

MT079434

After recording return to:
Custom Mortgage, LLC
625 Hawthorne Avenue SE
Salem, OR 97301

2007-009877

Klamath County, Oregon



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06/01/2007 11:27:46 AM

Fee: \$56.00

TRUST DEED

THIS TRUST DEED, made this 31 day of May, 2007, between Richard A. Heathershaw and Debora E. Heathershaw, husband and wife, as Grantors, Michael J. Martinis, a licensed Oregon attorney in good standing, as Trustee, and Western Orthopedic Surgery and Sports Medicine 401K dtd 01/01/2002 acct # 1066-4753, Beneficiary,

WITNESSETH:

Grantors irrevocably grant, bargain, sell and convey to Trustee in trust, with power of sale, the property in Klamath County, Oregon, legally described as:

Lot 7, Block 4, FIRST ADDITION TO ANTELOPE MEADOWS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon

Subject to:

1. Subject to a 20 foot building setback along West lot line as shown on dedicated plat,
2. Subject to an 8 foot public utility easement along 7 East lot line as show on dedicated plat
3. Reservations and restrictions as contained in plat dedication to wit:
"hereby dedicate to the use of public as public ways forever all streets shown on said plat."
4. Right of Way Easement created by instrument, subject to the terms and provisions thereof,
Dated: December 19, 1980
Recorded: May 3, 2001
Volume: M01, page 20255, Microfilm Records of Klamath County, Oregon
In favor of: Kenneth D. Davis
For: To construct, operate and maintain an electric transmission and/or distribution line or system
5. Right of Way Easement created by instrument, subject to the terms and provisions thereof,
Recorded: May 3, 2001
Volume: M01, page 20259, Microfilm Records of Klamath County, Oregon
In favor of: Charles Halfiew

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For: To construct, operate and maintain an electric transmission and/or distribution line or system together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter attached to or used in connection with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantors herein contained and payment of the sum of One Hundred Twenty Thousand Dollars (\$120,000.00), with interest thereon according to the terms of a Promissory Note of even date herewith, payable to Beneficiary or order and made by Grantors, the final payment of principal and interest thereof, if not sooner paid, to be due and payable as set forth in the foregoing Promissory Note, a copy of which is attached to this Trust Deed, marked Exhibit A and by this reference incorporated herein.

The date of maturity of the debt secured by this instrument is the date stated above on which the final installment of said note becomes due and payable.

To protect the security of this Trust Deed, Grantors agree:

1. That all improvements now on or hereafter placed on the premises shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of the Beneficiary. Grantors shall not commit or suffer any waste of the property or any improvements hereafter placed thereon, or any landscaping of the subject property, and shall maintain the property and all improvements now on or hereafter placed thereon and alterations thereof in good repair and condition. Grantors shall promptly comply with all laws, ordinances, regulations, directions, rules and requirements of all governmental authorities applicable to the use or occupancy of the property, and in this connection, promptly make all required repairs, alterations and additions.

2. To keep all improvements now existing or which shall hereafter be placed on the subject real property insured against fire and other casualties covered by standard policy of fire, hazard and casualty insurance with extended coverage endorsements. The policy shall be written to the full replacement value with loss payable to the parties hereto as their interest appears at the time of loss, with priority in payment to the Beneficiary. Existing insurance policies shall be prorated as of the date of closing. Insurance proceeds paid as a result of any casualty or hazard shall be used to repair, rebuild or replace the improvements situated upon the subject real property. All repair, replacement or rebuilding shall be done in a good and workmanlike manner by a licensed building contractor. All plans, specifications, work orders, bids and proposals for any such repair, replacement or rebuilding shall be first approved by Beneficiary in writing. No casualty or loss sustained shall operate to abate any payments required to be made under the terms of this Trust Deed. All insurance policies shall be deposited with the Beneficiary and shall contain a stipulation providing that coverage will not be canceled or diminished without a minimum of ten (10) days prior written notice to the Beneficiary. Grantors shall, on demand, furnish to the Beneficiary written proof that all insurance premiums have been paid and are current. In the event of loss, the Grantors shall give immediate notice to the Beneficiary. The Beneficiary may make proof of all uninsured losses if Grantors fail to do so within 15 days of the casualty. All uninsured losses shall be borne by the Grantors on or after the date Grantors took possession of the property.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property; if the Beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the Beneficiary may require and to pay for filing same in the proper public office, or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the Beneficiary. The parties agree that this Trust Deed shall also constitute a security agreement under the Uniform Commercial Code.

4. To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to Beneficiary; should Grantors fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantors, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at his option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this Trust Deed, shall be added to and become a part of the debt secured by this Trust Deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the Grantors, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the Beneficiary, render all sums secured by this Trust Deed immediately due and payable and constitute a breach of this Trust Deed.

Grantors shall pay all real property taxes for each fiscal tax year in full no later than December 1st of each fiscal tax year.

5. To pay all costs, fees and expenses of this trust, including the cost of title search, as well as the other costs and expenses of the Trustee incurred in connection with or in enforcing this obligation and Trustee's attorney's fees actually incurred, either in enforcement hereof by private advertisement and sale or in any suit or action filed hereon or in any appeal therefrom.

6. To appear and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee; and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including any suit for the foreclosure of this Trust Deed, to pay all costs and expenses, including evidence of title and the Beneficiary's or Trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court, and in the event of an appeal from any judgment or decree of the trial court, Grantors further agree to pay such sum as the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's attorney's fees on such appeal.

7. This Trust Deed and the Promissory Note secured thereby are personal to the Beneficiary and the Grantors herein, and the Grantors shall not assign this agreement, sell this property on contract or transfer their rights herein or in the property covered hereby, or lease, rent or demise the subject property or any portion thereof to any other third party without the written consent of the Beneficiary first had and obtained, which such consent shall not be unreasonably withheld. Beneficiary may require such personal information concerning any buyer, assignee or grantee as a prudent lender would require of a prospective borrower. It is specifically understood and agreed that this transaction is personal between the parties

hereto and that the Beneficiary's desire to accept Grantors' personal responsibility is a material inducement to Beneficiary in executing this transaction. Grantors agree to pay Beneficiary all costs associated with reviewing the qualifications of any prospective Grantor or assignee including, but not limited to, legal fees incurred for such review.

8. The Beneficiary may, at his option, declare the full unpaid balance of the Promissory Note secured by this Trust Deed, including accrued interest, immediately due and payable in the event the Grantors assign, sell this property on contract, lease, or otherwise transfer any rights herein without Beneficiary's prior written consent thereto.

9. As a condition for granting his consent to any such assignment, lease, sale or transfer, Beneficiary may require an increase in the interest rate charged under this agreement and the aforesaid Promissory Note, as well as require that all the net proceeds of any such assignment, lease, sale or transfer be paid to Beneficiary to reduce or pay in full the balance of this Trust Deed and the Promissory Note secured thereby.

10. Grantors shall indemnify and defend the Beneficiary from any claim, loss or liability arising out of or related to any activity of Grantors on the property or any condition of the property.

11. In the event of a default hereunder, the Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the property exceeds the amount of the balance due hereunder, and any receiver appointed may serve without bond. Employment by Beneficiary shall not disqualify a person from serving as receiver. Upon taking possession of all or any part of the property, the receiver may:

- (a) Use, operate, manage, control and conduct the rental business on the property and make expenditures for all maintenance and improvements as in the receiver's judgment are proper;
- (b) Collect all rents, revenues, income, issues and profits from the property and apply such sums to the expenses of use, operation and management;
- (c) At receiver'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 the receiver deems appropriate.

12. If the revenues produced by the property are insufficient to pay expenses, the receiver may borrow, from the Beneficiary or otherwise such sums as receiver deems necessary for the purposes stated in this paragraph, and repayment of such sums shall be secured by this contract. The amount borrowed or advanced shall bear interest at the same rate as the balance of the purchase price hereunder from the date of expenditure until repaid and shall be payable by the Grantors on demand.

It is mutually agreed that:

13. In the event that any portion or all of said property shall be taken under the right of eminent domain or condemnation Beneficiary shall have the right, if he so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by Grantors in such proceedings, shall be paid to Beneficiary and applied by Beneficiary first upon any reasonable costs, expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and Grantors agree, at Grantors' own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon Beneficiary's request.

14. At any time and from time to time upon written request of Beneficiary, payment of his fees and presentation of this Trust Deed and the note for endorsement (in case of full reconveyance, for cancellation), without affecting the liability of any person for the payment of the indebtedness, Trustee may:

- (a) Consent to the making of any map or plat of said 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;
- (d) Reconvey, without warranty, all or any part of the property.

15. The Grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$200.00.

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

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

18. Upon default by Grantors in payment of any indebtedness secured hereby or in Grantors' performance of any agreement hereunder, the Beneficiary may declare all sums secured hereby

immediately due and payable. In such an event, the Beneficiary, at his election, may proceed to foreclose this Trust Deed in equity as a mortgage or direct the Trustee to foreclose this Trust Deed by advertisement and sale. In the latter event, the Beneficiary or the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this Trust Deed in the manner provided in ORS 86.735 to 86.795.

19. Should the Beneficiary elect to foreclose by advertisement and sale, then after default at any time prior to five days before the date set by the Trustee for the Trustee's sale, the Grantors or other persons so privileged by ORS 86.753, may pay to the Beneficiary or his successors in interest, respectively, the entire amount then due under the terms of the Trust Deed and any obligation secured thereby (including costs and expenses actually incurred in enforcing the terms of the obligation and Trustee's attorney's fees not exceeding the amounts provided by law) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default, in which event all foreclosure proceedings shall be dismissed by the Trustee.

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

21. When the Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of:

- (1) The expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney;
- (2) To the obligation secured by this Trust Deed;
- (3) To all persons having recorded liens subsequent to the interest of the Trustee in this Trust Deed as their interests may appear in the order of their priority; and
- (4) The surplus, if any, to the Grantors or to their successors in interest entitled to such surplus.

22. For any reason permitted by law, Beneficiary may, from time to time, appoint a successor or successors to any Trustee named herein or to any Successor Trustee appointed hereunder. Upon such appointment, and without conveyance to the Successor Trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or appointed hereunder. Each appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Trust Deed and its place of record, which, when recorded in the office of the County Clerk or Recorder of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the Successor Trustee.

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

24. The Grantors covenant and agree to and with the Beneficiary and those claiming under the Beneficiary, that the Grantors are lawfully seized in fee simple of said described real property and have a valid, unencumbered title thereto and that the Grantors will warrant and forever defend the same against all persons whomsoever.

25. This Trust Deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term "Beneficiary" shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a Beneficiary herein. In construing this Trust Deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

26. No work of visual art shall be installed in or on the premises without Beneficiary's prior written consent. Beneficiary may condition his consent to installation of a work of visual art in the Premises, as defined in the Visual Artists Rights Act of 1990 VARA at 17 USC §101, on Grantors' delivery to Beneficiary of a written waiver of moral rights under the VARA executed by the artist and to be executed by Beneficiary acknowledging that the work may be subject to destruction upon removal.

27. No Liens Against Real Property. Grantors agree that Grantors will not permit nor suffer any liens to be filed against the above-described real property.

28. PROHIBITION ON USE OF THE PROPERTY FOR HAZARDOUS SUBSTANCES

As used in this paragraph: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protect; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Grantors shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the property. Grantors shall not do, nor allow anyone else to do, anything affecting the property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the property. The preceding two sentences shall not apply to the presence, use, or storage on the property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential and farm uses

and to maintenance of the property (including, but not limited to, hazardous substances in consumer products).

Grantors shall promptly give Beneficiary written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the property and any Hazardous Substance or Environmental Law of which Grantors have actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the property. If Grantors learn, or are notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the property is necessary, Grantors shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create an obligation on Beneficiary for an Environmental Cleanup.

29. This document is the result of a cooperative negotiation between the parties, and the parties acknowledge that this document shall not be construed against the draft person for any purpose.

IN WITNESS WHEREOF, said Grantors have hereunto set their hands the day and year first above written.

GRANTORS:

Richard A. Heathershaw

Richard A. Heathershaw

Debora E. Heathershaw

Debora E. Heathershaw

STATE OF OREGON, County of Deschutes)

On this 31 day of May, 2007, personally appeared before me the above-named Richard A. Heathershaw and Debora E. Heathershaw, and acknowledged the foregoing instrument to be their voluntary act and deed.

[Signature]
Notary Public for Oregon

