

16579-6

WHEN RECORDED MAIL TO

Name
Street
Address
City &
State

Entry No. 416910
Recorded 11-23-88 1:46 PM
Bk. 408 Pg. 508 - Fee 1350
Lilly Mae Noorlander

Lilly Mae Noorlander

Recorder of Grand County

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST
WITH ASSIGNMENT OF RENTS

This Deed of Trust, made this 22nd day of November, 19 88, between William J. Heiman & Diane M. Heiman, husband and wife as joint tenants, as TRUSTOR, whose address is 51 North 100 West, Moab, Utah 84532 (Street and number) (City) (State)

SOUTH EASTERN UTAH TITLE COMPANY, a Utah corporation, as TRUSTEE, and First Western National Bank, as BENEFICIARY,

Witnesses: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property, situated in Grand County, State of Utah:

Beginning at a point which bears South 1,774.5 feet and West 266.1 feet from the North 1/4 Corner, Section 1, T26S, R21E, SLBM and proceeding thence N 88 deg. 43' E 10 feet; thence S 0 deg. 21' W 36 feet; thence S 88 deg. 43' W 64.7 feet; thence N 0 deg. 21' E 36 feet; thence N 88 deg. 43' E 54.6 feet to the point of beginning.

LESS any portion within the road right-of-way which abuts the property.

SUBJECT TO (recording information refers to the records of Grand County, Utah):

1. Taxes for the year 1988 and subsequent years.
2. The claim of the City of Moab to a strip along the South side of the property by reason of a Quitclaim Deed, dated August 21, 1961, executed by D. H. Shields and Lena Shields, husband and wife in favor of the City of Moab, recorded August 21, 1961, in Book 102, at page 173.
3. Encroachment of the property onto First West Street as shown on the survey plat of John E. Keogh made December, 1978.
4. A License to Encroach, dated February 27, 1979, executed by and between the City of Moab a Municipal Corporation and Duren Howard Shields and Lena Shields, recorded February 27, 1979, in Book 290, at pages 32-35.
5. An overlap in recorded descriptions onto the land to the South of the property.

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereto belonging, now or hereafter used or enjoyed with said property, or any part thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

For the Purpose of Securing:

(1) payment of the indebtedness evidenced by a promissory note of even date hereof in the principal sum of \$ 26,328.45 made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or ad-

vances as hereafter may be made 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; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

To Protect The Security of This Deed of Trust, Trustor Agrees:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general; and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property Trustor further agrees:

(a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and

(b) To allow Beneficiary to inspect said property at all times during construction.

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

2. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary, instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Trustor shall fail to provide satisfactory hazard insurance, the Beneficiary may procure, on the Trustor's behalf, insurance in favor of the Beneficiary alone. If insurance cannot be secured by the Trustor to provide the required coverage, this will constitute an act of default under the terms of this Deed of Trust.

3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

5. To pay at least 10 days before delinquency all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest, on said property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.

6. To pay to Beneficiary monthly, in advance, an amount, as estimated by Beneficiary in its discretion, sufficient to pay all taxes and assessments affecting said property, and all premiums on insurance therefor, as and when the same shall become due.

7. Should Trustor fail to make any payment or to do any act as herein provided, then 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; 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 which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees.

8. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of _____ per annum until paid, and the repayment thereof shall be secured hereby.

9. To pay to Beneficiary a "late charge" of not to exceed five cents (5¢) for each One Dollar (\$1.00) of each payment due hereunder or due pursuant to the aforesaid promissory note of even date hereof which is more than fifteen (15) days in arrears. This payment shall be made to cover the extra expense involved in handling delinquent payments.

IT IS MUTUALLY AGREED THAT:

10. Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

11. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the note for endorsement (in case of full reconveyance, for cancellation and retention) without affecting the liability of any person for the payment of the indebtedness secured hereby, and without releasing the interest of any party joining in this Deed of Trust, 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 Deed of Trust or the lien or charge thereof; (d) grant any extension or modification of the terms of this loan; (e) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable trustee's fees for any of the services mentioned in this paragraph.

12. As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Deed of Trust and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option.

13. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), 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 for or otherwise collect said 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.

14. 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 said 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.

15. 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 by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

16. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

17. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at per annum from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

18. Trustor agrees to surrender possession of the hereinabove described Trust property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

19. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

20. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

21. This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

22. Trustee accepts this Trust when this Deed of Trust, 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 Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

23. This Deed of Trust shall be construed according to the laws of the State of Utah.

24. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

25. The attached Addendum is part of and supplements this Deed of Trust.

Signature of Trustor

William H. Heiman
William H. Heiman
Diane M. Heiman
Diane M. Heiman

STATE OF UTAH }
County of HOOPER } ss.

On this 22nd day of November, A.D. 19 88 personally appeared before me William H. Heiman and
Diane M. Heiman
the signers of the within instrument, who duly acknowledged to me that they executed the same.

My Commission expires: 11-28-92

Patricia H. Holbrook
Notary Public, Residing at Moab, Utah

STATE OF UTAH }
County of _____ } ss.

On the _____ day of _____, A.D. 19 _____ personally appeared before me _____
and _____, who being by me duly sworn did say, each for himself, that he, the said _____
is the _____ President, and he, the said _____, is the _____ Secretary
of _____, and that the within and foregoing instrument was signed in behalf of said corporation by
authority of a resolution of its Board of Directors, and said _____ and _____
each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

My Commission expires: _____

Notary Public, Residing at _____

ADDENDUM TO DEED OF TRUST

This Addendum to Deed of Trust (this "Addendum") is part of and supplements the Deed of Trust, dated November 22, 1988 ("Deed of Trust"), among William J. Heiman and Diane M. Heiman, Joint Tenants with Full Rights of Survivorship ("Trustor"), and First Western National Bank ("Beneficiary"), to which this Addendum is attached. Trustor and Beneficiary agree:

1. Exceptions to Title. Trustor's title to the property described in the Deed of Trust (the "Property") is subject to the following exceptions or encumbrances (recording information refers to the records of Grand County, Utah):

A. Taxes for the year 1988 and subsequent years.

B. The claim of the City of Moab to a strip along the South side of the Property by reason of a Quitclaim Deed, dated August 21, 1961, executed by D. H. Shields and Lena Shields, husband and wife, in favor of the City of Moab, recorded August 21, 1961, in Book 102, at page 173.

C. Encroachment of the Property onto First West Street as shown on the survey plat of John E. Keogh made in December, 1978.

D. A License to Encroach, dated February 27, 1979, executed by and between the City of Moab, a Municipal Corporation, and Duren Howard Shields and Lena Shields, recorded February 27, 1979, in Book 290, at pages 32-35.

E. An overlap in recorded descriptions onto the land to the South of the Property.

2. Consent to Second Deed of Trust.

Beneficiary consents to Trustor's execution and delivery of a Deed of Trust from Trustor to Duren Howard Shields, a/k/a D. H. Shields, and Lena Shields ("Shields"), which Deed of Trust (the "Shields Deed of Trust") will encumber the Property and secure the obligations of Trustor to Shields according to the terms of an unrecorded Uniform Real Estate Contract, dated February 22, 1979, between Shields, as Seller, and Trustor, as Buyer, referred to in a Memorandum of Contract executed by Shields and Trustor, recorded February 27, 1979, in Book 290, at page 36, in the records of Grand County, Utah. Beneficiary's consent to the Shields Deed of Trust is on the condition that the Shields Deed of Trust is recorded after and subordinate to the Deed of Trust from Trustor for the benefit of Beneficiary.

3. Notice of Default and Right to Cure. If Trustor defaults on any obligation of Trustor to Beneficiary which is evidenced or secured by the Deed of Trust and if Shields or any successor in interest of Shields then has any estate or interest of record in the Property then Beneficiary will not accelerate the debt of Trustor to Beneficiary or exercise or cause Trustee to exercise any right or remedy of Beneficiary to foreclose any lien against or to sell the Property unless and until (a) Beneficiary gives notice, as provided in this Addendum, to Shields or the successor in interest of Shields of the default and states in the notice any amount that is then due and payable by Trustor and secured by the Deed of Trust, and (b) the default is not cured by either Trustor, Shields or the successor in interest of either Trustor or Shields within 30 days after the notice of default is given by Beneficiary. Shields or any successor in interest of Shields will have the right but no obligation to cure any default by Trustor according to the terms of this Addendum.

4. Restriction on Increase in Debt. Beneficiary will not increase the principal or interest of the debt of Trustor to Beneficiary secured by the Deed of Trust without the written consent of Shields, which

consent may be given or withheld by Shields, in Shields' sole and absolute discretion.

4. Notices. All notices, requests, demands or other communications made or given according to the terms of or in connection with this Addendum will be in writing and will be effective on the earlier of the date received or three days after the date deposited in the United States Mail by certified mail, return receipt requested, postage prepaid, and addressed as follows:

To Trustor:

William J. and Diane M. Heiman
51 North 100 West
Moab, Utah 84532

To Trustee:

South Eastern Utah Title Company
136 East Center
Moab, Utah 84532

Attention: Ms. Christy Hobbs
Manager

To Beneficiary:

First Western National Bank
P. O. Box 249
Moab, Utah 84532

Attention: Mr. Shane Seright
Assistant Cashier

To Shields:

D. H. and Lena Shields
48 North Shields Lane
Moab, Utah 84532

With a Copy to Counsel for Shields:

Sutin, Thayer & Browne
A Professional Corporation
P. O. Box 1945
Albuquerque, New Mexico 87103

Attention: Norman S. Thayer, Esq.

or to such other address or addresses as any of the above-named parties may specify by written notice to the other parties.

6. Benefits, Amendments. This Addendum is binding on Trustor, Trustee, Beneficiary and their respective successors and assigns, and benefits Shields and any successor in interest of Shields' estate or interest in the Property. This Addendum may only be amended in writing and may not be amended without the prior written consent of Shields or the successor in interest of Shields.

DATED: November 22, _____, 1988.

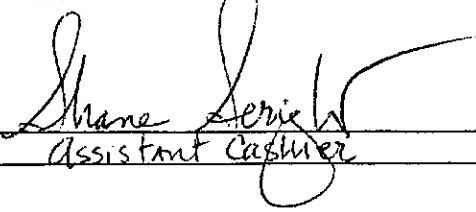
TRUSTOR:

BENEFICIARY:

FIRST WESTERN NATIONAL BANK



WILLIAM J. HEIMAN

BY 
Its Assistant Cashier



DIANE M. HEIMAN

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