sale to payment of: all sums secured hereby in such order as Beneficiary may determine; and the remainder, if any, to Grantor.

7.4 Reassignment of Security Interest.

At the request of Beneficiary, Trustee shall reassign to Beneficiary the security interest created hereby and after such reassignment Beneficiary shall have the right, upon the occurrence or continuance of any Event of Default, to realize upon the personal property subject to this Trust Deed, independent of any action of Trustee, pursuant to the UCC.

7.5 Acceptance of Trust.

Trustee accepts this trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto except Beneficiary 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 brought by Trustee.

7.6 Reliance.

Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Grantor under this Trust Deed, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

7.7 Replacement of Trustee.

Beneficiary may, from time to time, as provided by statute, appoint another trustee in place and stead of Trustee herein named, and thereupon Trustee herein named shall be discharged and the trustee so appointed shall be substituted as Trustee hereunder, with the same effect as if originally named Trustee herein.

8.

APPLICATION OF RENTS.

Grantor hereby gives to and confers upon Beneficiary the right, power and authority during the continuance of this Trust Deed to collect the rents, issues and profits of the Property, reserving unto Grantor the right, prior to any default in payment of any indebtedness secured hereby or hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Grantor's right to spend or retain any rents, issues or profits of the Property shall cease immediately and without notice of demand and Beneficiary may at any time and without notice, either in person, by agent, or by a receiver to be appointed by a court, without regard to the adequacy of any security for the indebtedness hereby secured and without the necessity of posting any bond or other security, enter upon and take possession of the Property or any part thereof, or in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

9. NOTICES.

9.1

Trustee. Any notice or demand upon Trustee may be given or made at:

Aspen Title & Escrow, Inc.
525 Main Street
Klamath Falls, Oregon 97601

9.2

Grantor and Beneficiary.

Any notice to or demand upon Grantor (including any notice of default or notice of sale) or notice to or demand upon Beneficiary shall be deemed to have been sufficiently made for all purposes when deposited in the United States mails, postage prepaid, registered or certified, return receipt requested, addressed as follows:

1/8/99

Trust Deed

Grantor:

D & S Properties
1041 Wild Plum Drive
Klamath Falls, Oregon

Beneficiary:

Washington Mutual Bank
851 S.W. Sixth Avenue, CRE0228
Portland, Oregon 97204
Attention: Commercial Real Estate Department

or to such other address as may be filed in writing by Grantor or Beneficiary with Trustee.

9.3 Waiver of Notice. The giving of notice may be waived in writing by the person or persons entitled to receive such notice, either before or after the time established for the giving of such notice.

10. MODIFICATIONS. Upon written request of any party then liable for any sum secured hereby, Beneficiary reserves the right to extend the term, or otherwise modify the terms, hereof or of the Note as Beneficiary and such person may from time to time deem appropriate and any such change shall not operate to release, in any manner, the liability of the original Grantor or Grantor's successors in interest.

11. SUCCESSORS AND ASSIGNS. All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

12. GOVERNING LAW; SEVERABILITY. This Trust Deed shall be governed by the law of the state of Oregon. In the event that any provision or clause of this Trust Deed or the Note conflicts with applicable law, the conflict shall not affect other provisions of this Trust Deed or the Note which can be given effect without the conflicting provision and to this end the provisions of this Trust Deed and the Note are declared to be severable.

13. GRANTOR'S RIGHT TO POSSESSION. Grantor may be and remain in possession of the Property for so long as it is not in default hereunder or under the terms of the Note and Grantor may, while it is entitled to possession of the Property, use the same.

14. MAXIMUM INTEREST. No provision of this Trust Deed or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Note provided for, neither Grantor nor its successors or assigns shall be obligated to pay that portion of such interest which is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section 14 shall control any provision of this Trust Deed or the Note which is inconsistent herewith.

15. ATTORNEYS' FEES AND LEGAL EXPENSES. In the event of any default under this Trust Deed, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any obligation secured by this Trust Deed, Beneficiary shall be entitled to collect from Grantor on demand all fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Grantor shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Grantor, any guarantor or other party liable for any of the obligations secured by this Trust Deed or any party having any interest in any security for

1/8/99

Trust Deed

any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Trust Deed; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

16. PREPAYMENT PROVISIONS. If at any time after default and acceleration of the indebtedness secured hereby there shall be a tender of payment of the amount necessary to satisfy such indebtedness by or on behalf of the Grantor, its successors or assigns, the same shall be deemed to be a voluntary prepayment such that the sum required to satisfy such indebtedness in full shall include, to the extent permitted by law, the additional payment required under the prepayment privilege as stated in the Note.

17. TIME OF ESSENCE. Time is of the essence under this Trust Deed and in the performance of every term, covenant and obligation contained herein.

18. MISCELLANEOUS.

18.1 Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

18.2 The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Trust Deed.

18.3 This Trust Deed, the Note and the other documents, instruments and agreements entered into by Grantor and Beneficiary in connection therewith (collectively, the "Loan Documents") constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

Trust Deed

DATED as of the day and year first above written.

THIS TRUST DEED WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS TRUST DEED IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, AND TO DETERMINE ANY LIMITS OR LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.390.

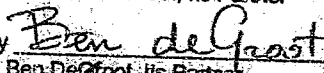
GRANTOR:

D & S PROPERTIES, a Partnership, an estate
in fee simple

By


Gerrit A. DeGroot, Its Partner

By


Ben DeGroot, Its Partner

By

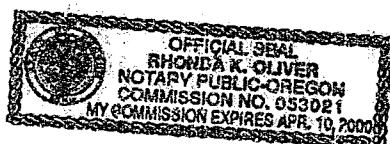

Arie C. DeGroot, Its Partner

Trust Deed

STATE OF Oregon)
) ss.
 COUNTY OF KLAMATH)

I certify that I know or have satisfactory evidence that GERRIT A. DEGROOT is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a general partner of D & S PROPERTIES, a general partnership which is the general partnership that executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12th day of April, 1999



Rhonda K. Oliver
 (Signature of Notary)

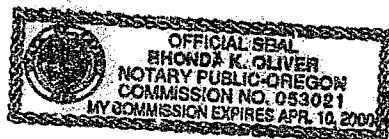
Rhonda K. Oliver
 (Legibly Print or Stamp Name of Notary)
 Notary public in and for the state of Oregon, residing at
Klamath Falls

My appointment expires April 10, 2000

STATE OF Oregon)
) ss.
 COUNTY OF KLAMATH)

I certify that I know or have satisfactory evidence that BEN DEGROOT is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a general partner of D & S PROPERTIES, a general partnership which is the general partnership that executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12th day of April, 1999.



Rhonda K. Oliver
 (Signature of Notary)

Rhonda K. Oliver
 (Legibly Print or Stamp Name of Notary)
 Notary public in and for the state of Oregon, residing at
Klamath Falls

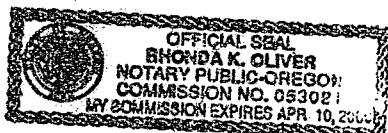
My appointment expires April 10, 2000

Trust Deed

STATE OF Oregon)
) ss.
 COUNTY OF Klamath)

I certify that I know or have satisfactory evidence that ARIE C. DEGROOT is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a general partner of D & S PROPERTIES, a general partnership which is the general partnership that executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12th day of April, 1999.



Rhonda K. Oliver
 (Signature of Notary)

RHONDA K OLIVER
 (Legibly Print or Stamp Name of Notary)
 Notary public in and for the state of Oregon, residing at
Klamath Falls

My appointment expires April 10, 2000

Trust Deed

EXHIBIT A

The land is located in the county of Klamath, state of Oregon, and is described as follows:

Lots 17, 18, 19, and 20 of the Resubdivision Plat of Block 23, Industrial Addition to the City Of Klamath Falls, in the County of Klamath, State of Oregon.

1/8/99

22

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title the 21st day
of April A.D. 1999 at 3:40 o'clock P. M., and duly recorded in Vol. M99
of Mortgages on Page 14680

Linda Smith, County Clerk

FEE

\$115.00

by Caroline Nashimoto