

2008-010148

Klamath County, Oregon



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07/15/2008 11:18:25 AM

Fee: \$46.00

Recording Requested By:
Aspen Title & Escrow, Inc.
525 Main Street
Klamath Falls, OR 97601

When Recorded Return To:

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

Until requested otherwise, send all tax statements:

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ATE: 66004 MS

COVER SHEET

DOCUMENT: First Trust Deed

GRANTOR: Danny R. Allen and Cynthia L. Allen

BENEFICIARY: J.R. Perkins, III, acting as Personal Representative of the
Estate of Hettie B. Gilmore, Deceased

#46-A

FIRST TRUST DEED

THIS TRUST DEED is made this 14 day of July, 2008, between Danny R. Allen and Cynthia L. Allen, as Grantors, and Aspen Title Company, as Trustee, and J. R. Perkins, III acting as Personal Representative of the Estate of Hettie B. Gilmore, deceased, as Beneficiary.

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

Lots 34 and 35, Block 2, Industrial Addition to City of Klamath Falls, Klamath County, Oregon, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon.

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

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of Forty Seven Thousand Two Hundred Dollars (\$47,200.00), with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order and made by Grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable August 15, 2023, and all obligations which may arise hereafter of this Grantor to the Beneficiary.

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. In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the Grantor without first having obtained the written consent or approval of the beneficiary, which approval shall not be unreasonably withheld, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

To protect the security of this Trust Deed, the Grantor agrees:

1. To protect, preserve and maintain said property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of said property.
2. To complete or restore promptly and in good workmanlike manner any building or improvement which may be constructed, damages or destroyed thereon, and pay when due all costs incurred therefor.
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.

4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said premises against loss or damage by fire and such other hazards as the Beneficiary may from time to time require, in an amount not less than Forty Seven Thousand Two Hundred dollars (\$47,200), written in companies acceptable to the Beneficiary, with loss payable to the latter; evidence of insurance shall be delivered to the Beneficiary as soon as insured; if the Grantor shall fail for any reason to procure any such insurance and to deliver said evidence to the Beneficiary at least fifteen (15) days prior to the expiration of any policy of insurance now or hereafter placed on said buildings, the Beneficiary may procure the same at Grantor's expense. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected, or any part thereof, may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. To keep said premises free from construction liens and to pay all taxes, assessments and other charges than may be levied or assessed 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 the Grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantor, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this Trust Deed, shall be added to and become 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 Grantor, 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.

6. To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the Trustee incurred in connection with or in enforcing this obligation and Trustee's and attorney's fees actually incurred.

7. To appear in and defend any such 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 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 6 in all cases shall be fixed by the trial court and

in the event of an appeal from any judgment or decree of the trial court, Grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's attorney's fees on such appeal.

IT IS MUTUALLY AGREED THAT:

8. The Grantor covenants to and with the beneficiary, heirs, executors, and administrators and assigns, that he has lawfully seized in fee simple of said premises; that the same are free from all encumbrances, and that he will warrant and forever defend the same against all persons; further that he will do and perform all things required of him and pay all obligations due or to become due under the terms of the promissory note secured hereby, including principal and interest, according to the terms thereof.

9. 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 it 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 Grantor in such proceedings, shall be paid to Beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, and the balance be applied upon the indebtedness secured hereby; and Grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon Beneficiary's request.

10. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, 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 thereof; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The Grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein or 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 not be less than \$50.00.

11. Upon any default by Grantor hereunder, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

12. 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.

13. Upon default by Grantor in payment of any indebtedness secured hereby or in his 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 execute and cause to be recorded his written notice of default and his election to sell the said described property to satisfy the obligations secured hereby, whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this Trust Deed in the manner provided in ORS 86.740 to 86.795.

14. 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 Grantor or other person so privileged by ORS 86.760, may pay to the Beneficiary or his successors in interest, respectively, the entire amount then due under the terms of the Trust Deed and the obligation secured thereby (including costs and expenses actually incurred in enforcing the terms and the obligation and Trustee's and attorney's fees) 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.

15. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale. 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 the purchaser, its deed in form as required by law conveying the property sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the Trustee, but including the Grantor and Beneficiary, may purchase at the sale.

16. When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (1) the expenses of the sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (2) to the obligation secured by the Trust Deed, (3) to all persons having recorded liens subsequent to the interest of the Trustee in the Trust Deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the Grantor or to his successor in interest entitled to such surplus.

17. 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 such

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.

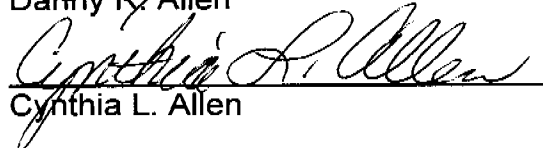
18. Trustee accepts this trust when this deed, duly executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be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

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

IN WITNESS WHEREOF, said Grantor has hereunto set his hand the day and year first above written.



Danny R. Allen



Cynthia L. Allen

STATE OF OREGON)
) ss.
County of Klamath)

The foregoing instrument was acknowledged by Danny R. Allen and Cynthia L. Allen, before me this 14 day of July, 2008.



Notary Public for Oregon

