

93910

Vol. mx8 Page

LINE OF CREDIT MORTGAGE
ADVANCELINESM
DEED OF TRUST

THIS DEED OF TRUST is made this 7 day of November, 19 88, among the Grantor,

Harold R. Heaton and Sally P. Heaton (herein "Borrower"),

Mr. Title Co. (herein "Trustee"),

and the Beneficiary, FIRST INTERSTATE BANK OF OREGON, N.A., a national banking association, (herein "Lender"), whose address is 601 Main St., Klamath Falls, OR 97601

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Klamath State of Oregon:

Moyina 1st addition lot 2 block 1

which has the address of 1111 Patterson Klamath Falls
(STREET) (CITY)
Oregon 97603 (herein "Property Address") hereinafter referred to as the "Property";
(ZIP CODE)

FOR THE PURPOSE OF SECURING: (i) payment of a revolving line of credit indebtedness in the principal sum of \$100,000.00 (or so much of that sum as may be advanced and outstanding), evidenced by an AdvanceLine Account Agreement (the "Agreement"), entered into by Borrower and Lender on the date first appearing above, and also evidenced by AdvanceLine Account Drafts, AdvanceLine Account Requests and AdvanceLine Account Checking Account Advances (Custom Credit), and Advance Telephone Requests as well as any extensions, renewals and/or modifications of that indebtedness; (ii) performance of each of Borrower's agreements under the Agreement; (iii) performance of each of Borrower's agreements in this Deed.

1. DESCRIPTION OF DEBT. The indebtedness secured by this Deed is a revolving line of credit. Funds may be advanced by Lender, repaid by Borrower and subsequently readvanced by Lender. All amounts secured by this Deed are subject to a variable rate of interest, which may change from time to time as recited in the Agreement. The Agreement provides that the periodic rate and Annual Percentage Rate for each day of any billing cycle will increase or decrease if our Prime Rate in effect on the first day of the preceding calendar month has increased or decreased from our Prime Rate in effect on the first day of the second preceding calendar month. However, the Annual Percentage Rate can't exceed the maximum rate provided in the Agreement. According to the Agreement, any amendment to it, including a change in interest rate, may, at Lender's option, affect the outstanding principal balance on the effective date of any such amendment. The Agreement is incorporated in its entirety into this Deed by this reference.

2. MATURITY DATE. The Agreement provides that, unless the Agreement is extended, renewed or modified, the final maturity date of indebtedness owing pursuant to the Agreement, if not sooner due and payable pursuant to the Agreement, is November 7, 19 88.

Borrower and Lender covenant and agree as follows:

3. TAXES AND LIENS. 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. Borrower shall maintain the Property free of any liens except for the Prior Lien (as defined in Paragraph 4 below).

4. PRIOR INDEBTEDNESS. The lien securing the indebtedness secured by this Deed of Trust is and remains secondary and inferior to recorded lien(s) securing payment of prior note(s) existing as of the date hereof (the "Prior Lien"). Borrower expressly covenants and agrees to pay or see to the payment of the indebtedness secured by the Prior Lien and to prevent any default thereunder. Borrower will immediately forward to Lender a copy of any notice of default it receives under the Prior Lien.

5. PROPERTY DAMAGE INSURANCE. Borrower shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Borrower fails to do so within 15 days of the casualty. Lender may, at its election, apply the proceeds to the reduction of the indebtedness hereby secured or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Borrower shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Upon satisfactory proof of such expenditure, Lender shall pay or reimburse Borrower from the proceeds for the reasonable costs of repair or restoration. Any proceeds which have not been paid out within 180 days after their receipt and which Borrower has not committed to the repair or restoration of the Property, shall be applied to the indebtedness secured hereby. If Lender holds any proceeds after payment in full of the indebtedness secured hereby, such proceeds shall be paid to Borrower. Any unexpired insurance shall inure to the benefit of, and pass to, the Purchaser of the Property covered by this Deed of Trust at any Trustee sale of the Property.

6. PRESERVATION AND MAINTENANCE OF PROPERTY. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of the Borrower's obligations under the declarations or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider were a part hereof.

7. PROTECTION OF LENDER'S SECURITY. Should Borrower fail to make any payment or do any act provided for in the Agreement or herein, then Lender or Trustee, but without obligation to do so and without notice to or demand upon Borrower and without releasing Borrower 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, Lender or Trustee being authorized to enter upon said Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or

the rights or powers of Lender 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, or in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable fees.

8. **INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspection of the Property.

9. **CONDEMNATION.** Any award resulting from a taking of all or any part of the Property by any governmental authority by eminent domain shall be paid to Lender to reduce the indebtedness secured hereby.

10. **JOINT AND SEVERAL LIABILITY; CO-SIGNERS:** All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Agreement, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property to Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Agreement or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Agreement, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

11. **NOTICE.** Unless the law requires otherwise, any notice provided for in this Deed of Trust shall be given by delivering it or by mailing such notice: (a) if to Borrower, at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein; (b) if to Lender, at Lender's address stated herein or at such other address as Lender may designate by notice to Borrower as provided herein. Notice shall be deemed to have been given when given in the manner designated herein.

12. **GOVERNING LAW; SEVERABILITY.** If any term of this Deed of Trust or of the Agreement conflicts with the law, such term shall be separated from the remaining terms, and all of the remaining terms shall remain in effect if they can be given effect without the conflicting term.

13. **BORROWER'S COPY.** Borrower shall be furnished a copy of the Agreement and of this Deed of Trust at the time of execution hereof.

14. **OTHER AGREEMENTS.** Borrower shall fulfill all the Borrower's obligations under any other loan agreement which Borrower enters into with Lender or any home improvement or repair assessments. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

15. **TRANSFER OF PROPERTY.** If Borrower or any successor in interest to Borrower in the Property sells, conveys, alienates, assigns or transfers the Property, or any part of it, or any interest in it, or becomes divested of Borrower's title or any interest in it in any manner or way, whether voluntary or involuntary, Lender shall have the right, at its sole option, to declare any indebtedness or obligation secured by this Deed, irrespective of the maturity date otherwise specified with respect to such indebtedness or obligation immediately due and payable, without notice or demand, and no waiver of this right shall be effective unless in writing and signed by Lender.

16. DEFAULT.

16.1 **Events of Default.** The following shall constitute events of default:

(a) Failure of Borrower to pay any portion of the indebtedness secured hereby when it is due.
(b) Failure of Borrower to make within the time required any payment for taxes or insurance or any other payment necessary to prevent filing of or discharge of any lien.
(c) Transfer or agreement to transfer any part or interest in the Property without the prior written consent of Lender.

(d) Insolvency on a balance sheet basis or business failure of Borrower; the commencement by Borrower of a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Borrower in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; the appointment or the consent by Borrower to the appointment of a receiver, trustee, or custodian of any of the Borrower's property; an assignment for the benefit of creditors by Borrower; the making or suffering by Borrower of a fraudulent transfer under applicable federal or state law; concealment by Borrower of any of its property in fraud of creditors; the making or suffering by Borrower of a preference within the meaning of the federal bankruptcy law; the imposition of a lien through legal proceedings or distraint upon any of the Property of Borrower which is not immediately discharged; or Borrower's failure generally to pay its debts as such debts become due. The events of default in this paragraph shall apply and refer to Borrower and to each of the individuals or entities which are collectively referred to as a "Borrower."

(e) Failure of Borrower to make any payment or perform any obligation under the Prior Lien within the time required thereunder, or commencement of any suit or other action to foreclose the Prior Lien.

(f) If the Property has been submitted to condominium ownership pursuant to the Oregon Condominium Act, or pursuant to any similar law of any other state, failure of Borrower to perform any of the obligations imposed on Borrower by the declaration submitting the Property to condominium ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder. If Borrower's interest in the Property is a leasehold interest and such Property has been submitted to condominium ownership, any failure of Borrower to perform any of the obligations imposed on him by the lease of the Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Property, or any failure of Borrower as a member of the association of unit owners to take any reasonable action within Borrower's power to prevent a default under such lease by the association of unit owners or by any member of the association, shall also constitute an event of default under this Deed of Trust.

(g) Failure of Borrower to perform any other obligation under this Deed of Trust after receipt of written notice from Lender specifying the nature of the default. No notice of default shall be required if during the prior 12 months Lender has already sent a notice to Borrower concerning default in performance of the same obligation.

(h) Borrower's breach of any covenant contained in the Agreement.

(i) Borrower's omission of material information, or making of any materially false or materially misleading statement, on Borrower's credit statement relied on by Lender in entering into the Agreement.

(j) Borrower's death.

(k) Borrow limits the indebtedness secured by this Deed of Trust pursuant to Section 4 of Chapter 716 of Oregon Laws 1987.

(l) The occurrence of anything relating to Borrower or the Property which causes Lender in good faith to deem itself insecure.

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

(a) Lender may declare the entire indebtedness secured hereby immediately due and payable.

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

(c) If the Property is submitted to condominium ownership, Borrower grants an irrevocable power of attorney to Lender to vote in its discretion on any matter that may come before the members of the association of unit owners. Lender shall have the right to exercise this power of attorney only after default by Borrower and may decline to exercise the power, as Lender may see fit.

(d) Trustee and Lender shall have any other right or remedy provided in this Deed of Trust, the Agreement or any other instrument delivered by Borrower in connection therewith, or available at law, in equity or otherwise.

16.3 **Waiver; Election of Remedies.** A waiver by either party of a breach of a provision of the Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Lender under this Deed of Trust are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower shall not affect Lender's right to declare a default and exercise its remedies under this Deed of Trust.

16.4 **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 its reasonable attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law. Whether or not any court action is involved, all reasonable expenses incurred by Lender that are necessary at any time in Lender's opinion for the protection of its interest or the enforcement of its right shall become a part of the indebtedness secured hereby and shall be payable at the time and shall bear interest from the date of expenditure until repaid at the same interest rate as applicable to the principal balance under the Agreement; provided, however, that at Lender's or Trustee's option, such sums may be added to the principal balance then due under the Agreement and be payable under the terms of the Agreement. Expenses covered by this paragraph include (without limitation) the cost of searching records, obtaining title reports, surveyors' reports, attorneys' opinions, title insurance, and fees for the Trustee.

17. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under Paragraph 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under Paragraph 16.2 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

18. **RECONVEYANCE.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all Notes/Agreements evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of preparation and recordation, if any.

19. **SUBSTITUTE TRUSTEE.** In accordance with applicable law, Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

20. **ATTORNEYS' FEES.** As used in this Deed of Trust and in the Agreement, "attorneys' fees" shall include attorneys' fees, if any, which shall be awarded by an appellate court.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Harold R. Heaton
BORROWER

Sally P. Heaton
BORROWER

STATE OF Oregon

County Klamath

BORROWER

BORROWER

) ss.

On this 7th day of November

Harold R. Heaton & Sally P. Heaton, 19 88, personally appeared the above named and acknowledged the foregoing instrument to be their voluntary act and deed.



Clara Cella
Notary Public for Oregon
My Commission expires: April 8, 1992

To Trustee:

REQUEST FOR RECONVEYANCE

The undersigned is the holder of the Agreement secured by this Deed of Trust. Said Agreement, together with all other indebtedness secured by the Deed of Trust, have been paid in full. You are hereby directed to cancel said Agreement and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date: _____

ADVANCELINESM DEED OF TRUST

GRANTOR

BENEFICIARY

AFTER RECORDING RETURN TO

1st Interstate Bank
601 Main St
KFO 97601

STATE OF OREGON,
County of Klamath ss.

Filed for record at request of:

Mountain Title Co.

on this 16th day of Nov. A.D., 19 88
at 12:10 o'clock P.M. and duly recorded
in Vol. M88 of Mortgages Page 19344

Evelyn Biehn

County Clerk

By

Darlene Mullendore

Fee, \$18.00

Deputy.