

9021

TRUST DEED

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THIS TRUST DEED, made this 8th day of December, 1989, between

MICHAEL G. SWINGER, SR. & MARGARET E. SWINGER, husband and wife  
as Grantor, MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, as Trustee, andGERALD A. SMAILEY  
as Beneficiary,

## WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property  
in Klamath County, Oregon, described as:That portion of Lot 4 lying Westerly of the Klamath Falls-Malin Highway, and that portion  
of the Northerly 584.1 feet of Lot 3 lying Westerly of the Klamath Falls-Malin Highway, in  
Section 2, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County,  
Oregon.

Tax Account No. 4110-200-400

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 ONE HUNDRED THREE THOUSAND FIVE HUNDRED AND NO/100 (\$103,500.00) 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, 19The 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 \$... FULL VALUE... written in  
companies acceptable to the beneficiary, 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 or become delinquent and promptly deliver receipts therefor  
to the beneficiary; should the grantor fail to make payment of any taxes, assess-  
ments, 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 its option, make payment thereof,  
and the amount so paid, with interest at the rate set forth in the note secured  
hereby, together with the obligations described in paragraph 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  
hereinbefore described, as well as the grantor, shall be bound to; the  
same extent that they are bound for 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.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 the beneficiary; should the grantor fail to make payment of any taxes, assess-  
ments, 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 its option, make payment thereof,  
and the amount so paid, with interest at the rate set forth in the note secured  
hereby, together with the obligations described in paragraph 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  
hereinbefore described, as well as the grantor, shall be bound to; the  
same extent that they are bound for 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, in-  
cluding evidence 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 ap-  
pellate court shall adjudge reasonable as the beneficiary's or trustee's attor-  
ney'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 ben-  
eficiary 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 com-  
pensation, promptly upon beneficiary's request.9. At any time and from time to time upon written request of ben-  
eficiary, payment of its fees and presentation of this deed and the note for  
endorsement (in case of full reconveyances, 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 ingranting any easement or creating any restriction thereon; (c) join in any  
subordination or other agreement affecting this deed or the lien or charge  
thereof; (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 \$5.10. Upon any default by grantor hereunder, beneficiary may at any  
time without notice, either in person, by agent or by a receiver to be ap-  
pointed by a court, and without regard to the adequacy of any security for  
the indebtedness hereby secured, enter upon and take possession of said prop-  
erty 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 attor-  
ney's fees upon any indebtedness secured hereby, and in such order as ben-  
eficiary 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 event  
the beneficiary elects to foreclose by advertisement and sale, 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,  
sums secured by the trust deed, the default may be cured by paying the  
entire amount 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  
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 im-  
plied. 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 or 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, in-  
cluding 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 suc-  
cessors to any trustee named herein or to any successor trustee appointed here-  
under. 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.

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