

RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:

Sears Consumer Financial Corporation of Delaware  
18581 Teller Ave., Suite 200  
Irvine, CA 92713

Loan No. \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

K-43111

**SEARS HOMEOWNER RESOURCE/SEARS CONSUMER FINANCIAL CORPORATION OF DELAWARE**

**DEED OF TRUST AND FIXTURE FILING**

(THIS DEED OF TRUST AND FIXTURE FILING SECURES A LINE OF CREDIT AGREEMENT  
WHICH PROVIDES, SUBJECT TO CERTAIN CONDITIONS, FOR OBLIGATORY  
ADVANCES AND FOR A VARIABLE INTEREST RATE)

25  
1  
14  
91 MAY

THIS DEED OF TRUST, is made this 06 day of May, 1991  
among the Trustor, ALLEN C. BARRETT & OPAL M. BARRETT

HUSBAND AND WIFE ~~XXXXXXXXXXXX~~

(herein "Borrower"), whose address is: 1704, 1706, 1708 & 1710 CREST STREET  
KLAMATH FALLS, OR 97603

HAMMONS and MILLS, ATTORNEYS  
Terrence Hammons, 1342 High Street, Suite 3, Eugene, Oregon 97401  
(herein "Trustee"); and the Beneficiary,

Sears Consumer Financial Corporation of Delaware, whose address is:  
1 Centerpoint Drive, Suite 540 (herein "Lender").  
Lake Oswego, OR 97035-8615

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

LOT 8 IN BLOCK B OF HOMECREST, ACCORDING OF THE OFFICIAL PLAT THEREOF ON  
FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

which has the address of 1704, 1706, 1708 & 1710 CREST STREET  
(Number and Street)

KLAMATH FALLS, OR 97603  
(City, State, and Zip Code)

(herein "Property Address");

The Property is not currently used for agricultural, timber or grazing purpose.

**AMOUNT SECURED:**

Fifty Thousand and 0/100  
(\$ 50000.00 )

TOGETHER with all the improvements now or hereafter erected on the property, and all easements,  
rights, appurtenances, rents (subject however to the rights and authorities given herein to Borrower to  
collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and  
water stock, and all fixtures now or hereafter attached to the property, all of which, including  
replacements and additions thereto, shall be deemed to be and remain a part of the property covered by  
this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this  
Deed of Trust is on a leasehold) are herein referred to as the "Property".

TO SECURE to Lender (a) the repayment of all indebtedness due and to become due under the terms and  
conditions of the Sears Homeowner Resource Account Agreement and Disclosure Statement (the  
"Agreement") executed by Borrower and dated the same day as this Deed of Trust, and all modifications,  
extensions and renewals thereof, which Agreement provides that Lender shall make advances to  
Borrower of a revolving nature and that such advances may be made, repaid and remade from time to  
time, subject to the limitation that the total outstanding principal balance owing at any one time under  
the Agreement (not including finance charges thereon at a rate which will vary from time to time, and  
any late charges and other fees and charges which may from time to time be owing under the  
Agreement) shall not exceed the Amount Secured designated on the first page of this Deed of Trust; (b)  
the payment of all other sums advanced in accordance herewith to protect the security of this Deed of  
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Trust, with finance charges thereon at the variable rate described in the Agreement; (c) the performance of the covenants and agreements contained herein and in the Agreement; and (d) any future advances made by Lender to Borrower pursuant to Paragraph 20 of this Deed of Trust (herein "Future Advances").

Any references in this Deed of Trust to the "Note" shall be deemed to refer to the Agreement, and any references in this Deed of Trust to notes and promissory notes shall include loan agreements, as applicable. All references to interest shall be deemed to include finance charges.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

COVENANTS. Borrower and Lender covenant and agree as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Agreement, late charges as provided in the Agreement, and the principal and interest on any Future Advances secured by this Deed of Trust.

2. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender under the Agreement and paragraph 1 hereof shall be applied by Lender first (in the order Lender chooses) to any finance charges, late charges, collection costs and other charges owing under the Agreement or this Deed of Trust, second, to the principal balance under the Agreement, and third, to finance charges, other charges and the principal balance of any Future Advance.

3. **CHARGES; LIENS.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain priority over this Deed of Trust (excluding the lien on any mortgage or deed of trust encumbering the Property that is prior in right or in time ("Prior Deed of Trust") to this Deed of Trust and that has been approved by Lender), and leasehold payments or ground rents, if any, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due and in the event Borrower makes payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust (excluding the lien of any Prior Deed of Trust); provided that Borrower shall not be required to discharge any such lien so long as Borrower shall (a) agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or (b) in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof, or (c) secure from the holder of such prior lien an agreement in form satisfactory to Lender subordinating such lien to this Deed of Trust. Any default by Borrower under the terms of any Prior Deed of Trust shall constitute a default under this Deed of Trust.

Borrower shall not enter into any agreement with the holder of any Prior Deed of Trust by which the Prior Deed of Trust or the indebtedness secured by the Prior Deed of Trust is modified, amended, extended or renewed, without the prior written consent of Lender. Borrower shall neither request nor accept any future advances under any Prior Deed of Trust without the prior written consent of Lender.

4. **HAZARD INSURANCE.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and such other hazards as Lender may require and in such amounts and for such periods as Lender may require. Unless Lender in writing requires otherwise, the policy shall provide insurance on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the hazard insurance policy. The amount of coverage shall be no less than Borrower's credit limit under the Agreement plus the full amount of any superior lien on the Property.

The insurance carrier providing insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid by Borrower, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not hereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, such application of proceeds to principal shall not extend or postpone the due date of the payments referred to in paragraph 1 hereof or change the amount of such payments. If under paragraph 17 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

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

**6. PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement or reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Agreement unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take action hereunder. Any action taken by Lender under this paragraph 6 shall not cure any breach Borrower may have committed of any covenant or agreement under this Deed of Trust.

**7. INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

**8. CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in a paragraph 1 hereof or change the amount of such payments.

**9. BORROWER NOT RELEASED.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust or release of any security for the obligations secured hereby, or any other amendment to the Agreement or this Deed of Trust granted by Lender to Borrower or to any successor in interest of Borrower, shall not operate to release, in any manner, the liability of Borrower or Borrower's successors, as the case may be. Lender shall not be required to commence proceedings against any successor in interest of Borrower or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower or Borrower's successor in interest.

**10. FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

**11. REMEDIES CUMULATIVE.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

**12. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**13. NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided in this Deed of Trust shall be given by personally delivering such notice to Borrower or by mailing such notice by first class mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by first class mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**14. UNIFORM DEED OF TRUST; GOVERNING LAW; SEVERABILITY.** This form of Deed of Trust combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform deed of trust covering real property. This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located, except to the extent preempted by federal law. In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

**15. BORROWER'S COPY.** Borrower shall be furnished with a conformed copy of the Agreement and this Deed of Trust at the time of execution or after recordation hereof.

**16. TRANSFER OF THE PROPERTY.** If you transfer any or all of the Property or any interest in it, or you agree to sell or otherwise transfer or assign your rights in the Property, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable.

**17. ACCELERATION; REMEDIES.** In the event of a default hereunder, Lender at Lender's option, may declare all the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice to the person and in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the trust of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and cost of title evidence; (b) to all sums secured by this Deed of Trust, and (c) the excess, if any, to the person or persons legally entitled thereto.

**18. BORROWER'S RIGHT TO REINSTATE.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five (5) days before the sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Agreement or notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses, as allowed by Oregon law, incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorney's fees. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

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

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

20. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

21. **RECONVEYANCE.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust to Trustee. Trustee, upon receipt of the fee then charged by Trustee for the issuance of reconveyances, shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay the fee then charged by the Trustee for the issuance of reconveyances and all costs of recordation.

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

23. **REQUEST FOR NOTICE.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address.

24. **STATEMENT OF OBLIGATION.** Lender may collect the maximum fee for furnishing the statement of obligation provided by applicable law.

25. **NO MERGER.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the prior written consent of Lenders.

26. **FIXTURE FILING.** This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to any and all fixtures included within the term "Property" as used in this Deed of Trust and with respect to any goods or other personal property that may now or hereafter become such fixtures.

27. **AFFIRMATION OF LOAN PURPOSE.** The Grantor warrants that the proceeds of the loan represented by the above described note and this Trust Deed are primarily for the borrower's personal family household or agriculture purposes.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

Allen C. Barrett  
ALLEN C. BARRETT

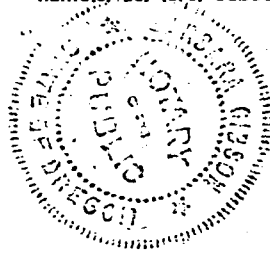
X Opal M. Barrett  
OPAL M. BARRETT

STATE OF OREGON KLAMATH County ss:

On this 7th day of May, 1991 before me, the undersigned, a Notary Public

In and for said State, personally appeared ALLEN C. BARRETT & OPAL M. BARRETT

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged that (he) (she) (they) executed the same.



(Reserved for official seal)

Witness my hand and official seal.

Signature Barbara Gibson  
Name (Typed or Printed) Barbara Gibson

My Commission expires: 7-9-93

#### REQUEST FOR RECONVEYANCE

#### TO TRUSTEE:

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

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 14th day of May A.D., 19 91 at 1:25 o'clock P.M., and duly recorded in Vol. M91 of Mortgages on Page 9103.

FEE \$28.00

Evelyn Biehn County Clerk

By Barbara Gibson