

63575

K-38722
TRUST DEED

Vol. MM Page 12183

Parties.

Grantor.

MICHAEL W. FEILER and PENNY L. JACOBSON

Beneficiary.

DAVID H. WIRTZ and BETTY JO WIRTZ,
husband and wife

Trustee.

BEND TITLE COMPANY

1. Agreement. For valuable consideration, Grantor grants, bargains, sells and conveys to Trustee in trust for Beneficiary, with power of sale, the real property in Crook County, Oregon, together with appurtenances, described as:

Lots One (1), Two (2), Three (3) and Four (4), Block Four (4), Town of Chemult, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

The described real property, together with all improvements, fixtures and personal property now or hereafter located on or about such property, is referred to in this Trust Deed as the "Property". The Property is not currently used for agricultural, timber or grazing purposes.

2. Security.

A. This Trust Deed secures a Promissory Note between Grantor as Promisor and Beneficiary as Promisee, dated July 10, 1986, a copy of which is attached hereto as Exhibit "A" and the terms of which are hereby made a part of this Trust Deed (the "Note").

B. As additional security, Grantor hereby assigns to Beneficiary during the continuance of this trust, all rents, issues, royalties and profits of the Property. Until Grantor shall default in the payment of any indebtedness secured by this Trust Deed or in the performance of any other promise by Grantor under this Trust Deed, Grantor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable.

3. Warranties of Title. Grantor warrants and represents to Beneficiary that Grantor owns the Property in fee simple free from all liens and encumbrances except for the usual printed

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JOHNSON, MARCEAU, KARNOPP, PETERSEN & NASH
ATTORNEYS
835 N.W. BOND STREET
BEND, OREGON 97701-2799

exceptions in title insurance policies and the following
liens and encumbrances:

SUBJECT TO: NONE

4. Grantor's Duties. Grantor shall

- (a) forever defend the Property against all persons;
- (b) pay the Note according to all its terms and conditions;
- (c) pay all taxes and assessments and all charges of every nature which may be levied or assessed against the Property;
- (d) pay and otherwise cause to be removed according to their terms and conditions any and all other liens and encumbrances that are or may become charges against the Property or any part thereof;
- (e) complete or restore promptly and in good workmanlike manner any building or improvement on the Property which may be constructed, damaged or destroyed and pay when due all costs incurred for such repairs;
- (f) not remove or demolish any building or improvement on the described Property without the prior written consent of Beneficiary.

5. Beneficiary's Right to Perform on Behalf of Grantor. If Grantor fails to perform Grantor's obligations under this Trust Deed, Beneficiary may render such performance without waiving the default. All monies expended by Beneficiary in connection with such performance shall become additional indebtedness of Grantor secured by this Trust Deed, shall bear interest from the date of expenditure at the rate payable from time to time on the outstanding principal under the Note, and shall be immediately due and payable without demand by Beneficiary. Nothing contained in this paragraph shall be construed to require Beneficiary to incur any expense or perform any act on behalf of Grantor.

6. Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement cost basis covering all improvements on the Property, with loss payable to Beneficiary and Grantor, as their respective interests may appear. The policy shall be written in such form with such terms and by such insurance company that is reasonably acceptable to Beneficiary. Grantor shall deliver to Beneficiary a certificate of coverage from the insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of 10 days' written notice to Beneficiary. Beneficiary may inspect the policy at any time. In the event of loss, Grantor shall give immediate notice to Beneficiary and Beneficiary may make proof of loss if Grantor fails to do so within 15 days of the casualty.

7. Use of Property. Grantor agrees not to abuse, misuse or waste the Property, real or personal, and to maintain the Property in good condition.

8. Performance.

A. If Grantor performs the terms and conditions of this Trust Deed and pays the obligation secured hereby according to all its terms and conditions this conveyance shall be void, but otherwise shall remain in full force to secure the performance of this Trust Deed and the payment of the obligation it secures. The parties agree that in the event Grantor fails to perform any term or condition of this Trust Deed or the obligation it secures, or if proceedings of any kind are taken by anyone to foreclose any prior lien or encumbrance or any lien which Grantor is bound by this Trust Deed to remove on the Property or any part thereof, Beneficiary shall have the option to declare the whole unpaid amount of the obligation secured by this Trust Deed at once due and payable, and this Trust Deed may be foreclosed at any time thereafter.

B. Upon performance of the obligation secured hereby, Trustee shall, upon written request of Beneficiary, reconvey the Property to Grantor.

9. Default.

A. Upon default by Grantor in 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 of default and election to sell the Property, which

notice Trustee shall cause to be duly filed for record. If Beneficiary desires the Property to be sold, Beneficiary shall deposit with Trustee this Trust Deed, the Note and all documents evidencing expenditures secured hereby, whereupon the Trustee shall fix the time and place of sale and give notice thereof as then required by law. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee shall, if Grantor's default has not been cured in the manner then provided by law, sell said Property at the time and place fixed by the notice of sale in the manner then provided by law. Trustee shall deliver to its purchaser its deed in the form as required by law conveying the Property, but without any covenant or warranty, express or implied.

B. Upon any 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, enter upon and take possession of the Property, in Beneficiary's own name, sue for or otherwise collect such rents, issues and profits of the Property, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees at trial and on appeal, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said 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.

C. Nothing herein shall be construed as a waiver by Beneficiary of the right to elect to foreclose in the manner provided by law for the foreclosure of mortgages on real property. If suit or action is instituted to enforce any of the provisions of this Trust Deed, the prevailing party shall be entitled to such sums as the court may adjudge reasonable as attorneys' fees in said suit or action in any court including any appellate court in addition to costs and disbursements provided by statute. The prevailing party shall also recover the cost of a title report issued for purposes of the foreclosure.

10. Condemnation. Should the Property or any part thereof be taken under the right of eminent domain or condemnation, or in any other manner, Beneficiary shall have the right, if Beneficiary 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 attorneys' fees necessarily paid or incurred by Grantor in such proceedings, shall be paid to Beneficiary and applied by Beneficiary first upon any reasonable costs and expenses and attorneys' fees necessarily paid or incurred by Beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and Grantor agrees, at Grantor's own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon Beneficiary's request. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for purposes of this paragraph as a taking by condemnation.

11. Waiver. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive the right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay. Waiver of any provision in this Trust Deed shall not be held a waiver of any subsequent default or of any default in any other provision.

12. Governing Law; Severability. This Trust Deed shall be governed by the law of Oregon. In the event that any provision or clause of this Trust Deed or the Note conflicts with applicable law, such 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 the Trust Deed and the Note are declared to be severable.

13. Establishment of Trust.

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

B. Beneficiary may appoint another Trustee in place of Trustee named herein, and thereupon the Trustee so appointed shall be substituted as Trustee with the same effect as if originally named Trustee.

14. Sale and Transfer of Possession. Beneficiary has entered into the transaction for which this Trust Deed is

given on the basis of Grantor's personal liability, financial resources and responsibility. Therefore, it is specifically understood and agreed by Grantor that no interest in the Property shall be sold, conveyed, transferred, or otherwise disposed of in any manner by Grantor or Grantor's successors or assigns, directly or indirectly, without Beneficiary's prior written consent, which consent shall not be unreasonably withheld. In the event Beneficiary consents to a transfer, the transferee shall expressly assume all of Grantor's obligations under this Trust Deed and the Note, such consent and assumption shall not in any way relieve or discharge Grantor's obligations under this Trust Deed and the Note. In addition, Grantor shall reimburse all costs and fees reasonably incurred by Beneficiary in reviewing, investigating, and preparing documents in connection with any such transfer, including but not limited to attorney fees. Consent to one transfer shall not constitute consent to subsequent transfers or be deemed a waiver of this Section 14.

15. Underground Fuel Tanks. Grantor acknowledges the existence of underground fuel tanks on the Property. Sections 605-690 of Chapter 466 of the Oregon Revised Statutes provide, in part, that any person owning or having control over any oil spilled or released or threatening to spill or release shall be strictly liable without regard to fault for damages resulting from such spill or release or threatened spill or release and is also responsible for cleaning up the spill or release under the direction of the Department of Environmental Quality. The term "oil" is defined in the statutes to include gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

Grantor acknowledges that in the transaction which this Trust Deed is a part, Beneficiary has made no warranties whatsoever concerning the integrity of the underground fuel tanks or their contents. Grantor accepts the risk of any spill or release or threatened spill or release of any substance from the fuel tanks on the Property, and Grantor joint and severally releases, indemnifies and holds Beneficiary (and each of them) harmless from all liability, claims, damages, administrative or investigative fines, penalties or fees, attorney fees and other expenses resulting therefrom.

16. Successors in Interest. Subject to section 14 above, this Trust Deed shall inure to and bind the heirs, legatees, devisees, administrators, executors, successors, and assigns of the parties hereto. All obligations of Grantor hereunder

are joint and several. The term "Beneficiary" shall mean the owner and holder, including pledgors, of the Note secured hereby, whether or not named as beneficiary herein.

DATED this 10th day of July, 1986.

Grantor.

Michael W. Feiler
MICHAEL W. FEILER

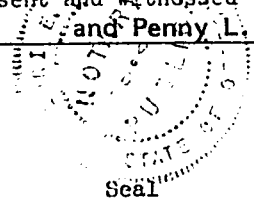
Penny L. Jacobson
PENNY L. JACOBSON

STATE OF OREGON)
) ss.
County of Deschutes)

Joseph A. Renfro
Witness

STATE OF OREGON)
) ss.
County of Deschutes)

On this 10th day of July, 19 86, Before me, a Notary Public in and for said County and State, personally appeared Joseph A. Renfro, known to me to be the same person whose name appears on the foregoing instrument as subscribing witness thereto and who, being duly sworn, acknowledged to me that he resides at Bend, in the County of Deschutes, State of Oregon, and that he knew the persons described in and who executed the foregoing instrument and that he was present and witnessed the execution of said instrument by Michael W. Feiler and Penny L. Jacobson.



Lori E. Black
Notary Public for Oregon

My commission expires 5/11/87

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JOHNSON, MARCEAU, KARNOPP, PETERSEN & NASH
ATTORNEYS
835 N.W. BOND STREET
BEND, OREGON 97701-2799

EXHIBIT "A"

12190

PROMISSORY NOTE

Parties.

Promisor. MICHAEL W. FEILER and PENNY L. JACOBSON

Promisee. DAVID H. WIRTZ and BETTY JO WIRTZ, as joint tenants with the right of survivorship

Agreement. For value received, Promisor promises to pay to Promisee or Promisee's order, at such place as Promisee designates, the principal sum of \$146,100.

The yearly interest rate on the unpaid balance of the principal sum is 9.5 percent.

Interest begins July 11, 1986.

The principal sum and interest shall be payable in installments of not less than \$1,228.49.

The first installment payment shall be made on August 11, 1986.

Subsequent installment payments shall be made on the same day of each month thereafter until all of the principal sum and interest is fully paid.

Promisor may prepay at any time without penalty.

No partial prepayment shall excuse Promisor from the regular installment payments due under this note.


Default. All obligations of Promisor are joint and several. Should default be made in any payment due under this note, the entire principal sum and accrued interest shall at once


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become due and payable without notice at the option of the holder of this note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. In the event of default, it is agreed that the holder of this note may recover such reasonable expenses as may be incurred in collection, including a reasonable attorneys' fee, and further including attorneys' fee in any appeal from a suit or action.

DATED this 10th day of July, 1986.

Promisor.


MICHAEL W. FEILER

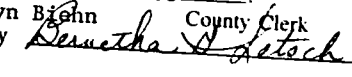

PENNY L. JACOBSON

Return to;
Bend Title Company
P.O. Box 752
Bend, Oregon 97709
Attn: Lori

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of _____ July _____ A.D., 19 86 at 11:42 o'clock A M., and duly recorded in Vol. M86
of _____ Mortgages on Page 12183

FEE \$37.00

Evelyn Biehn County Clerk
By 

Page 2. PROMISSORY NOTE

JOHNSON, MARCEAU, KARNOPP, PETERSEN & NASH
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