

OF

TRUST DEED

Vol. 1188 Page 2617

84651

THIS TRUST DEED, made this 26th day of January, 1988, between

JON JAY GARLINGHOUSE & CYNTHIA CATHERINE ALLYN, husband and wife
as Grantor, MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, as Trustee, and

TOM W. DAIN & DARLENE K. DAIN, husband and wife or survivor
as Beneficiary,

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property
Klamath County, Oregon, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

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 TWENTY THOUSAND SIX HUNDRED AND NO/100

(\$20,600.00) Dollars, 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 per terms of note, 1988.

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, 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, 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 and workmanlike manner any building or improvement which may be constructed, damaged 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 \$100,000.00, with loss payable to the latter; all policies 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 policies to the beneficiary at least fifteen 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 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 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 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 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 herebefore described, as well as the grantor, shall be bound to the same extent as if the grantor were personally bound to 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 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 expenses 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, 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. 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 the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance 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.
9. 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 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 deed or the lien or charge thereon; (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 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 \$50.00.

10. 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 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.

11. 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.

12. Upon default by grantor in payment of any indebtedness secured hereby or in his performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, 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, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. 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 real property to satisfy the obligation 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 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, the sums secured by the trust deed, the default may be cured by paying the sums then due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with trustee's and attorney's fees not exceeding the amounts provided by law.

14. 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 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 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 grantor and beneficiary, may purchase at the sale.

15. When 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 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.

16. 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, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

17. 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.

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 696.505 to 696.585.

3218

The grantor covenants and agrees to and with the beneficiary and those claiming under him, that he is lawfully seized in fee simple of said described real property and has a valid, unencumbered title thereto EXCEPT for prior Trust Deed in favor of Jack Bosse, which buyers herein DO NOT agree to assume and pay, and sellers further agree to hold buyers harmless therefrom and that he will warrant and forever defend the same against all persons whomsoever.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are: (a) * primarily for grantor's personal, family or household purposes (see Important Notice below).

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 includes 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.

* IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; if warranty (a) is applicable and the beneficiary is a creditor as such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures; for this purpose use Stevens-Ness Form No. 1319, or equivalent. If compliance with the Act is not required, disregard this notice.

(If the signer of the above is a corporation, use the form of acknowledgement opposite.)

Jon Jay Garlinghouse

Cynthia Catherine Allyn

STATE OF OREGON,

County of Lane

This instrument was acknowledged before me on February 4, 1980, by

Jon Jay Garlinghouse & Cynthia Catherine Allyn

[Signature]
Notary Public for Oregon

My commission expires 1-21-92

STATE OF OREGON,

County of Lane

This instrument was acknowledged before me on February 4, 1980, by Cynthia Catherine Allyn

[Signature]
Notary Public for Oregon

My commission expires 1-21-92

REQUEST FOR FULL RECONVEYANCE

To be used only when obligations have been paid.

TO:

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by said trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by said trust deed (which are delivered to you herewith together with said trust deed) and to reconvey, without warranty, to the parties designated by the terms of said trust deed the estate now held by you under the same. Mail reconveyance and documents to _____

DATED: February 4, 1980

Beneficiary

Do not lose or destroy this Trust Deed OR THE NOTE which it secures. Both must be delivered to the trustee for cancellation before reconveyance will be made.

TRUST DEED

(FORM No. 831)

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

Jon Jay Garlinghouse &
Cynthia Catherine Allyn
147 E. Hilliard Ln.
EUGENE OR 97404 Grantor

Tom H. Dain & Darlene K. Dain
PO Box 148
CRESCENT CAVE OR 97421 Beneficiary

AFTER RECORDING RETURN TO

MOUNTAIN TITLE COMPANY

STATE OF OREGON,

County of _____ } ss.

I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book/reel/volume No. _____ on page _____ or as fee/file/instrument/microfilm/reception No. _____, Record of Mortgages of said County. Witness my hand and seal of County affixed.

By _____
NAME TITLE
Deputy

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

A parcel of land located in the SE1/4 of Section 18, Township 24 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at the Southeast corner of said Section 18; thence North 01 degrees 03' 41" East along the East line of said Section 18, a distance of 560.00 feet to a 1/2 inch iron rod; thence North 89 degrees 08' 04" West along a line parallel with the South line of said Section 18, a distance of 365.00 feet to a 1/2 inch iron rod; thence North 01 degrees 03' 41" East along a line parallel with the said East line, 434.66 feet to a 1/2" iron rod; thence continuing along said parallel line, 42 feet more or less to the center thread of Crescent Creek; thence Westerly along the center thread of Crescent Creek, 515 feet more or less to a point on the Westerly right of way of an easement and right of way recorded May 7, 1979 in Volume M79, page 11935, Microfilm Records of Klamath County, Oregon; thence Southerly along said right of way, 40 feet more or less to a 1/2" iron rod; thence continuing Southerly along said right of way, South 18 degrees 02' 08" West, 171.21 feet to a 1/2 inch iron rod; thence continuing along said right of way along the arc of a 130.00 foot radius curve to the left, 141.41 feet (the chord bears South 13 degrees 07' 37" East, 134.54 feet to a 1/2 inch iron rod); thence continuing along said right of way along the arc of a 95.68 foot radius curve to the right, 75.73 feet; (the chord bears South 21 degrees 36' 51", 73.77 feet to a 1/2 inch iron rod); thence South 01 degrees 03' 41" West along said right of way, 80.75 feet to a 1/2 inch iron rod on the Northerly right of way of an easement recorded December 11, 1978 in Volume M78, page 27809, Microfilm Records of Klamath County, Oregon; thence North 89 degrees 08' 04" West along said Northerly right of way, 455.00 feet to a 1/2 inch iron rod; thence North 01 degrees 03' 41" East along a line parallel with the East line of said Section 18, a distance of 397.15 feet to a 1/2 inch iron rod; thence continuing North 01 degrees 03' 41" East along said parallel line, 25 feet more or less to the center thread of said Crescent Creek thence Northwesterly along said center thread, 300 feet more or less to a point that lies North 01 degrees 03' 41" East, 60 feet from a 1/2 inch iron rod which is North 89 degrees 08' 04" West 1575.00 feet, and North 01 degrees 03' 41" East 1089.38 feet from the point of beginning; thence South 01 degrees 03' 41" West, 60 feet to said last mentioned iron rod; thence continuing South 01 degrees 03' 41" West along a line parallel with the East line of said Section 18, 529.38 feet to a 1/2 inch iron rod; thence North 89 degrees 08' 04" West along a line parallel with the South line of said Section 18, a

distance of 1058.67 feet to a point on the North-South centerline of said Section 18; thence South 01 degrees 01' 37" West along said centerline, 560.00 feet to the South 1/4 corner of said Section 18; thence South 89 degrees 08' 04" East along the South line of said Section 18, a distance of 2633.33 feet to the point of beginning.

EXCEPTING THEREFROM a parcel of land located in the SE1/4 of Section 18, Township 24 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Commencing at the Southeast corner of said Section 18; thence North 89 degrees 08' 04" West along the South line of said Section 18, a distance of 870.00 feet to a 1/2 inch iron rod; thence North 01 degrees 03' 41" East along a line parallel to the East line of said Section 18, a distance 560.00 feet to a 1/2 inch iron rod; thence North 89 degrees 08' 04" West along a line parallel with the South line of said Section 18, a distance of 455.00 feet to a 1/2 inch iron rod; at the true point of beginning, thence North 01 degrees 03' 41" East along a line parallel with said East line, 397.15 feet to a 1/2 inch iron rod; thence continuing North 01 degrees 03' 41" East 25 feet, more or less to the center thread of Crescent Creek; thence Northwesterly along said center thread, 300 feet more or less to a point that lies North 01 degrees 03' 41" East, 60 feet from a 1/2 inch iron rod which is North 89 degrees 08' 04" West 1575.00 feet, and North 01 degrees 03' 41" East 1089.38 feet from the Southeast corner of Section 18; thence South 01 degrees 03' 41" West, 60 feet to said last mentioned iron rod; thence continuing South 01 degrees 03' 41" West along a line parallel with the East line of said Section 18, 529.38 feet to a 1/2 inch iron rod; thence North 89 degrees 08' 04" West along a line parallel with the South line of said Section 18, a distance of 1058.67 feet to a point on the North-South centerline of said Section 18; thence South 01 degrees 01' 37" West along said centerline, 560.00 feet to the South 1/4 corner of said Section 18; thence South 89 degrees 08' 04" East along the South line of said Section 18, a distance of 1763.33 feet; thence North 01 degrees 03' 41" East along a line parallel to the East line of said Section 18, a distance 560.00 feet to a 1/2 inch iron rod; thence North 89 degrees 08' 04" West along a line parallel with the South line of said Section 18, a distance of 455.00 feet to a 1/2 inch iron rod and the point of beginning.

PARCEL 2:

A strip of land 60 feet in width, the centerline of which is described as follows:

Commencing at the Southeast corner of said Section 18; thence North 89 degrees 08' 04" West along the South line of said Section, 840.00 feet to the point of beginning for said easement; thence North 01 degrees 03' 41" East, 640.65 feet; thence along the arc of a 125.68 foot radius curve to the left, 99.48 feet (the chord bears North 21 degrees 36' 51" West, 96.90 feet); thence along the arc of a 100.00 foot radius curve to the right, 108.78 feet, (the chord bears North 13 degrees 07' 38" West, 103.49 feet); thence North 18 degrees 02' 08"

East, 171.21 feet, (the chord bears North 9 degrees 10' 24" East, 61.62 feet); thence North 00 degrees 18' 40" East, 268.72 feet to the Southerly right of way of Pine Creek Loop Road as shown on the official plat of Tract 1052, CRESCENT PINES. The Southerly terminus of said easement being the South line of said Section 18 and the Northerly terminus being the Southerly right of way of said Pine Creek Loop Road. Also, the non-exclusive right to use the bridge presently installed across Crescent Creek in said easement as part of said easement and right of way.

Tax Account No.: 2407 018D0 05000

This Trust Deed is an "All Inclusive" Trust Deed and is second and subordinate to the Trust Deed now of record dated June 2, 1987 and recorded June 12, 1987 in Volume M87, page 10209 and rerecorded December 29, 1987 in Volume M87, page 23082, Microfilm Records of Klamath County, Oregon, in favor of Jack F. Bosse, which secures the payment of a Note therein mentioned.

Tom W. Dain & Darlene K. Dain, beneficiaries herein, agree to pay when due, all payments due upon the said promissory note in favor of Jack F. Bosse, and will save Grantors harmless therefrom. Should the said beneficiaries herein default in making any payments due upon said prior Note and Trust Deed, Grantors herein may make said delinquent payments and any sums so paid by Grantor herein shall then be credited upon the sums next to become due upon the Note secured by this Trust Deed.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Company the 24th day
of February A.D., 19 88 at 11:33 o'clock A. M., and duly recorded in Vol. M88
of Mortgages on Page 2677

FEE \$25.00

Evelyn Biehn, County Clerk
By [Signature]