

04 SEP 9 AM 9:26

RECORDING REQUESTED BY:
TICOR TITLE AGENCY OF ARIZONA, INC.
AND WHEN RECORDED MAIL TO:

Thomas J. Prosser
1855 Birch St
Klamath Falls, OR 97601

ORDER NO.: 712-AF

Vol M04 Page 60198

State of Oregon, County of Klamath
Recorded 09/09/04 9:26 a m
Vol M04 Pg 60198-201
Linda Smith, County Clerk
Fee \$ 41.00 # of Pgs 4

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made September 2, 2004, between

Thomas J. Prosser and Maria E. Prosser, husband and wife

herein called TRUSTOR, whose address is 1855 Birch St., Klamath Falls, OR 97601

and TICOR TITLE AGENCY OF ARIZONA, INC., an Arizona corporation, whose mailing address is 6245 E. Broadway, Ste. 150, Tucson, AZ 85711, herein called TRUSTEE, and

Myrtle Giachetti, a widow

herein called BENEFICIARY, whose address is 3189 E. Corte de Andalucia, Tucson, AZ 85718

That property located in Klamath County, State of Oregon, described as follows:

See Exhibit "A" attached hereto...

Together with all buildings, improvements, and fixtures thereon.

THIS DEED OF TRUST, made on the above date between the Trustor, Trustee and Beneficiary above named.

WITNESSETH: That Trustor irrevocably grants, conveys, transfers and assigns to Trustee in Trust, with Power of Sale, the above described real property, together with leases, rents, issues, profits, or income thereof, (all of which are hereinafter called "property income") SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income; AND SUBJECT TO existing taxes, assessments, liens encumbrances, covenants, conditions, restrictions, rights-of-way, and easements of record.

FOR THE PURPOSE OF SECURING:

- A. Performance of each agreement of Trustor herein contained.
- B. Payment of the indebtedness evidenced by promissory note or notes of even date herewith, and an extension or renewal thereof, in the principal sum of **\$5,000.00** executed by Trustor in favor of Beneficiary or order.
- C. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) Trustor shall keep said property in good condition and repair; shall not remove or demolish any building thereon, shall complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and shall pay when due all claims for labor performed and materials furnished therefore; shall comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; shall not commit or permit waste thereof; shall not commit, suffer or permit any act upon said property in violation of law; shall cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations

30.5
ok Maria Prosser

RECONVEYANCE and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this DEED OF TRUST or the obligations secured hereby.

(5) Should Trustor fail to make any payment or to do any act as provided in this DEED OF TRUST, then the Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may, make or do the same 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 said property for such purposes: pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees. Trustor shall pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expending at the rates provided in the promissory note(s) secured by this DEED OF TRUST.

IT IS MUTUALLY AGREED:

(6) That any award of damages in connection with any condemnation or any such taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefore and the ownership thereof subject to this DEED OF TRUST) and upon receipt of such monies Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That time is of the essence of this DEED OF TRUST, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) At any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this DEED OF TRUST and said note(s) for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and upon payment of its fees, Trustee may (A) by DEED OF PARTIAL RELEASE AND PARTIAL RECONVEYANCE release and reconvey, without covenant or warranty, express or implied, any portion(s) of the property then held hereunder; the recitals in such DEED OF PARTIAL RELEASE and PARTIAL RECONVEYANCE of any matters shall be conclusive proof of the truthfulness thereof; the grantee in such DEED OF PARTIAL RELEASE and PARTIAL RECONVEYANCE may be described as "The Person or Persons Legally Entitled Thereto", (B) consent to the making of any map or plat thereof; (C) join in granting any easement thereon; or (D) join in any extension agreement or any agreement subordinating the lien or charge hereof. Beneficiary shall execute his release upon such DEED if so requested by Trustee.

(9) Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this DEED OF TRUST and said note(s) to Trustee for cancellation and retention and upon payment of its fees, Trustee shall by DEED OF RELEASE and FULL RECONVEYANCE release and reconvey, without covenants or warranty, express or implied, the property then held hereunder. The recitals in such DEED OF RELEASE and FULL RECONVEYANCE of any matters shall be conclusive proof of the truthfulness thereof. The grantee in such DEED OF RELEASE and FULL RECONVEYANCE may be described as "The Person or Persons Legally Entitled Thereto."

(10) As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority during the continuance of this Trust, to collect the Property income, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such Property Income as it becomes due and payable. Upon such default, Beneficiary may at any time without notice, either in person by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, or the solvency of the Trustor, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such Property Income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorney's fees, upon taking possession of said property. The collection of such Property Income and the application thereof as foresaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold said property under this DEED OF TRUST. Beneficiary also shall deposit with Trustee this DEED OF TRUST, said note(s), and all documents evidencing expenditures secured hereby.

Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, said property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of: All sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.P.S. 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a

made a party in any legal or court proceeding as a result of litigation between the Trustor and Beneficiary or between a third party and either both of Trustor and/or Beneficiary, the attorney's fees and costs of Trustee shall be paid by either Trustor or Beneficiary, whichever being the non prevailing party.

(15) Time is of the essence of this DEED OF TRUST and each and every provision hereof.

(16) Trustor and Beneficiary agree that the trust relationship created by this instrument is strictly limited to the creation and enforcement of a security interest in real property. Thus, all Trustee's duties, fiduciary or otherwise, are strictly limited to those imposed by this document and A.R.S. 33-801 through 33-821, inclusive, and no additional duties, burdens or responsibilities shall be placed on the Trustee.

(17) The Trustor requests that a copy of any notice of Trustee's Sale hereunder be mailed to him at his address hereinbefore set forth. All notices required hereby shall be sent to the addresses indicated above unless such party shall have recorded a Request for Notice pursuant to A.R.S. 33-809A in the county recorder's office of the county where the property encumbered hereby is located, indicating a different address.

(18) This Deed of Trust, when recorded, shall operate as a Declaration of Abandonment of any homestead previously recorded concerning the property described herein.

(19) ADDITIONAL TERMS AND CONDITIONS: In the event the property is sold, transferred or conveyed in any manner, the entire unpaid principal balance together with accrued interest shall become immediately due and payable in full.

Thomas J. Prosser 9-4-04
 Thomas J. Prosser

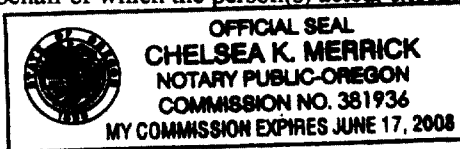
Maria E. Prosser 09-04-04
 Maria E. Prosser

STATE OF OREGON
 COUNTY OF KLAMMATH

} SS:

September 4th, 2004 - Chelsea K. Merrick

On September 2, 2004 before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Thomas J. Prosser and Maria E. Prosser, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



(This area for official notarial seal)

*State of Oregon
 County of Klamath*

WITNESS my hand and official seal.

Signature *Chelsea K. Merrick*
September 4th, 2004

NOTE: The parties are cautioned that by completing and executing this document, legal rights, duties and obligations are created. By signing, the parties acknowledge that they have been advised to seek and obtain independent legal counsel as to all matters contained in the within document prior to signing same and that said parties have obtained advice or choose to proceed without same.

Exhibit A

A parcel of land situate in Block 24, ELDORADO HEIGHTS ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon, and being more particularly described as follows:

Beginning at the Western most corner of Lot 7, Block 24, ELDORADO HEIGHTS ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, said corner being on the Southeasterly right of way line of Birch Street and from which the Northwest corner of said Block 24 bears North 40° 20' 30" East 129.10 feet distant; thence along said Southeasterly right of way line of Birch Street, North 40° 20' 30" East 71.10 feet; thence South 49° 39' 30" East 124.32 feet; thence South 15° 45' 10" West 85.19 feet, more or less, to the Northeasterly corner of Lot 10, Block 24; thence along the Northeasterly line of Lots 9 and 10 on a 6° 36' 40" curve to the left, 105.00 feet to the beginning of said curve; thence continuing along said Northeasterly line of Lot 9 and Lot 8, Block 24, North 49° 45' West 55.00 feet, more or less, to the point of beginning.