

88117

KCTC-40576

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AFTER RECORDING RETURN TO:

Thomas K. Hooper
750 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204

TRUST DEED

DATED: June 10, 1988

BETWEEN: OLIVER R. SPIRES and DIANNE E. SPIRES,
AND: NISSAN MOTOR ACCEPTANCE CORPORATION,
a California, corporation,

GRANTOR

AND: KLAMATH COUNTY TITLE COMPANY
of Oregon,

BENEFICIARY

TRUSTEE

FOR VALUE RECEIVED, Grantor conveys to Trustee in trust the real property in the City of Klamath Falls, Klamath County, Oregon, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, together with all existing or subsequently erected or affixed buildings or improvements. The property is not currently used for agricultural, timber or grazing purposes.

Grantor presently assigns to Beneficiary all of Grantor's right, title and interest in and to all rents, revenues, income, issues and profits (the "Income") from the real property described above.

The real property described above is referred to as the "Property."

Beneficiary has loaned Oliver Spires Nissan, Inc. (Borrower), all of whose capital stock is owned by Grantor Oliver R. Spires, \$515,000 according to the terms of that certain Dealer Capital Loan Security Agreement (the "Agreement") and that certain Collateral Pledge Agreement (the "Pledge Agreement") given to evidence such indebtedness, both dated the same as this Deed, under which the final payment of principal and interest will be due on or before seven (7) years from the date of the Agreement.

The term "Indebtedness" as used in this Deed shall mean the principal and interest payable under the Agreement, the Pledge Agreement, and any amounts expended or advanced by Beneficiary to discharge obligations of Grantor or Borrower or expenses incurred

by Beneficiary to Trustee to enforce obligations of Borrower, as permitted under this deed, together with interest thereon as provided below.

This Trust Deed and the assignment of the Income are given to secure payment of the Indebtedness and performance of all obligations under this Deed, the Agreement, and the Pledge Agreement, and are given and accepted on the terms hereinafter set forth. The parties agree as follows:

1. **PAYMENT AND PERFORMANCE**

Grantor or Borrower shall pay to Beneficiary promptly when due all amounts, payment of which is secured by this Deed; Borrower and Grantor shall strictly perform all obligations imposed upon them by the Agreement, the Pledge Agreement and this Deed.

2. **POSSESSION AND MAINTENANCE OF THE PROPERTY**

2.1 Possession. Until in default, Grantor or Borrower may remain in possession and control of and operate and manage the Property and collect the income from the Property.

2.2 Duty to Maintain. Grantor or Borrower shall maintain the Property in good condition and promptly perform all repairs and maintenance necessary to preserve its value.

2.3 Nuisance, Waste. Grantor or Borrower shall neither conduct or permit any nuisance nor commit or suffer any strip or waste on the property.

2.4 Removal of Improvements. Grantor or Borrower shall not demolish or remove any improvements from the Property without the prior written consent of Beneficiary. Beneficiary shall consent if Grantor or Borrower makes arrangements satisfactory to Beneficiary to replace any improvements which Grantor and Borrower propose to remove with one of at least equal value. "Improvements" shall include all existing and future buildings, structures and parking facilities.

2.5 Beneficiary's Right to Enter. Beneficiary and its agents and representatives may enter upon the Property at all reasonable times to attend to Beneficiary's interest and to inspect the Property.

2.6 Compliance with Governmental Requirements. Grantor or Borrower shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Property. Grantor or Borrower may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals,

so long as Beneficiary's interest in the Property is not jeopardized.

3. TAXES AND LIENS

3.1 Payment. Grantor or Borrower shall pay when due all taxes and assessments levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor and Borrower shall maintain the Property free of any liens having priority over or equal to the interest of Beneficiary under this deed, except for the lien of taxes and assessments not due, and except as otherwise provided in Subsection 3.2.

3.2 Right to Contest. Grantor or Borrower may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Beneficiary's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor or Borrower shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor or Borrower have notice of the filing, secure the discharge of the lien or deposit with Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any costs, attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien.

3.3 Evidence of Payment. Grantor or Borrower shall upon demand furnish to Beneficiary evidence of payment of the taxes or assessments and shall authorize the appropriate county official to deliver to Beneficiary at any time a written statement of the taxes and assessments against the Property.

4. PROPERTY DAMAGE INSURANCE

4.1 Maintenance of 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 in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Beneficiary. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Beneficiary. Grantor shall deliver to Beneficiary certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days written notice to Beneficiary.

4.2 Application of Proceeds. Grantor shall promptly notify Beneficiary of any loss or damage to the Property. Beneficiary may make proof of loss if Grantor fails to do so within fifteen

(15) days of the casualty. All proceeds of any insurance on the Property shall be held by Beneficiary as part of the Property. If Grantor elects to restore the Property, Grantor and Borrower shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Beneficiary. Beneficiary shall, upon the satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Grantor elects not to restore the Property, Beneficiary shall retain a sufficient amount of the proceeds to pay all amounts due under this deed, and shall pay the balance to Grantor. Any proceeds which have not been paid out within one hundred eighty (180) days after their receipt and which Grantor has not committed to the repair or restoration of the Property shall be used to repay first, accrued interest and then principal of Grantor's and Borrower's Indebtedness. If Beneficiary holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor.

5. EXPENDITURE BY BENEFICIARY

If Grantor and Borrower fail to comply with any provision of this deed, Beneficiary may, at its option on Grantor and Borrower's behalf, take the required action and any reasonable amount that it expends in so doing shall be added to the Indebtedness. Amounts so added shall be payable on demand with interest from the date of expenditure at the same rate as the Note. The rights provided for in this section shall be in addition to any other rights or any remedies to which Beneficiary may be entitled on account of the default. Beneficiary shall not, by taking the required action, cure the default so as to bar it from any remedy that it otherwise would have had.

6. WARRANTIES OF GRANTOR

6.1 Title. Grantor warrants that they hold merchantable title to the Property in fee simple free of all encumbrances, except that certain Mortgage to South Valley State Bank to secure a note for \$655,000.

6.2 Defense of Title. Subject to the exceptions in the paragraph above, Grantor warrants and will forever defend the title against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Beneficiary or Trustee under this deed, Grantor shall defend the action at their expense.

7. CONDEMNATION

7.1 Application of Net Proceeds. If all or any part of the Property is condemned, Beneficiary may at its election require that all or any portion of the net proceeds of the award be applied on the Indebtedness. The net proceeds of the award shall

mean the award after payment of all reasonable costs, expenses, and attorneys' fees necessarily paid or incurred by Grantor, Beneficiary, and Trustee in connection with the condemnation.

7.2 Proceedings. If any proceedings in condemnation are filed, Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award.

8. POWERS AND OBLIGATIONS OF TRUSTEE

8.1 Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the request of Beneficiary and Grantor:

(a) Join in preparing and filing a map or plat of the Property, including the dedication of street or other rights in the public.

(b) Join in granting any easement or creating any restriction on the Property.

(c) Join in any subordination or other agreement affecting this deed or the interest of Beneficiary under this deed.

(d) Sell the Property as provided under this deed.

8.2 Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor and Borrower, Beneficiary or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

9. RECONVEYANCE ON FULL PERFORMANCE

If Grantor or Borrower pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor and Borrower under this deed, the Agreement and the Pledge Agreement, Beneficiary shall execute and deliver to Trustee a request for full reconveyance. The reconveyance fee required by law shall be paid by Grantor.

10. DEFAULT

The following shall constitute events of default:

(a) Failure of Borrower or Grantor to pay any portion of the Indebtedness within 10 days after written notice of nonpayment.

(b) Failure of Grantor, Borrower, or its associated

dealership to comply with any of the requirements or conditions contained in the Agreement or the Pledge Agreement.

(c) Appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, the commencement of any proceeding under any bankruptcy or insolvency laws by or against, or failure to obtain dismissal or deny the contents of any petition filed under any bankruptcy or insolvency laws within the time required to answer by, Grantor and Borrower.

(d) Failure of Grantor or Borrower to perform any other obligation under this deed within thirty (30) days after receipt of written notice from Beneficiary specifying the failure or, if the fault cannot be cured within thirty (30) days, failure within such time to commence and pursue curative action with reasonable diligence.

11. RIGHTS AND REMEDIES ON DEFAULT

11.1 Remedies. Upon the occurrence of any event of default and at any time thereafter, Trustee or Beneficiary may exercise any one or more of the following rights and remedies:

(a) Beneficiary shall have the right at its option without notice to Grantor or Borrower to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

(b) The Trustee shall have the right to foreclose by notice and sale, and the Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law.

(c) Beneficiary shall have the right, without notice to Grantor or Borrower, to take possession of the Property and collect the Income, including amounts past due and unpaid, and apply the net proceeds, over and above Beneficiary's costs, against the Indebtedness. In furtherance of this right, Beneficiary may require any tenant or other user to make payments of rent or use fees directly to Beneficiary. If the Income is collected by Beneficiary, then Grantor and Borrower irrevocably designate Beneficiary as Grantor's and Borrower's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and Borrower and to negotiate the same and collect the proceeds. Payments by tenants or other users to Beneficiary in response to Beneficiary's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Beneficiary may exercise its rights under this

paragraph either in person, by agent or through a receiver.

(d) Beneficiary shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect the Income from the Property and apply the proceeds, over and above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Beneficiary shall not disqualify a person from serving as a receiver.

(e) In the event Grantor or Borrower remain in possession of the Property after the Property is sold as provided above or Beneficiary otherwise becomes entitled to possession of the Property upon default of Grantor or Borrower, Grantor or Borrower shall become a tenant at will of Beneficiary or the purchaser of the Property and shall pay while in possession a reasonable rental for use of the Property.

(f) Trustee and Beneficiary or the purchaser of the Property and shall pay while in possession a reasonable rental for use of the Property.

11.2 Sale of the Property. In exercising its rights and remedies, the Trustee or Beneficiary shall be free to sell all or any part of the Property together or separately or to sell certain portions of the Property and refrain from selling other portions. Beneficiary shall be entitled to bid at any public sale on all or any portion of the Property.

11.3 Waiver; Election of Remedies. A waiver by either party of a breach of a provision of this deed shall not constitute strict compliance with that provision or any other provision. Election by Beneficiary to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor or Borrower under this deed after failure of the Grantor or Borrower to perform shall not affect Beneficiary's right to declare a default and exercise its remedies under this deed.

11.4 Attorneys' Fees; Expenses. In the event suit or action is instituted to enforce any of the terms of this deed, the prevailing party shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and on any appeal, together with court costs, the cost of obtaining title reports or title insurance and fees for the Trustee.

Any notice under this deed shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, directed to the address stated below. Any party may change its address for notices by written notice to other parties.

Beneficiary:

NISSAN MOTOR ACCEPTANCE CORPORATION
Attn: Manager, Dealer Credit
18701 South Figueroa Street
Carson, California 90248

Grantor:

OLIVER SPIRES NISSAN, INC.
1930 S. 6th Street
Klamath Falls, OR 97601

Trustee:

KLAMATH COUNTY TITLE COMPANY
422 Main Street
Klamath Falls, OR 97601

13. MISCELLANEOUS

13.1 Successors and Assigns. Subject to the provisions of applicable law with respect to successor trustees, this deed shall be binding upon and inure to the benefit of the parties, their successors and assigns.

13.2 Time of Essence. Time is of the essence of this deed.

13.3 Use of the Property. The Grantor and Borrower warrants that the proceeds of the loan represented by the above-described note and this trust deed are for an organization, or are for business or commercial purposes. This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or

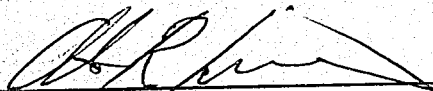
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accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses.

EXECUTED effective the day and date first above written.

GRANTOR:

OLIVER R. SPIRES and DIANNE E. SPIRES


Oliver R. Spires

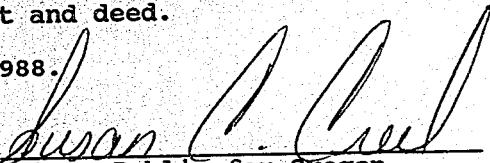

Dianne E. Spires

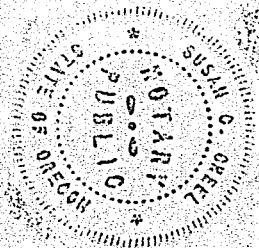
STATE OF OREGON)
) ss.
COUNTY OF KLAMATH)

Personally appeared before me the above named Oliver R. Spires and Dianne E. Spires who acknowledged the foregoing instrument to be their voluntary act and deed.

Dated this 10TH day of June, 1988.

Before me:


Notary Public for Oregon
My commission expires: 6-21-88



The following described real property situated in Klamath County, Oregon:

PARCEL 1: A piece or parcel of land situated in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the intersection of the Southerly right of way line of South Sixth Street and the Westerly right of way of the O. C. & E. Railroad spur; said point being also the Northeasterly corner of that parcel of land conveyed at page 8265 of Volume M68, of Klamath County Deed Records, thence North 58°24'45" West along the Southerly right of way line of South Sixth Street 218.95 feet to a point; thence North 55°48'55" West along said right of way line 180.4 feet to the most Northerly corner of that parcel of land conveyed at page 5330 of Volume M72, Klamath County Deed Records; thence South 0°45' East 451.4 feet to a point; thence North 88°11'20" East 203.85 feet to a point; thence South 0°51'30" East 57.0 feet to a point; thence North 89°15' East 129.0 feet to a point on the West right of way line of the O. C. & E Railroad spur; thence North 0°45' West along said right of way spur 284.2 feet to the point of beginning.

PARCEL 2: A piece or parcel of land situated in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon being more particularly described as follows:

Beginning at a point on the Westerly right of way line of the O. C. & E Railroad spur as the same is presently located and constructed from which the Northeasterly corner of that parcel of land conveyed on page 8265 of Volume M68 of Klamath County Deed Records bears North 0°45' West 284.2 feet distance; thence South 0°45' East along said railroad right of way 249.0 feet to a point; thence along a circular curve to the left (having a central angle of 14°25'10" a radius of 429.51 and a long chord which bears South 7°57'35" East 107.8 feet) a distance of 108.1 feet to a point; thence South 89°15' West 286.55 feet to a point; thence North 37°52'10" West 284.80 feet to a point; thence North 1°48'40" West 180.0 feet to a point; thence North 88°11'20" East 319.2 feet to a point; thence South 0°51'30" East 57.0 feet to a point; thence North 89°15' East 129.0 feet, more or less to the point of beginning.

PARCEL 3: A parcel of land situated in the SW $\frac{1}{4}$ of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the South line of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, from which the South quarter corner of said Section 33 bears North 89°26' East 313.83 feet distant; thence North 0°45' West 4.0 feet to an existing iron pin reference monument; thence North 0°45' West 176.00 feet to an existing iron pin; thence North 89°14'40" East 166.00 feet to an existing iron pin; thence North 0°45'30" West 76.50 feet to an existing iron pin on the Westerly right of way line of the O.C. & E Railroad spur as the same is presently located and constructed; thence following said right of way line along a 13.34 degree curve to the right, the long chord of which bears North 21°39'25" West 72.70 feet, a distance of 72.8 feet to an iron pin; thence South 89°15' West 286.55 feet to an iron pin; thence North 37°52'10" West 284.8 feet to an iron pin; thence North 1°48'40" West 180.0 feet to a point; thence North 88°11'20" East 115.35 feet to a point on the Southwest corner of that parcel designated as Parcel A in recorded survey no. 1922; thence North 0°45' West along the Westerly boundary of said

Page 2 Exhibit A

Parcel A, 451.4 feet to a point on the Southerly right of way boundary of South Sixth Street as the same is presently located and constructed; thence North $68^{\circ}29'25''$ West along the Southerly right of way line of South Sixth Street 429.1 feet to a point on the Easterly right of way line of the Southern Pacific Railroad projected Northerly; thence South $0^{\circ}45'$ East along said right of way line projected and along said right of way line 1195.1 feet to its intersection with the Northerly right of way line the O.C. & E. Railroad; thence South $51^{\circ}58'$ East along said Northerly right of way line 241.2 feet to its intersection with the South line of Section 33, Township 38 South, Range 9 East of the Willamette Meridian; thence North $89^{\circ}26'$ East 415.45 feet more or less, along said section line to the point of beginning.

PARCEL 4: A parcel of land situated in the SW $\frac{1}{4}$ of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point in the Southerly line of Sixth Street, City of Klamath Falls, County of Klamath, State of Oregon, said point lying distant 176.10 feet Westerly along the Southerly line of Sixth Street from the intersection of the Southerly line of the said Sixth Street with the Westerly line of Owens Street (formerly known as Front Street), running thence South $0^{\circ}57'30''$ East, a distance of 526.84 feet to a point; thence Southerly, along the arc of a curve, (said curve being tangent to the last mentioned course at the last mentioned point) concave to the left having a radius of 389.51 feet, a distance of 346.14 feet to a point in the Westerly line of Owens Street; thence South $0^{\circ}55'30''$ East, along the Westerly line of Owens Street, a distance of 50.02 feet to a point; thence Northerly along the arc of a curve (the tangent of the said curve bears North $56^{\circ}05'$ West at the last mentioned point) concave to the right, having a radius of 429.51 feet, a distance of 413.24 feet, to a point; thence North $0^{\circ}57'30''$ West and tangent to the last mentioned course at the last mentioned point, a distance 554.78 feet, to a point in the Southerly line of Sixth Street; thence South $56^{\circ}01'30''$ East, along the Southerly line of Sixth Street, a distance of 48.79 feet to the point of beginning,

LESS AND EXCEPT a tract of land described as follows: Beginning at the intersection of the Westerly line of Owens Street and the Southerly line of Sixth Street as now located; thence North $56^{\circ}01'33''$ West, 176.10 feet, more or less, to the Easterly line of Deed Volume 82, page 96, and the true point of beginning of the strip of land to be described; thence South $0^{\circ}57'30''$ East along the Easterly line of said deed, 110 feet; thence North $56^{\circ}01'33''$ West 48.79 feet to the Westerly line of Deed Volume 82, page 96; thence North $0^{\circ}57'30''$ West 110 feet to the Southerly line of Sixth Street; thence South $56^{\circ}01'33''$ East 48.79 feet to the true point beginning.

9044

REQUEST FOR FULL RECONVEYANCE

To be used when obligations have been paid.

TO: _____

The undersigned is the legal owner and holder of the Indebtedness secured by this deed. The entire Indebtedness has been paid and you are entitled to by the deed or applicable law to cancel evidences of Indebtedness (which are delivered together with the deed) and to reconvey the Property as required by law. The reconveyance and other documents should be mailed to: _____

DATED: _____, 19__.

BENEFICIARY: NISSAN MOTOR ACCEPTANCE CORPORATION

By _____

Title _____

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 10th day
of June A.D., 1988 at 3:28 o'clock P M., and duly recorded in Vol. M88-
of Mortgages on Page 9033

FEE \$63.00

Evelyn B. Bihn
By Bernetha A. Detoch County Clerk