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Loan No. 000456

PruAdvance Account

The Prudential Bank and Trust Company

# SECOND TRUST DEED LINE OF CREDIT MORTGAGE

(This Second Trust Deed Secures a Line of Credit Agreement Which Provides, Subject to Certain Conditions, Refor Obligatory Advances and For a Variable Interest Rate) NIELSEN NIELSEN 0.9.71. ROBERT D. NELSEN AND DORIS J. NELSEN, HUSBAND AND WIFE AMONG: whose address is 3933 VALINDA WAY, KLAMATH FALLS OR 97603 ("Grantor"), MOUNTAIN TITLE AND: whose address is 222 SOUTH SIXTH, KLAMATH HILLS, OR 97601 THE PRUDENTIAL BANK AND TRUST COMPANY, whose address is 200 Galleria Parkway, Suite ("Trustee"), 1900, Atlanta, Georgia 30339, Atlention: Consumer Lending Officer ("Beneficiary"). AND: 09/18/1989. DATED:

RECITALS

Grantor desires to borrow money from Beneficiary on a revolving line of credit (the "PruAdvance Account Agreement issued pursuant to the "PruAdvance Account Agreement" between Grantor and Beneficiary of even date herewith) and to secure such borrowing with an interest in residential real property owned by Grantor, and Beneficiary desires to loan money to Grantor on such a basis. Therefore, in consideration of the covenants and conditions below,

# the parties agree:

1.1 The Real Property. Grantor irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, the real property in KLAMATH County, Oregon described on Exhibit A attached hereto, together with the tenements, hereditaments and appurtenances and all other rights belonging or in anywise now or hereafter appertaining to said real property, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in

1.2 Purpose. Grantor makes the grant in Paragraph 1.1 for the purpose of securing the performance of each connection with said real property (collectively, the "Real Property"). agreement of Grantor contained herein and in the PruAdvance Account Agreement and securing the payment by Grantor to Beneficiary of the sum of <u>FIFTY-FIVE THOUSAND AND NO/100</u> Dollars (\$<u>55,000.00</u>), plus any other amounts advanced by Beneficiary to Grantor, together with Interest thereon (the "Advances"), according to the terms of the PruAdvance Account Agreement, or any renewals or extensions thereof. The PruAdvance Account Agreement contains provisions regarding, among other things, Advances, use of proceeds, promises to pay, minimum and maximum amounts of credit outstanding, loan advance procedures and finance charges. The final payment of principal and interest under the PruAdvance Account Agreement, if not sooner paid, is due and payable 09/14/2004, unless the PruAdvance Account

1.3 Maturity. The date of maturity of the debt secured by this second Trust Deed is the date, stated above, on is reissued under the terms of the PruAdvance Account Agreement. which the entire outstanding balance of the PruAdvance Account becomes due and payable. However, upon the occurrence of an Event of Default as defined in Paragraph 5 hereof or under Paragraph 14 of the PruAdvance Account Agreement, Beneficiary may cancel the PruAdvance Account and shall have no further obligation to make any Advances against the PruAdvance Account, and any balance outstanding shall, without notice or demand, at Beneficiary's option,

1.4 Priority. All Advances made to or on behalf of Grantor under the PruAdvance Account Agreement or this second Trust Deed and all amendments to the PruAdvance Account Agreement or this Second Trust Deed shall relate become immediately due and payable. back to the time of the recording of this Second Trust Deed and shall have priority over any intervening liens or

encumbrances relating to the Real Property.

The above described Real Property is not currently used for agricultural, timber or grazing purposes.

3.1 Duty to Maintain. Grantor agrees to protect, preserve and maintain the Real Property in good condition and 3. GRANTOR'S COVENANTS AND WARRANTIES repair; not to remove or demolish any building or improvement thereon; and not to commit or permit any waste

3.2 Restoration. Grantor agrees to complete or restore promptly and in good and workmanlike manner any thereof.

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\*\* The maximum interest rate will not exceed 19.9%

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A Subsidiary of The Prudential

# SECOND TRUST DEED

building or improvement on the Real Property which may be constructed, damaged or destroyed and to pay when due all costs incurred therefor.

3.3 Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Real Property.

3.4 UCC Filing. If Beneficiary so requests, Grantor shall join in executing such financing statements pursuant to the Uniform Commercial Code as Beneficiary may require and shall pay for filing them 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 Beneficiary.

#### 3.5 insurance and Other Charges.

3.5.1 Payment. Grantor agrees to maintain property damage insurance on the Real Property in an amount sufficient to cover the amount of Grantor's credit limit amount under the PruAdvance Account Agreement, plus any amounts owing by Grantor under any other outstanding recorded trust deeds, deeds to secure debt, mortgages or other security interests affecting the Real Property and in an amount sufficient to avoid application of any coinsurance clause. This insurance may be obtained from any agent or company of Grantor's choice, subject to the terms in Paragraphs 3.5.2. Grantor also agrees to pay all taxes, assessments and similar charges that may become due on the Real Property. If Grantor fails to maintain that insurance or to pay those taxes, assessments or charges, Beneficiary may, at its option, pay any of the charges when payable and without notice. The amount paid shall be debited as an Advance and charged to the PruAdvance Account under the terms of the PruAdvance Account Agreement. Beneficiary may make Advances in excess of the then credit limit amount for said charges. The Real Property shall be bound to the same extent it is bound for the payment of all other Advances. All payments made by Beneficiary under this Paragraph 3.5.1 shall be immediately due and payable.

3.5.2 Insurance Companies, Policies and Certificates. Both the insurance company providing the policy required by Paragraph 3.5.1 and the form of the policy must be acceptable to Beneficiary. Such policy must provide for loss payable to Beneficiary, without contribution by Beneficiary, pursuant to the New York Standard or other mortgagee clause satisfactory to Beneficiary. Grantor shall deliver to Beneficiary a certificate of coverage from the insurer issuing the policy required by Paragraph 3.5.1 containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days advance written notice to Beneficiary. Grantor shall deliver to Beneficiary at least 10 days prior to the expiration of any insurance policy required by Paragraph 3.5.1 a certificate showing the placement of a renewal or substitute policy of insurance and indicating the premium for such policy has been paid.

3.5.3 Notice of Loss. In the event of loss, Grantor shall immediately notify Beneficiary, which may make proof of loss if it is not made promptly by Grantor.

3.5.4 Insurance Proceeds. Grantor and Beneficiary shall jointly adjust the insurance; provided, however, that if it is not paid within 45 days following the damage or destruction, the insurance may be adjusted by Beneficiary alone. Beneficiary is authorized and empowered to collect and receive insurance proceeds. If Beneficiary collects or receives such proceeds, the proceeds may, at the option of Beneficiary, either: (a) be retained and applied by Beneficiary toward payment of all or part of the PruAdvance Account in such order as Beneficiary is impaired, or (b) be paid over wholly or in part to the Grantor upon such conditions as Beneficiary may determine for the repair of buildings or improvements located on the Real Property or for the erection of new buildings or improvements in their place or for any other purpose or object satisfactory to Beneficiary. If Beneficiary elects to pay all or a portion of the insurance proceeds to Grantor, Beneficiary shall not be obligated to see to the proper application of any amount paid to Grantor.

3.6 Encumbrance of Real Property. Grantor agrees not to create, assume or allow to exist any trust deed, deed to secure debt, mortgage, lien, security interest, title retention device or other encumbrance covering all or any part of the Real Property or all or any part of Grantor's interest therein, whether legal or equitable, excluding only prior encumbrances consented to in writing by Beneficiary and liens for governmental charges which are not delinquent, without the prior written approval of Beneficiary.

#### 4. EMINENT DOMAIN

In the event that any portion or all of the Real 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 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 PruAdvance Account and the Advances in such order as Beneficiary may determine. 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.

#### 5. EVENTS OF DEFAULT

The following events shall be "Events of Default":

(a) Grantor fails to make any required minimum payment on the PruAdvance Account or any required payment under this Second Trust Deed when due;

(b) there is any change in circumstances which in the opinion of Beneficiary would materially adversely affect Grantor's ability to make any required minimum payment on the PruAdvance Account or on this Second Trust Deed when due;

(c) Grantor breaches any representation, covenant or warranty made in the PruAdvance Account Agreement or in this Second Trust Deed:

(d) Grantor fails in any other respect to comply with the terms of the PruAdvance Account Agreement or this Second Deed of Trust:

(e) a petition for relief under any chapter of the Bankruptcy Code shall be filed by or against Grantor or a receiver shall be appointed for all or any part of Grantor's assets;

(f) Grantor dies;

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# SECOND TRUST DEED

(g) Grantor enters into an agreement to sell or transfer ownership of all or any part of the Real Property or all or any part of Grantor's interest therein, whether legal or equitable;

(h) all or any part of the Real Property or all or any part of Grantor's interest therein, whether legal or equitable is sold or transferred with or without Grantor's consent or by operation of law;

(i) any representation, warranty or information furnished to Beneficiary in connection with the PruAdvance Account or this Second Trust Deed is false in any material respect;

(i) Grantor fails to make any required payment secured by the First Trust Deed (as defined in Section 10.1 below) when due or is otherwise in default under the terms of the First Trust Deed or any other instrument evidencing a security interest in the Real Property;

(k) Grantor becomes insolvent (as defined in the Uniform Commercial Code as in affect at the time in the State of Georgia).

6. REMEDIES

Upon the occurrence of an Event of Default, Beneficiary may take any one or more of the following steps; 6.1 Acceleration. Beneficiary may declare all sums secured hereby immediately due and payable.

6.2 Foreclosure. Beneficiary, at its election, may proceed to foreclose this Second Trust Deed as a mortgage or direct the Trustee to foreclose this Second Trust Deed by advertisement and sale.

6.3 Receiver. Baneficiary may have a receiver of the Real Property appointed; provided, however, an action may be instituted to appoint to receiver during foreclosure of this Second Trust Deed by advertisement and sales, unless, at the time the action is filed, this Second Trust Deed covers real property upon which is situated three or fewer residential units, one of which is occupied by the Grantor, the Grantor's spouse or the Grantor's child as the primary residence of such person. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Real Property exceeds the amount of the indebtedness secured by this Second Trust Deed. Employment by Trustee or Beneficiary shall not disqualify a person from serving as receiver. Grantor waives all defenses and consents to the appointment of a receiver at Beneficiary's option.

6.4 Possession. Beneficiary may, either through a receiver or as a lender-in-possession, take possession of all or any part of the Real Property, and Grantor shall peaceably surrender the same.

6.5 Nonwaiver. The entering upon and taking possession of the Real Property, the collection of rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Real 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.

6.6 Beneficiary may cancel the PruAdvance Account Agreement.

6.7 Remedies Nonexclusive. The remedies provided above shall be nonexclusive and in addition to any other remedies provided by law or equity.

#### 7. FORECLOSURE BY ADVERTISEMENT AND SALE

7.1 Notice. In the event Beneficiary elects to foreclose the Real Property by advertisement and sale, Beneficiary or Trustee shall execute and cause to be recorded a written notice of default and election to sell the Real Property to satisfy the obligations secured hereby, whereupon Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this Second Trust Deed in the manner provided in ORS 86.740 to 86.795.

7.2 Cure. Should Beneficiary elect to foreclose by advertisement and sale, then after default at any time prior to five days before the last date set by the Trustee for the trustee's sale, Grantor or any other person so privileged by ORS 86.753, may pay to Beneficiary or its successors in interest, respectively, the entire amount then due under the terms of this Second Trust Deed and the PruAdvance Acccunt Agreement (including costs and expenses actually incurred in enforcing the terms hereof and thereof, together with trustee's and attorney's fees not exceeding the amounts provided by law), other than such amounts as would not then be due had no default occurred. Such payment shall cure the default, in which event all foreclosure proceedings shall be dismissed by Trustee.

7.3 Sale. If the Event of Default is not cured pursuant to Paragraph 7.2, 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. Trustee may sell the Real Property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to 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 Trustee, but including Grantor and Beneficiary, may purchase at the sale.

7.4 Application of Sale Proceeds. When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (a) the expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (b) the PruAdvance Account, (c) to all persons having recorded liens subsequent to the interest of the Trustee in this second Trust Deed as their interests may appear in the order of their priority and (d) the surplus, if any, to Grantor or to his successor in interest entitled to such surplus.

8. SUCCESSOR TRUSTEE

For any reason permitted by law Beneficiary may appoint a successor or successors to the Trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveynance 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, containing reference to this Second Trust Deed and its place of record, which when recorded in the office of the county Clerk or Recorder of the county or counties in which the Real Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

#### 9. TITLE

Grantor covenants that he is lawfully seized in fee simple of the Real Property and has a valid, unencumbered title thereto except as provided in Paragraph 10.1 and Exhibit B hereto. Grantor agrees to warrant and forever defend

LENDER

### the same against all persons.

10. FIRST TRUST DEED

10.1 Subordination. This Second Trust Deed is subject and subordinate to the following trust deed or mortgage (the "First Trust Deed"): a <u>MORTGAGE</u> with <u>THE PRUDENTIAL HOME MORTGAGE COMPANY, INC.</u> as Beneficiary, dated <u>09/18/1989</u>, recorded <u>SLPE 18, 1989</u> in Book <u>MS9</u> Page <u>17557</u> in the Records of <u>KLAMATH</u> County, Oregon.

10.2 Grantor's Obligations With Respect to First Trust Deed. Grantor represents, warrants and agrees that:

(a) this Second Trust Deed is lawfully executed and delivered in conformity with the First Trust Deed;

(b) Grantor will promptly pay, when due and payable, the interest, installments of principal, and all other sums and charges mentioned in and made payable by the First Trust Deed;

(c) Grantor will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by Grantor under the First Trust Deed, within the periods (exclusive of grace periods) provided in the First Trust Deed, and will do all things necessary to preserve and to keep the First Trust Deed free from default;

(d) Grantor will promptly notify Beneficiary in writing of any default by Grantor in the performance or observance of any of the terms, covenants or conditions on the part of the Grantor to be performed under the First Trust Deed;

(e) Grantor will promptly mail Beneficiary a copy of any notice received from the mortgagee, beneficiary or trustee under the First Trust Deed, noting or claiming any default by Grantor in the observance or performance of any of the terms, covenants or conditions on the part of Grantor to be performed or observed under the First Trust Deed;

(f) Grantor will not, without the prior written consent of Beneficiary, enter into any agreement or accept the benefit of any arrangement whereby the holder of the First Trust Deed waives, postpones, extends, reduces or modifies the payment of any installment of principal or interest or any other item or amount required to be paid under the terms of the First Trust Deed or modifies any provision thereof;

(g) Grantor will, within ten (10) days after written demand from Beneficiary, use its best efforts to obtain from the mortgagee or beneficiary of the First Trust Deed and deliver to Beneficiary a certificate stating that such First Trust Deed is in full force and effect, is unmodified, that no notice of default thereunder has been served on the Grantor and stating whether or not there are any defaults thereunder, and specifying the nature of such defaults, if any;

(h) Grantor will furnish to Beneficiary, upon demand, proof of payment of all items which are required to be paid by Grantor pursuant to the First Trust Deed and proof of payment of which is required to be given to the mortgagee or beneficiary under the First Trust Deed; and

(i) Grantor shall execute and deliver, on request of Beneficiary, such instruments as Grantor may deem useful or required to permit Beneficiary to cure any default under the First Trust Deed or permit Beneficiary to take such other action as Beneficiary considers desirable to cure or remedy the matter in default and preserve the interest of Beneficiary in the Real Property.

The generality of the provisions of this Paragraph 10.2 relating to the First Trust Deed shall not be limited by other provisions of this Second Trust Deed setting forth particular obligations of Grantor which are also required of Grantor under the First Trust Deed.

#### 11. RECONVEYANCE UPON PAYMENT

Upon written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Second Trust Deed and the PruAdvance Account Agreement to Trustee for cancellation and retention and payment of its fees, Trustee shall reconvey, without warranty, the Real Property then held hereunder. The recitals in any reconveyance executed under this Second Trust Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

#### **12. GENERAL PROVISIONS**

12.1 Trust Deed Binding on Successors and Assigns. This Second Trust Deed shall be binding on and inure to the benefit of the successors and assigns of Grantor, Trustee and Beneficiary except that Grantor may not assign his obligations and liabilities under the PruAdvance Account Agreement on this Second Trust Deed to any other person.

12.2 Duty to Defend and Indemnify. Grantor agrees to appear in and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee. In any suit, action or proceeding in which Beneficiary or Trustee may appear, including any suit for the foreclosure of this Second Trust Deed, Grantor agrees to pay all costs and expenses, including evidence of title and Beneficiary's and Trustee's attorney's fees. The amount of attorney's fees 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 and Trustee's attorney's fees on such appeal.

12.3 Notice. Any notice under this Second Trust Deed shall be in writing. Any notice to be given or document to be delivered under this Second Trust Deed shall be effective when either delivered in person or deposited as registered or certified mail, postage prepaid, addressed to the party at the address first stated in this Second Trust Deed; provided that any notice pursuant to exercise of the Trustee's power of sale in the event of default shall be sufficient if such notice complies with all provisions of Oregon law applicable to exercise of such powers of sale. Any party may by notice to the other designate a different address.

12.4 Expenses and Attorney Fees. In the event that Beneficiary or Trustee shall take any action, judicial or otherwise, to enforce the PruAdvance Account Agreement or any provision of this Second Trust Deed or if Beneficiary or Trustee shall be required to appear in any proceeding to protect and maintain the priority of Trustee's title to the Real Property, Trustee or Beneficiary (or both) shall be entitled to recover from Grantor all expenses which it may

## SECOND TRUST DEED

reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports and surveryors' reports, and its attorney fees, whether incurred in a suit or action or any appeals from a judgment or decree therein or in connection with nonjudicial action. Grantor shall reimburse Beneficiary or Trustee (or both) for expenses so incurred on demand with interest from the date of expenditure until repaid at a rate equal to the highest rate then applicable on any indebtedness secured by this Second Trust Deed.

12.5 Beneficiary's Right to Cure. If Grantor fails to perform any obligation required of it under this Second Trust Deed, Beneficiary may, without notice, take any steps necessary to remedy such failure. Grantor shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at a rate equal to the highest rate then applicable on any indebtedness secured by this Second Trust Deed. Such action by Beneficiary shall not constitute a waiver of the default or any other right or remedy which Beneficiary may have on account of Grantor's default.

12.5 Applicable Law. This Second Trust Deed shall be governed by the laws of Oregon.

12.7 Time of Essence. Time is of the essence of this Second Trust Deed.

12.8 Headings. The headings to the paragraphs of this Second Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Second Trust Deed.

12.9 Incorporation and Definitions. The PruAdvance Account Agreement is incorporated herein by this reference and is made a part of this Second Trust Deed. In the event of any conflicts or inconsistencies between the provisions of the PruAdvance Account Agreement and the provisions of this Second Trust Deed, the provisions of the PruAdvance Account Agreement, as it may be amended from time to time, shall control. Unless provided otherwise herein, all words and phrases used in this Second Trust Deed shall have the same meanings as they have in the PruAdvance Account Agreement. Except as supplemented and amended by the PruAdvance Account Agreement, the Second Trust Deed shall remain in full force and effect in accordance with the terms hereof. All references to this "Second Trust Deed" shall mean this Second Trust Deed as supplemented and amended by the PruAdvance Account Agreement.

12.10 Severability. If any provision of this Second Trust Deed shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Second Trust Deed, but this Second Trust Deed shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12.11 Waivers. No delay or failure by Beneficiary in the exercise of any right or remedy shall operate as a waiver of any of Beneficiary's rights under the PruAdvance Account Agreement or this Second Trust Deed, and no single or partial exercise by Beneficiary of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. Beneficiary shall be under no duty to exercise any of or all of the rights and remedies given by the PruAdvance Account Agreement or this Second Trust Deed, and, in addition, no party to this instrument shall be discharged from his or her obligations, liabilities or undertakings thereunder: a) should Beneficiary release or agree not to sue any person against whom the party has to Beneficiary's knowledge, a right of recourse, or b) should Beneficiary agree to suspend the right to enforce the PruAdvance Account Agreement or this Second Trust Deed against such person or otherwise discharge such person.

IN WITNESS WHEREOF, Grantor has hereunto set his hand the day and year first above written.

Artis J. Mielsen ROBERT D. NIELSON Mickey Doris J. Mielsen DORIS J. NIELSON Mielson

September 18, 1989

STATE OF OREGON

COUNTY OF flamath

This instrument was acknowledged before me on Robert D.Nielsen & Doris j. Nielsen

Before me Authin Willie commission ends 6/16/92 Notary Public for Oregon

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Grantor				
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The Prudential Bank and Trust Co Beneficiary	ompany			
When recorded return to:				

The Prudential Home Mortgage Company PruAdvance P.O. Box 1629 Minneapolia, MN 55440

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# 17651

EXHIBIT A containing legal description Lot 4 in Block 18 of TRACT NO. 1127 - NINTH ADDITION TO SUNSET VILLAGE, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Tax Account No 3909 012CD 04700

of <u>Sept.</u> A.D., 19 <u>Of</u> a <u>on Page</u> <u>Increase</u> of <u>Mortgages</u> <u>Evelyn Biehn</u> <u>County Clerk</u> By <u>OAulune</u> <u>Yuilling</u>	