

21902

Order Number:

Loan Number:

Recording Requested by and  
When Recorded, Please Mail To:The Bank of Newport  
P.O. Box 7  
Newport, OR 97365  
Attn: Howard I. Hansen

mtc 24077-DN

COMMERCIAL TRUST DEED  
With Assignment of Rents and Leases  
(Oregon)This Commercial Trust Deed with Assignment of Rents and Leases  
("Trust Deed"), is made this 2nd day of October, 1990BY: Joseph W. Green  
P.O. Box 759  
Portland, OR 97207

"Grantor"

TO: Henry L. Bauer, an Oregon Attorney  
1100 Commonwealth Building  
Portland, OR 97204

"Trustee"

IN FAVOR OF: The Bank of Newport  
P.O. Box 7  
Newport, OR 97365

"Beneficiary"

1. GRANT AND ASSIGNMENT. Grantor, in consideration of the indebtedness herein recited, and to secure payment of all sums and performance of all obligations herein, irrevocably grants, conveys, and assigns to Trustee, In Trust, With Power of Sale, the real property and rights described below:

1. The real property located in Klamath County, Oregon described in Exhibit "A", attached hereto and incorporated herein by reference (hereinafter "Real Property") together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter pertaining, including any after-acquired title or reversion;

- 1.2 The rents, issues and profits thereof, and all rights of

COMMERCIAL TRUST DEED  
JOSEPH W. GREEN

the Grantor under all present and future leases thereof, subject, however, to the right and authority thereafter given to Grantor to collect and apply such rents, issue, and profits prior to any default hereunder;

1.3 All buildings, pavings, landscaping, structures, and improvements presently situated or hereafter constructed or placed thereon;

1.4 All easements, appurtenances, party walls, water and water rights, air rights, development rights, access and rights to streets, roads, alleys and ways, and all minerals, oil, gas, and other hydrocarbon substances on, under, or relating thereto;

1.5 All Equipment, including but not limited to, all apparatus, all machinery, all appliances (whether or not built-in), all fixtures and trade fixtures, including, but not limited to, landscaping, plumbing, lighting, heating, cooking, refrigeration, air conditioning, communication, and security fixtures, all furniture and furnishings, including, but not limited to, window, door, ceiling, floor, and wall treatments, and all articles of personal property of any kind and nature whatsoever now owned or hereafter acquired by Grantor, attached to, appurtenant to, located on, forming a part of, or used in connection with the construction, completion, maintenance, repair, reconstruction, alteration, operation, use or occupancy of the Real Property, together with all present and future attachments, parts, fixtures, special tools, accessories, and equipment therefor and all accessions, additions, and improvements thereto, substitutions, and replacements thereof, and all products and proceeds thereof; and

1.6 All proceeds and claims arising on account of any damage to or taking of the Real Property or any improvements thereon or any part thereof, and all causes of action, payments and recoveries for any loss or diminution in the value of the Real Property or any improvements thereon and the interruption of business conducted on or from the property, and all insurance proceeds relating to any of the above.

All of the foregoing items, whether now or hereafter installed or existing, are hereby declared to be, for the purposes of this Trust Deed, a part of the realty, the specific enumerations herein not excluding the general, and to the extent that any of the same shall be deemed at law or in equity between the parties or as to third persons other than Real Property, then the same shall be included within the personal property security interest hereinafter



enumerated.

2. PERSONAL PROPERTY SECURITY INTEREST. The Grantor also hereby grants to the Beneficiary a security interest in all of the following described personal property, whether now or hereafter existing, and in which the Grantor now has or hereafter obtains any right, title, estate or interest, and in the rents, revenues, issues, and profits therefrom.

- 2.1 All goods located on the Real Property and used or intended for use in the operation or occupancy of the Real Property or in any improvements thereon, but which are not effectively made Real Property under paragraph 1 above, including but not limited to, all appliances, furniture and furnishings, inventories, equipment, including building service equipment, and building materials, and supplies; together with all present and future attachments, parts, fixtures, special tools, accessories, and equipment therefore and all accessories, additions, and improvements thereto, substitutions, and replacements thereof, and all products and proceeds thereof;
- 2.2 All general intangibles relating to the use of the Real Property, now existing or hereafter arising, including but not limited to, all names under or by which the Real Property or any improvements on the Real Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Real Property and licenses and permits necessary or incidental to any such business; and all shares of stock or other evidence of ownership of any part of the Real Property that is owned by the Grantor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property and all proceeds thereof; and
- 2.3 All planner, architect, engineer or contractor contracts, workproduct, plans and specifications, market feasibility reports, appraisals, or the like, now or hereafter entered into or prepared or used or intended for use in connection with the development of the Real Property, now existing or hereafter arising, and in all proceeds thereof.

Grantor shall promptly execute the necessary financing statements in the form required by the Uniform Commercial Code in effect in Oregon which statements shall be filed at Grantor's expense in all

public offices where filing is required to perfect the security interest of Beneficiary in the collateral. Beneficiary may, at any time and at its option without further authorization from Grantor, file copies of this instrument as the financing statement.

3. The term "Property" hereinafter shall refer to all of the above-described Real Property and personal property and any leasehold interest granted to the Trustee and any other present or future interest of the Grantor and any successor in interest of the Grantor, unless indicated or required by the context.

4. WARRANTIES. The Grantor hereby warrants:

- 4.1 Grantor is the owner in fee simple absolute of the above-described Property and every part thereof and the same is free from all liens and encumbrances, except those permitted exceptions set forth in Exhibit "B" hereto;
- 4.2 Grantor has the right and power to grant, convey, and assign the above-described Property to Trustee. Grantor will forever warrant and defend the above-described Property against any and all claims thereon of any and all persons;
- 4.3 The above-described Real Property is not currently used for agricultural, timber, or grazing purposes;
- 4.4 That (a) No Hazardous Substance is currently being generated, stored or disposed of on, under or in the Property; (b) That neither Grantor nor, to the best of Grantor's knowledge, any other person or entity has ever caused or permitted any Hazardous Substance to be generated, placed, held, located or disposed of on, under or in the Property; and (c) That neither Grantor, nor to the best of Grantor's knowledge, has any other person or entity ever used the Property as a dump site, permanent or temporary storage site, or transfer station for any Hazardous Substance. Grantor further represents and warrants to Beneficiary that Grantor has not received any notice of, nor is Grantor aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, and that there is no action or proceeding pending before or appealable from any court, quasi-judicial body or administrative agency relating to Hazardous Substances affecting or alleged to be affecting the Property.

As used in this Trust Deed the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste, or material which is or becomes regulated under any federal,

state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean up, including without limitation any substance, waste or material which now or hereafter is designated as hazardous in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et. seq.), The Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et. seq.), The Federal Water Pollution Control Act (33 U.S.C. Section 1257, et. seq.), or the Clean Air Act (42 U.S.C. Section 2001, et. seq.). Grantor agrees to hold harmless, indemnify and defend Beneficiary from and against any damage, loss, expense, or liability resulting from any breach of this representation and warranty including attorneys' fees and costs. This indemnity shall survive payment in full of the indebtedness hereby secured or any entry of a judgement of foreclosure or the delivery of a deed in lieu of foreclosure of this Trust Deed.

4.5 If, with the written consent of Beneficiary, this Trust Deed is a second or more inferior trust deed on the Property, Grantor shall faithfully and fully observe and perform each and every term, covenant, and condition of any superior trust deed ("Superior Trust Deed") and never permit the same to go into default. A default or delinquency under any Superior Trust Deed shall automatically and immediately constitute a default under this Trust Deed. Beneficiary is hereby expressly authorized to advance at its option all sums necessary to keep any Superior Trust Deed in good standing, and all sums so advanced together with interest thereon at the default rate provided in the Note described herein, shall be repayable to Beneficiary as in the case of other advances made by Beneficiary hereunder. Grantor agrees that Grantor shall not make any agreement with the holder of any Superior Trust Deed, nor shall Grantor request or accept any future advances under such Superior Trust Deed, without the express written consent of Beneficiary.

5. INDEBTEDNESS SECURED. This Trust Deed is made for the purpose of securing, in such order of priority as Beneficiary may elect, payment of:

5.1 An indebtedness in the sum of THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00) evidenced by that certain Promissory Note of even date herewith made by Grantor and payable to Beneficiary (the "Note"), and any and all modifications, extensions, renewals, amendments, and replacements thereof, and all future advances thereunder, together with interest thereon, according to the terms of the Note. The interest rate,



payment terms or balance due on the Note may be indexed, adjusted, renewed, or renegotiated without affecting the priority of the lien of this Trust Deed;

- 5.2 All other sums, with interest as herein provided, becoming due and payable under the provisions hereof by Grantor to Beneficiary;
  - 5.3 Performance of each and every condition, obligation, covenant, promise or agreement contained herein, or in the Note, or in any loan agreement relative to any indebtedness evidenced by the Note, or in any security agreement or assignment of rents and appointment of receiver at any time given to secure any indebtedness hereby secured or any part thereof;
  - 5.4 All other liabilities and indebtedness from Grantor to Beneficiary, of any and every kind, whatsoever, now existing or hereafter arising, whether primary, secondary, direct, contingent, fixed or otherwise, and whether arising under the Note and this Trust Deed, or any other agreement, or by operation of law, and whether or not evidenced by instruments or other evidences of indebtedness.
6. MATURITY. The date of maturity of this Trust Deed is October 31, 2000, which is the maturity date of the debt evidenced by the Note described in paragraph 5.1.
7. PRESERVATION AND MAINTENANCE OF PROPERTY. To protect the security of this Trust Deed, Grantor agrees to all times:
- 7.1 To keep said Property in good condition and repair, and to not permit or suffer any extraordinary modification or removal or demolition of, or a structural change in any building, fixture, equipment, or other improvement on said Property;
  - 7.2 To comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property or requiring any alteration or improvements to be made thereon. Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Grantor shall not allow changes in the nature of the occupancy for which the Property was used (or if not then used, then intended to be used) at the time this Trust Deed was executed. Grantor shall not initiate or acquiesce in any change in the zoning classification of the Property without Beneficiary's prior written consent;
  - 7.3 To not commit or permit waste thereon and to not commit,

suffer, or permit any act upon said Property in violation of the law;

- 7.4 To not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Substance, except in compliance with all applicable federal, state and local statutes, ordinances, rules regulations and other laws, nor shall Grantor cause or permit, as a result of any intentional or unintentional act or omission on the part of Grantor or any tenant, subtenant or other user or occupier of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

Without limiting the generality of paragraph 7.2 above, Grantor will comply, and will cause all tenants, subtenants and other users and occupants of the Property to comply, with all federal, state and local laws, ordinances, rules and regulations and other laws and requirements pertaining to Hazardous Substances, and pay, or cause such tenants, subtenants and other users and occupants, to pay all fees and charges in connection therewith.

In the event that Grantor receives any notice or advice from any governmental agency or any source whatsoever, with respect to Hazardous Substances on, from or affecting the Property Grantor shall immediately notify Beneficiary and will promptly furnish Beneficiary with a copy of such notice or advice.

Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all Hazardous Substances from the Property in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.

Beneficiary is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property to ascertain the accuracy of all representations and warranties herein relating to Hazardous Substances, and the observance of all covenants herein relating thereto.

Grantor agrees to hold harmless, indemnify and defend Beneficiary from and against any damage, loss, expense or liability resulting from any breach of these covenants, including attorneys' fees. The obligations and



liabilities of Grantor contained in these subparagraphs shall survive payment in full of the indebtedness hereby secured or any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Trust Deed.

- 7.5 To cultivate, irrigate, fertilize, prune, and do all other acts which from the character or use of the Property may be reasonably necessary to preserve and protect the same, the specific enumeration herein not excluding the general;
- 7.6 To complete or restore promptly and in good workmanlike manner any buildings or improvements which may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on the Property, Grantor further agrees to complete the same in accordance with plans and specifications satisfactory to Beneficiary, to allow Beneficiary to inspect the Property at all times during construction, to replace any work or materials unsatisfactory to Beneficiary within fifteen (15) calendar days after written notice from Beneficiary of such fact, which notice may be given to the Grantor by registered or certified mail, sent to the address herein specified, or by personal service of same. If work upon the construction or restoration of the building or buildings shall be discontinued for a period of fifteen (15) days, the Beneficiary may, at its option, also enter into and upon said premises and complete the construction or restoration of said building or buildings. The Grantor hereby gives to the Beneficiary full authority and power to make such entry and to enter into such contracts or arrangements as may be necessary to complete or restore said building or buildings and all monies expended by the Beneficiary in connection with such completion or restoration shall be added to the principal theretofore advanced under the Note and secured by this Trust Deed and shall be payable by the Grantor on demand with interest as provided in the Note.
- 7.7 To provide Beneficiary, at Beneficiary's request, and at Grantor's expense, a current or updated appraisal of Property. Said request may be made as required by regulatory authorities or auditors or as required by Beneficiary if Beneficiary reasonably believes the security of this Trust Deed is in jeopardy.

8. HAZARD INSURANCE. Grantor agrees:

- 8.1 At Grantor's expense, and at all times, to keep the



buildings and improvements now and/or hereafter placed upon the said premises insured against loss by fire and other hazards as Beneficiary may require and to carry and maintain such liability and indemnity insurance as may be required by Beneficiary and showing Beneficiary as additional insured, all such policies of insurance in companies, amounts, form, and for such periods as is satisfactory to Beneficiary. All such policies and renewals thereof shall contain, in form satisfactory to Beneficiary, standard beneficiary loss payable clauses naming Beneficiary as beneficiary thereunder as well as a standard waiver of subrogation endorsement and shall be delivered to Beneficiary, with receipts therefor evidencing premiums paid in full. All such policies shall contain a provision that the insurer must give ten (10) days prior written notice of any intended cancellation or substantial change of coverage;

8.2 To give immediate written notice to Beneficiary of any loss or damage to the Property caused by any casualty or of any claim by any person and that Beneficiary has the full power to settle and compromise claims under all such policies, to demand, receive, and receipt for all monies becoming payable thereunder, to execute in the name of Grantor or Beneficiary any proofs of loss, notices or other instruments in connection with such policies or loss thereunder, and to assign all policies to any holder of Grantor's indebtedness to grantee of the Property in the event of foreclosure of this Trust Deed or other transfer of title to the Property;

8.3 That the amount collected under any fire or other insurance policy may at Grantor's request and with Beneficiary's prior written consent be applied toward any indebtedness secured hereby or toward the rebuilding, repairing, or replacing of the Property or any portion thereof, but in any event Beneficiary may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any costs of collection, including reasonable attorneys' fees and any settlement. Any 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; and

8.4 In case of policies due to expire, Grantor will deliver to and deposit with Beneficiary renewal policies not less than thirty (30) days prior to the respective dates of expiration.

9. TAXES AND OTHER LIENS. Grantor agrees:

9.1 To pay or cause to be paid, on or before the due date,

COMMERCIAL TRUST DEED  
JOSEPH W. GREEN

the amount of all taxes, assessments, and other charges of whatsoever kind and nature, affecting said Property or this Trust Deed or the debt secured thereby;

- 9.2 To keep the Property and every portion thereof free from all liens and encumbrances of every kind, whether superior or inferior to this Trust Deed, including, but not limited to, liens for labor, services, materials, or supplies, and will not do or permit any act or omission whereby the lien or priority of this Trust Deed may be impaired;
  - 9.3 That if Grantor objects in good faith to the validity or amount of any tax, assessment, or lien, Grantor, at Grantor's sole expense, may contest the validity or amount of the tax, assessment, or lien, provided that Grantor shall deposit with Beneficiary cash, a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount deemed adequate, as determined by Beneficiary, for reserves, therefor;
  - 9.4 To furnish to Beneficiary upon demand evidence of payment of all taxes, assessments, charges, or liens, and to authorize the appropriate county officials to deliver to Beneficiary at any time a written statement of the status of the taxes and assessments against the Property; and
  - 9.5 If Beneficiary is required by legislative enactment or judicial decision to pay any tax or taxes or assessments to any state, municipality, or government on the Property (or on any interest therein), Grantor, upon demand by Beneficiary, shall pay such taxes or assessments or reimburse Beneficiary within thirty (30) days after the mailing to Grantor of such demand therefor; provided, however, that if in the opinion of counsel for Beneficiary (a) it might be unlawful to require Grantor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, Beneficiary may elect, by notice in writing given to Grantor, to declare all of Grantor's liabilities secured hereby to be due and payable sixty (60) days from the giving of such notice. If at any time the United States of America shall require internal revenue or other documentary stamps to be affixed to this Trust Deed, then Grantor shall pay for same when due, together with any interest or penalties imposed in connection therewith.
10. RESERVE FOR TAXES AND INSURANCE. Upon default by Grantor in the payment of property taxes, assessments, insurance premiums, and



similar charges, unless this covenant is prohibited by law, Grantor shall pay to Beneficiary, monthly or otherwise as Beneficiary shall direct, in addition to the amounts payable under the terms of the Note secured hereby, annual property taxes, assessments, insurance premiums, and similar charges next payable, as estimated by Beneficiary. If at any time Beneficiary determines that such payments will not be sufficient to account for each charge on its due date (and in the case of annual property taxes, on the due date of the first installment thereof), Grantor will pay to Beneficiary upon demand such additional sums as necessary to account for such deficiency.

10.1 At Beneficiary's election:

- (a) Beneficiary may apply the sums paid as reserves first to accrued interest and then to the principal amount of the loan, and upon payment of such charges for which reserves are collected, add such payment to the principal amount of the loan. Beneficiary is authorized to pay each such charge when it (and in the case of annual property taxes, on the due date of the first installment thereof) is due; or
- (b) Beneficiary may retain the payments hereunder and apply them to such charges when they (and in the case of annual property taxes, on the due date of the first installment thereof) become due. Sums received shall not earn interest and may be commingled with other funds of Beneficiary. If Beneficiary is required by law to pay interest on these sums, Beneficiary may, to the extent permitted by law, impose a charge for holding and disbursing such funds.

10.2 If the foregoing provision for reserves is at any time prohibited by law, or waived in writing by Beneficiary, or Grantor fails to make reserve payments in the full amount required hereunder, Grantor shall pay in the full amount such charges when they are due and provide Beneficiary with evidence satisfactory to Beneficiary of such payment.

Payment by Grantor hereunder, shall not constitute a waiver of any other of Beneficiary's rights and remedies provided in this Trust Deed.

11. PROTECTION OF SECURITY. Should Grantor fail to make any payment or do any act as provided for in this Trust Deed, then Beneficiary may at Beneficiary's election, without obligation, and

without releasing Grantor from any obligation hereof, or any default hereunder or impairing any right or remedy thereon, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, the Beneficiary being authorized to enter upon the Property for such purpose. The Beneficiary may at any time, prior to full payment of all sums secured by this Trust Deed, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrances, charge, or lien which in the judgement of Beneficiary appears to be prior or superior hereto; and, in exercising any power conferred by this Trust Deed, pay necessary expenses, employ counsel, and pay reasonable fees. Any amount paid by Beneficiary together with interest from the date of expenditure at the default rate provided in the Note shall be immediately due and payable by Grantor to Beneficiary and, until paid, shall be added to and become a part of the indebtedness secured hereby. Notwithstanding the above, Grantor agrees to appear in and defend any and all actions or proceedings, whether at law or in equity, purporting to affect Grantor's title to the Property, or any portion thereof, or purporting to affect the lien or priority of this Trust Deed or the rights or powers of Trustee or Beneficiary hereunder, and to pay all costs and expenses incurred in such actions or proceedings, whether by Grantor, Trustee, or Beneficiary, including but not limited to, the cost of evidence of title and reasonable attorneys' fees.

12. LEASES. Grantor shall fully perform all the terms and conditions on the part of Grantor to be performed in any present or future lease with respect to which Grantor is lessor covering all or a part of the above-described Real Property, and Grantor will not, without the prior written consent of Beneficiary, terminate, cancel, or accept the surrender of, or suffer or permit the termination, cancellation, or surrender of such lease, except upon the expiration of the term thereof, or materially modify or alter, or suffer or permit the material modification or alteration of such lease. Grantor further covenants and agrees not to enter into any lease for a term in excess of six (6) months of all or any portion of the said above described Real Property without the prior written consent of Beneficiary. Grantor shall notify present and future lessees of Beneficiary's security interest in their lease and that any modification or alteration of lease made without the consent of Beneficiary shall be void as to the Beneficiary.

13. ASSIGNMENT OF RENTS. All rents, issues, income and profits derived from the Property are hereby assigned to Beneficiary. In the event of a default hereunder, Beneficiary shall have the right to enter upon and take possession of the Property; to demand, collect, and receive all of the rents and revenues which may now be due and unpaid and which may hereafter become due; to institute and carry on all legal proceedings necessary for the protection of the



Property, including such proceedings as may be necessary to recover possession of the whole or any part of the Property; to institute and prosecute any and all actions for the collection of rents and other revenues from the Property which may now be due and unpaid and which may hereafter become due; to institute and prosecute summary proceedings for the removal of any person from the Property; to pay the costs and expenses of all such suits and proceedings out of the rents and other revenues received.

14. DAMAGES, CLAIMS, JUDGMENTS AND AWARDS. Grantor shall give Beneficiary and Trustee immediate notice of actual or threatened commencement of any condemnation or other such proceedings. The proceeds of any award or claim for damages heretofore or hereafter made by any public or quasi-public authority, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Property, or any part thereof, or for conveyance in lieu of condemnation thereof, are hereby assigned to and shall be paid to Beneficiary. In addition, all causes of action heretofore or hereafter accrued for damages or injury to the Property or any part thereof, including without limitation causes of action arising in tort or contract or for fraud or concealment of a material fact, are hereby assigned to Beneficiary and the proceeds shall be paid to Beneficiary. Grantor, upon request by Beneficiary, shall make, execute, and deliver any and all further assignments and other instruments deemed necessary by Beneficiary for the purpose of assigning all such awards and other payments free and clear of all claims, liens, and encumbrances.

Beneficiary may elect, at its option, without regard to whether or not its security is impaired, to apply any and all such sums on any portion of the indebtedness selected by it, whether then matured or subsequently to mature, or to release the entire amount so received by it or any part thereof; provided, however, that any proceeds of partial condemnation shall be applied to the extent necessary to restore the remaining Property to a usable condition. If, prior to the receipt by Beneficiary of such award or payment, the Property shall have been sold in foreclosure of this Trust Deed, Beneficiary shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Trust Deed shall have been sought or recovered or denied, and of the costs and disbursement incurred by Beneficiary in connection with the collection of such award or payment, including reasonable attorneys' fees. In the event beneficiary chooses to apply such proceeds to the outstanding indebtedness, any amounts received by Beneficiary which exceed the outstanding indebtedness shall be paid to Grantor.

15. BENEFICIARY MAY DIRECT TRUSTEE. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Trust Deed and the

Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey all or any part of said Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or in any agreement subordinating the lien or charge hereof.

16. RECONVEYANCE. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Deed and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

17. SUCCESSOR TRUSTEE. The Beneficiary may from time to time appoint another Trustee or Trustees to execute the trusts hereby created, such appointment to be written and acknowledged and filed in the office of the County Recorder where this Trust Deed is filed or recorded. Any Trustee or Trustees so appointed shall be vested with all the title and powers and subject to all the trusts conferred hereby.

18. DEFAULT. Time is of the essence. Any of the following events shall constitute default hereunder: Failure to pay the secured indebtedness when due; failure to promptly, fully, and faithfully comply with the terms and conditions of this Trust Deed; institution of a proceeding under any bankruptcy, receivership, or insolvency laws by or against Grantor; or any assignment by Grantor for the benefit of creditors. Any default under this Trust Deed shall constitute a default under the Note which it secures and under all other security instruments securing the Note. Any default under such other security instruments shall constitute a default under this Trust Deed.

19. REMEDIES. On any default hereunder, Beneficiary may at its option, without notice of such election and without demand, exercise any one or more of the following rights and remedies, in addition to any other remedy which may be available herein, at law, in equity, or otherwise:

19.1 Declare all of Grantor's indebtedness immediately due and payable;

19.2 Have a receiver appointed as a matter of right, or may exercise all rights of a receiver as a mortgagee-in-possession. Such receiver shall have the power to collect the rents, income, and revenues of the Property and all other powers which may be necessary or usual in such cases for the protection, possession, control, management, and operation of the Property, including



completion of any construction in progress on the Property. If the revenues produced by the Property are insufficient to pay expenses, the receiver may borrow from Beneficiary or otherwise, or Beneficiary may borrow or advance such sums as it deems necessary for the purposes stated in this section, and repayment of such sums shall be secured by this Trust Deed. The amounts borrowed or advanced shall bear interest at the default rate provided in the Note from the date of expenditure until repaid and shall be payable by Grantor to Beneficiary on demand;

- 19.3 File one or more suits at law or in equity, for the foreclosure of this Trust Deed or to collect the indebtedness owed by Grantor. In the event of the commencement of judicial proceedings to foreclose this Trust Deed, Grantor does hereby expressly waive, to the extent permitted by applicable law, any and all rights of appraisal, valuation, stay, extension, and redemption from sale under any order or decree of foreclosure of this Trust Deed on behalf of Grantor and each and every person that may legally buy, acquiring any interest in or title to the deed of Property to the date of this Trust Deed;
- 19.4 Order Trustee to sell, grant, bargain, release, or convey all or part of the Property and all right, title, and interest of Grantor therein by advertisement and sale at public or private auction in accordance with the laws of the State of Oregon. Trustee may sell said Property either in one parcel or separate parcels. Beneficiary may become a purchaser at such sale. Beneficiary may execute and deliver to the purchaser at any such sale deeds or other instruments of conveyance for the Property; and/or;
- 19.5 With respect to any part of the Property that is personal property, exercise the rights and remedies of a secured party under the Uniform Commercial Code and under the security agreement given in connection herewith. In exercising such remedies, Beneficiary shall give Grantor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition of the Property is to be made, and notice given at least ten (10) days prior to the time of the sale or other disposition shall be conclusively presumed to be reasonable. A public sale conducted in the following fashion shall be conclusively presumed to be reasonable: Notice is given at least ten (10) days prior to the date of sale by publication once in a newspaper of general circulation published in the county in which the

sale is to be held; the sale is held in a county in which the Property or any part thereof is located or in a county in which Grantor has a place of business; payment is required to be in cash or by certified check immediately following the close of the sale, except that if Beneficiary bids it need not actually make payment; the sale is by auction, but it need not be by a professional auctioneer; and the Property is sold "as is" and without preparation for sale by Beneficiary.

20. FORBEARANCE. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

21. ELECTION OF REMEDIES. Election by Beneficiary to pursue one remedy shall not exclude resort to any other remedy, and all remedies of Beneficiary under this Trust Deed are cumulative. An election to make expenditures or to take action to perform an obligation hereunder shall neither prejudice Beneficiary's right to declare a default nor constitute a waiver of the breached term or of any of the remedies provided in this section or elsewhere. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Grantor hereunder, or acquiescence herein, nor will it affect any subsequent default hereunder by the Grantor of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Beneficiary. No terms or conditions contained in this Trust Deed or any of Grantor's indebtedness may be waived, altered, or changed except as evidenced in writing by Grantor and Beneficiary.

22. APPLICATION OF PROCEEDS FROM PROPERTY. Unless otherwise required by decree of court or applicable law, all proceeds realized from the exercise of Beneficiary's rights and remedies shall be applied and distributed, first, on account of the costs and expenses, including attorneys' fees, of exercising such rights and remedies; second, to the balance of indebtedness owed by Grantor, payment of which is secured by this Trust Deed and related documents, in such order as Beneficiary shall determine; and third, the overplus, if any to the person or persons legally entitled thereto, or to the clerk of the court in the case of a foreclosure by judicial proceeding.

23. ACCELERATION DOES NOT WAIVE PREPAYMENT PENALTY. Upon default by Grantor and following the acceleration of maturity as herein provided, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale (including sale under power of sale) by Grantor, its successor and assigns, or by anyone in their behalf, shall be



deemed to be a voluntary prepayment under the terms of the Note and any such payment to the extent permitted by law, will, therefore, include the additional payment required under the prepayment privilege, if any, contained in the Note.

**24. CERTAIN ACTS OF BENEFICIARY NOT A RELEASE.** Without affecting the liability of Grantor, or any other person (except any person expressly released in writing), for payment of said debt or for the performance of any obligations set forth in this Trust Deed, and without affecting the lien or other rights of the Beneficiary with respect to any Property or other security not expressly released in writing, the Beneficiary at any time, and from time to time, either before or after maturity of the Note and without notice or consent, may exercise any one or more of the following rights:

- 24.1 Release any person liable for payment of said debt, or for the performance of any obligation;
- 24.2 Make any agreement extending the time, or otherwise altering the terms of payment of said debt, or modifying or waiving any obligation, or subordinating, modifying, or otherwise dealing with any lien securing payment of the Note;
- 24.3 Exercise or refrain from exercising or waive any right the Beneficiary may have;
- 24.4 Accept additional security of any kind; and/or
- 24.5 Release or otherwise deal with any property, real or personal, securing said debt, including all or any part of the Property.

**25. ACCELERATION ON TRANSFER OF PROPERTY.** This loan is personal to Grantor and not assignable. In making it, the Beneficiary has relied on Grantor's credit, Grantor's interest in the Property, the provisions for management of the Property, and financial market conditions at the time this loan is made. The Beneficiary may declare the entire principal balance plus accrued interest immediately due and payable without notice if, the Grantor, without Beneficiary's prior written consent (a) sells, conveys, contracts to sell, alienates, or further encumbers all or any part of the Property; or (b) except for tenant leases entered into in the ordinary course of business, leases all or part of the Property for a term, together with all exercisable options, of more than six (6) months; or (c) suffers the title or any interest in the Property to be divested, whether voluntarily or involuntarily; or (d) changes or permits to be changed the character or use of the Property; or (e) if a partnership, limited partnership, joint venture, tenancy in common, or other entity consisting of fractional interests in the Property and twenty-five percent (25%) or more ownership

interest is transferred or assigned, whether voluntarily or involuntarily; or (f) if a corporation with fewer than 100 stockholders at the date of execution of this Trust Deed and more than ten percent (10%) of its capital stock is sold, transferred, or assigned during a twelve (12) month period; or (g) changes, transfers, or assigns any management rights.

Beneficiary will waive its right under this paragraph 25 if all of the following conditions are met: (a) The credit of the third party is satisfactory to Beneficiary; (b) The third party will assume full personal liability for payment and performance of the Note, Trust Deed, and other security instruments; (c) A charge for administrative costs (not to exceed two percent (2%) of the original principal balance of the Note stated in paragraph 5.1) is paid to Beneficiary; (d) If required by Beneficiary, either the interest rate on the secured loan is increased, or Beneficiary is paid a lump sum compensation, in an amount determined solely by Beneficiary, at the time of assumption; (e) The third party has the qualified management ability to operate the Property in Beneficiary's sole judgement; and (f) The Note and Property security documents executed by the undersigned are not in default.

In the event of a waiver by Beneficiary and consequent transfer of the Property, any increase in the interest rates shall entitle Beneficiary to increase the monthly payments to an amount that would repay the then remaining principal balance in equal monthly payments, including interest at the new effective rate, over the then remaining amortization term.

Further, an assumption shall NOT release Grantor or any successor in interest from personal liability for payment and performance of the terms and conditions of this Trust Deed.

26. MULTIPLE PARTIES. If there is more than one person comprising Grantor, the obligations imposed upon Grantor under this Trust Deed shall be joint and several.

27. TRUSTEE. Trustee accepts this trust when this Trust Deed, duly accepted 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 trust deed or of any action or proceedings in which the Grantor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

28. SEVERABILITY. In the event any one or more of the provisions contained in the Trust Deed shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Trust Deed, which remaining provisions shall continue in full force and effect.



29. GOVERNING LAW. This Trust Deed has been executed and delivered in the State of Oregon, and is to be governed in all respects by the laws of the State of Oregon.

30. INSPECTION: BOOKS AND RECORDS. Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property during normal business hours. Grantor shall keep and maintain at all times at Grantor's address set forth in the introductory paragraph, or such other place as Beneficiary may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases, and other instruments which affect the Property. Such books, records, contracts, leases, and other instruments shall be subject to examination and inspection at any reasonable time by Beneficiary. Upon Beneficiary's request, Grantor shall furnish to Beneficiary, within ninety (90) days after the end of each calendar year or at such time as Beneficiary may request, a statement of income and expenses of the Property, each in reasonable detail and certified by Grantor and, if Beneficiary shall require, by an independent certified public accountant. Grantor shall furnish at the same time a rent schedule for the Property, certified by Grantor, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable, and the rent paid.

31. FINANCIAL STATEMENTS. Upon Beneficiary's request, Grantor shall furnish to Beneficiary, within ninety (90) days after the end of Grantor's fiscal year or at such time as Beneficiary may request, such financial statements, balance sheets, credit reports, and other documents pertaining to the financial condition and obligations of the Grantor and any partner or comaker of Grantor, and any tenant or lessee of Grantor occupying the Property at the time of such request, each in reasonable detail and, where applicable, certified by Grantor and, if Beneficiary shall require, by an independent certified public accountant.

32. COSTS AND EXPENSES. Grantor agrees to pay all costs and expenses incurred by Beneficiary in connection with the preservation, realization, enforcement and exercise of Beneficiary's rights, powers, remedies, and collateral under this Trust Deed, including reasonable attorneys' fees, whether incurred in litigation or prior to litigation, at trial or on appeal. The terms "costs" and "expenses" shall include, in addition to statutory costs and disbursements, out-of-pocket costs incurred, including costs of title search, filing, and recording, and all costs of discovery depositions and expert witness fees. For the purpose of this paragraph "litigation" shall be deemed to include any proceedings commenced in any court of general or limited jurisdiction, including any proceedings commenced in the bankruptcy courts of the United States.

33. BINDING EFFECT. This Trust Deed will be unaffected by the death of any of the parties hereto, and applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees,, devisees, administrators, executors, successors, and assigns. The right to plead any statute of limitations in any suit brought upon the Note or the indebtedness thereby evidenced or to foreclose or enforce this Trust Deed or arising therefrom or by reason of any default of the Grantor, is hereby waived to the full extent permissible by law. The term "Beneficiary" shall mean the owner and holder, including pledgee, of the Note secured hereby, whether or not named as Beneficiary herein. In this Trust Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

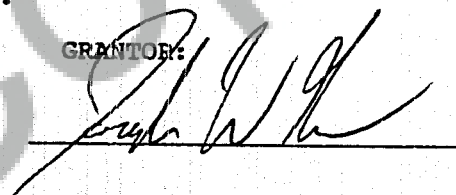
34. OFFSETS. No offsets or claims which the Grantor now or in the future may have against the Beneficiary shall relieve the Grantor from making payments or performing any other obligations contained in or secured by this Trust Deed.

35. NOTICES. All notices or requests required or permitted under this Trust Deed shall be in writing, shall be personally delivered, or sent by certified mail, return receipt requested, postage prepaid, and shall be deemed given when so delivered or mailed irrespective of whether such notice is actually received by the addressee, and shall be sent to the parties at the addresses set forth in the introductory paragraph of this Trust Deed or as subsequently changed by written notice.

36. All covenants and warranties contained in this Trust Deed shall run with the land.

IN WITNESS WHEREOF, Grantor has caused these presents to be duly executed the day and year first above written and, if Grantor is a corporation, by an officer or officers duly thereunto authorized by its Board of Directors.

GRANTOR:



STATE OF OREGON                    )  
  ) ss.  
County of                            )

On this 22nd day of October, 1990, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named JOSEPH W. GREEN known to me to

COMMERCIAL TRUST DEED  
JOSEPH W. GREEN

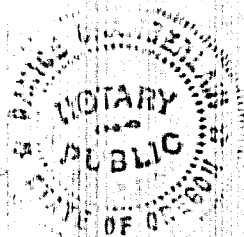


21573

be the identical individual described in and who executed the within instrument and acknowledge to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

*Danice Chamberlain*  
Notary Public for Oregon  
My commission expires: 5-24-92



COMMERCIAL TRUST DEED  
JOSEPH W. GREEN

REQUEST FOR FULL RECONVEYANCE  
(to be used only when all obligations have  
been paid under this Trust Deed)

TO: TRUSTEE

The undersigned is the legal owner and holder of the Note and all other indebtedness secured by the within Trust Deed. Said Note, together with all other indebtedness secured by said Trust Deed has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Trust Deed, to cancel said Note above mentioned and all other evidences of indebtedness secured by said Trust Deed delivered to you herewith, together with the said Trust Deed, and to reconvey, without warranty, to the parties designated by the terms of said Trust Deed, all the estates now held by you thereunder.

DATED: \_\_\_\_\_

Mail Reconveyance To:



(W.S.)

## EXHIBIT "A"

A parcel of land lying in the East 1/2 of SW 1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, described as follows:

Beginning at an iron pin which lies North 0° 51' West along the 40 line a distance of 462.3 feet and North 89° 09' East a distance of 262.2 feet and South 46° 09' East a distance of 657.8 feet from the iron axle which marks the Southwest corner of the NE 1/4 SW 1/4 of Section 1; and running thence continuing South 46° 09' East a distance of 352.1 feet to an iron pin which lies on the Northwesterly right of way line of the Enterprise Irrigation Canal; thence North 11° 21' East along the Northwesterly right of way line of the Enterprise Canal; a distance of 337.4 feet to an iron pin; thence continuing along the Northwesterly right of way line of the Enterprise Irrigation Canal North 60° 21' East a distance of 103.3 feet to an iron pin on the Klamath Falls-Lakeview Highway Southerly right of way line of 30 feet at right angles from its center; thence North 46° 09' West along the above-mentioned highway right of way line a distance of 200 feet to an iron pin; thence South 43° 51' West a distance of 384 feet more or less to the Point of Beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its State Highway Commission, recorded in Volume M71 at page 10194 and re-recorded in Volume M71 at page 11031, Microfilm Records of Klamath County, Oregon.

## EXHIBIT "B"

1. Rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.
2. The premises herein described are within and subject to the statutory powers, including the power of assessment, of Klamath Project and Enterprise Irrigation District.
3. The premises herein described are within and subject to the statutory powers, including the power of assessment, of Enterprise Drainage District.
4. Transmission line Easement, subject to the terms and provisions thereof, granted to California Oregon Power Company, by instrument recorded May 22, 1926 in Volume 69 at page 577, Deed Records of Klamath County, Oregon. (Covers a 10-foot strip along highway)
5. Reservations and easements contained in Deed recorded May 22, 1956 in Volume 283 at page 286, Gladys T. Adams, et vir, to Joseph T. Riker, et ux, to wit:  

"subject to an easement for ditches and/or pipe lines to convey water for the benefit of adjoining property owners."
6. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission recorded September 24, 1971 in Volume M71, page 10194, and re-recorded October 21, 1971 in Volume M71, page 11031, Microfilm Records of Klamath County, Oregon, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property.
7. Reservations, restrictions and easements contained in Deed recorded September 24, 1971 in Volume M71, page 10194, and re-recorded October 21, 1971 in Volume M71, page 11031, Microfilm Records of Klamath County, Oregon, Robert B. Chilcote to the State of Oregon, by and through its State Highway Commission.
8. Right of Way Easement, subject to the terms and provisions thereof, as disclosed by instrument dated March 3, 1977, recorded March 7, 1977 in Volume M77, page 3868, Microfilm Records of Klamath County, Oregon, granted to Pacific Power and Light Company, a corporation, for an electric transmission line.



9. An easement created by instrument, subject to the terms and provisions thereof,  
Dated: November 17, 1977  
Recorded: November 28, 1977  
Volume: M77, page 23008, Microfilm Records of Klamath County, Oregon  
In favor of: South Suburban Sanitary District  
For: Sewer
10. An easement created by instrument, subject to the terms and provisions thereof,  
Dated: November 17, 1977  
Recorded: November 28, 1977  
Volume: M77, page 23009, Microfilm Records of Klamath County, Oregon  
In favor of: South Suburban Sanitary District  
For: Sewer

THIS TRUST DEED RIDER is made this 22 day of October 1990, and is incorporated into and shall be deemed to amend and supplement that certain Trust Deed of even date herewith, given by the undersigned (herein "Grantor") to secure Grantor's Note to The Bank of Newport, an Oregon Banking Corporation (herein "Beneficiary").

**HAZARDOUS SUBSTANCE COVENANTS.** In addition to the covenants and agreements made in the Trust Deed, Grantor and Beneficiary further covenant and agree as follows:

A. Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge after due and diligent inquiry, no hazardous or toxic waste substances are being stored on the property or any adjacent property nor have any such substances been stored or used on the property or any adjacent property prior to Grantor's ownership, possession or control of the property. Grantor agrees to provide written notice to Beneficiary immediately upon Grantor becoming aware that the property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause nor permit any activities on the property which directly or indirectly could result in the property or any other property being contaminated with hazardous or toxic waste or substances. For purposes of this Trust Deed Rider, the term "Hazardous or Toxic Wastes or Substances" shall include hazardous wastes, hazardous substances, hazardous materials, pollutants, contaminants, PCBs, radioactive materials, solid wastes and asbestos containing materials as such substances may be defined from time to time in federal, state, regional or local legislation.

B. Grantor shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, storage, treatment, control, removal or cleanup of hazardous or toxic waste or substances in, on, or under the property or in, on, or under any adjacent property that becomes contaminated with hazardous or toxic waste or substances as a result of construction, operations or other activities on, or the contamination of, the property, or incorporated in any improvements thereon, at Grantor's expense. Beneficiary may, but is not obliged to, enter upon the property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest as Beneficiary; and whether or not Grantor has actual knowledge of the existence of Hazardous or Toxic Waste or Substances, in, on, or under the property or any adjacent property as of the date hereof, Grantor shall reimburse Beneficiary on demand for the full amount of all costs and

expenses incurred by Beneficiary prior to Beneficiary acquiring title to the property through foreclosure or deed in lieu of foreclosure, in connection with such compliance activities.

C. **GRANTOR'S ENVIRONMENTAL INDEMNIFICATION.** Grantor agrees to indemnify and hold harmless the Beneficiary, its employees, and agents from and against any and all losses, damages, liability and expenses (including fines, civil or other penalties, forfeitures, demands, claims, orders, response costs, consulting fees, attorneys fees, costs and expenses of litigation or settlement) ("Environmental Costs"), which any or all of them may hereafter suffer, incur, be responsible for, or pay out as a result of or connected in any way with Hazardous or Toxic Wastes or Substances on or under the property or which may have migrated therefrom, or Grantor's operations in connection therewith, the conduct of Grantor (whether negligent or not), or a breach of any representation, warranty, covenant, or conditions of this security instrument, including, without limitation, injury to persons or property, all foreseeable and unforeseeable consequential damages, the costs of any required or necessary repair, removal, clean up, or decontamination, and the preparation of any corrective action, closure or other required plans, any violation or alleged violation of laws, statutes, orders, regulations, requirements, ordinances, or demand of any governmental entity or agency, any lawsuit brought or threatened, settlement reached, or governmental order, contamination or other adverse effects on the property, adjacent properties or to the environment. At the Grantor's election, any and all Environmental Costs incurred by Grantor prior to reconveyance of this Trust Deed, may be added to the principal balance of the loan, bearing interest at the note rate, and may be collected in a foreclosure proceeding.

D. **ENVIRONMENTAL OBLIGATIONS SURVIVE PAYMENT/SATISFACTION.** Grantor's obligations hereunder and the indemnity in Section C shall survive payment of the Note in full or satisfaction of the Loan through foreclosure or otherwise.

IN WITNESS WHEREOF, said Grantor has hereunto set his hand, and if a corporation, has caused these presents to be duly executed by authority of its Board of Directors all on the day and year first above written.

GRANTOR:

Joseph W. Green

STATE OF OREGON: COUNTY OF KLAMATH: 35.

Filed for record at request of Mountain Title Co. the 26th day of Oct. A.D. 19 90 at 11:13 o'clock A.M. and duly recorded in Vol. M90 of Mortgages on Page 21553.

Evelyn Biehn - County Clerk

By Debra M. Mendenhall

FEE \$103.00