

OC

TRUST DEED

THIS TRUST DEED, made this 04 day of November, 19 81, between
KARA LEE NIELSON

KARA LEE NIELSON
as Grantor, Terence J. Hammons, Attorney at Law, State of Oregon, as Trustee, and
Sears Consumer Financial Corporation of Delaware
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:

LEGAL DESCRIPTION AND OPEN END RIDER ATTACHED HERETO AND MADE A PART
HEREOF.

AKA: 8043 HWY 140 E.

KLAMATH FALLS, OR 87603

AKA: 8043 HWY 140 E.

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.

WARRANTY OF SURETY PERFORMANCE of each agreement of grantor contained and payment of the

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor contained and payment of the sum of THIRTY FIVE THOUSAND AND 00/100 Dollars, with interest thereon according to the terms of a

sum of THIRTY FIVE THOUSAND AND 00/100 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 December, 2006.

The 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.

The above described real property is not currently used for agricultural, timber or grazing purposes.

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 agents or 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 said beneficiary from time to time requires, in an amount not less than \$ 35000.00 written in companies of good repute and in policies of insurance

less than \$ _____, with loss payable to the latter; all policies of insurance acceptable to the beneficiary, with loss to be paid as insured; if the grantor shall fail to deliver to the beneficiary any such insurance and to deliver said policies to the beneficiary upon request, the beneficiary may, at least fifteen days prior to the expiration of any policy of insurance, cause the same to be renewed or replaced by another policy of insurance or hereafter placed on said buildings, the beneficiary may, at least fifteen days prior to the expiration of any policy of insurance, cause the same to be renewed or replaced by another policy of insurance at the grantor's expense. The amount collected under any such policy of insurance shall be applied by beneficiary upon any condition of beneficiary the entire amount so collected; the beneficiary may determine, or may cause to be released to grantor. Such application or release shall not constitute an admission of fault or liability on the part of the grantor, and the beneficiary or any policy maker any default or notice of default hereunder or invalidate any act done hereunder to such notice.

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 payable due or delinquent and to deliver receipts therefor to beneficiary; should the greater fail to make payment of any taxes, assessments, 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 of 10% per annum secured hereby, together with the obligations described in paragraphs 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 the 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, constitute a breach of this trust deed.

6. To pay all costs, fees and expenses of this trust including the cost of this 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 enforcement of the trust, to pay all costs and expenses, including attorney's fees and disbursements of the beneficiary or trustee's attorney; the beneficiary or trustee's attorney's fees and disbursements shall be paid by the trial court and the beneficiary or trustee shall not be liable for the payment of the costs and expenses mentioned in this paragraph 7 in all cases that the trial court, grantor (or grantor's estate) or the appellate court deems to be in the interest of justice. In the event of an appeal from any judgment or decree of the trial court, grantor (or grantor's estate) shall be liable for the payment of the costs and expenses mentioned in this paragraph 7 in all cases that the appellate court shall adjudge reasonable as to the grantor (or grantor's estate) on such appeal.

beneficiary's or trustee's attorney's fees on such appeal.
It is mutually agreed that:

[illegible]

9. At any time and from time to time upon written request of beneficiary payment of its fees and presentation of this deed and the note for endorsement or case of full reconveyance, for cancellation, without affecting the liability of person for the payment of the indebtedness, trustee may (a) consent to the making

any timber or plot of said property; (b) join in granting 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) recover, without warranty, all or any part of the property. The grantee in any recovery 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 truth of the same. Trustee's fees for any of the services mentioned in this paragraph shall not be less than \$5.

10. Upon any default by the grantor hereunder, beneficiary may at any time cause the property herein described to be sold by a court of competent jurisdiction without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, to receive upon and take possession of said property or any part thereof, to sell the same or otherwise collect the rents, issues and profits thereof, to sue in his own name or otherwise to collect the same, and to execute and enforce those parts due and unpaid, and apply the same, less costs and charges of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as beneficiary may determine, to the satisfaction of the beneficiary, to the payment of the principal and interest thereon.

17. 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 this notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in his performance of any agreement hereunder, the beneficiary may declare this security agreement hereby immediately due and payable, in such an event the beneficiary at his election may proceed to foreclose this trust deed in equity as to the mortgaged premises, or he may elect to exercise the power of sale and cause to be recorded his written notice of default and his election to sell the said premises, in the latter event the beneficiary or the trustee at his election to sell the said premises shall file 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 § 731.01 to § 731.09.

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, sum or sums of money, the default may be cured by paying the entire amount secured by the trust deed, the amount of such portion as would not then be due at the time of the cure, or more than such portion as would not then be due if 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 be obligated to pay the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with the trustee's fee and attorney's fees, and assessing the amounts provided by law.

14. Otherwise, the sale shall be held on the date 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 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 favor of the purchaser as required by law conveying the property so sold, but without any warranty, express or implied. The records in the deed shall constitute evidence of fact shall be conclusive proof of the truthfulness thereof, any purchase excluding the trustee, but including the grantor and beneficiary, may purchase the sale.

15. When trustee sells pursuant to the powers provided herein, trust shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by the 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 lien may appear in the order of their priority; and (4) the surplus, if any, to the grantor.

may appear in the order of their priority and for the surplus, in the order of their priority, to his successor in interest entitled to such surplus.

16. Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder, U. to any trustee named herein or to any successor trustee, the latter may, at such appointment, and without conveyance to the successor trustee, the latter may be vested with all title, powers and duties conferred upon any trustee here 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 constitute the final and conclusive record 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 obliged to actively pay party hereto of pending sale under any other deed of trust or of 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 Dead Act provides that the trustee hereinafter 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 in this state, or a person licensed as a broker, salesperson or agent under the Real Estate License Law 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 696.508.

95-140-11-103-16

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In the event of any suit or action being instituted to foreclose this mortgage, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action and in the event of any appeal, the losing party agrees to pay such sum as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees on such appeal; in any event the mortgagor agrees to pay all reasonable costs incurred by the mortgagee for title reports and title search, all such sums to be secured by the lien of this mortgage and included in the decree of foreclosure.

In construing this mortgage, it is understood that the mortgagor or mortgagee may be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, the masculine pronoun shall mean the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the mortgagor has executed this instrument this 8th day of November, 1991; if a corporate mortgagor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

William H. Martella
William H. Martella

Shirley R. Martella
Shirley R. Martella

(If executed by a corporation,
affix corporate seal)

STATE OF OREGON,)
County of Klamath) ss.
November 8, 1991

Personally appeared the above named
William H. Martella
Shirley R. Martella

and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

(OFFICIAL
SEAL)

ARTHUR B. MILLS

NOTARY PUBLIC - OREGON

Notary Public for Oregon

My commission expires

11-8-92

Notary Public for Oregon

My commission expires:

STATE OF OREGON, County of _____) ss.
November 8, 1991

Personally appeared _____ and
_____, who, being duly sworn,
each for himself and not one for the other, did say that the former is the
_____, president and that the latter is the
_____, secretary of _____

_____, a corporation,
and that the seal affixed to the foregoing instrument is the corporate seal
of said corporation and that said instrument was signed and sealed in be-
half of said corporation by authority of its board of directors; and each of
them acknowledged said instrument to be its voluntary act and deed.

Before me:

(OFFICIAL
SEAL)

MORTGAGE

TO

AFTER RECORDING RETURN TO

SHASTA CASCADE FACTOR, INC.
409 PINE STREET
KLAMATH FALLS, OREGON 97601

STATE OF OREGON,) ss.
County of Klamath

I certify that the within instru-
ment was received for record on the
14th day of Nov., 1991,
at 1:36 o'clock P.M., and recorded
in book/reel/volume No. M91 on
page 23833 or as document/fee/file/
instrument/microfilm No. 37368,
Record of Mortgages of said County.

Witness my hand and seal of
County affixed.

Evelyn Biehn, County Clerk
NAME TITLE

By William H. Martella, Deputy

SPACE RESERVED
FOR
RECORDER'S USE

Fee \$23.00

The date of maturity of the debt secured by this mortgage is the date on which the last scheduled principal payment becomes due, to-wit: November 14, 19 94.

3.2.30.2

The mortgagor warrants that the proceeds of the loan represented by the above described note and this mortgage are:

- (a)* primarily for mortgagor's personal, family, household or agricultural purposes (see Important Notice below),
- (b) for an organization or (even if mortgagor is a natural person) are for business or commercial purposes other than agricultural purposes.

This indenture is further conditioned upon the faithful observance by the mortgagor of the following covenants hereby expressly entered into by the mortgagor, to-wit:

That mortgagor is lawfully seized of said premises, and now has a valid and unincumbered fee simple title thereto,

and that he will warrant and defend the same against the claims and demands of all persons whomsoever; That he will pay the said promissory note and all installments of interest thereon promptly as the same become due, according to the tenor of said note;

That so long as this mortgage shall remain in force he will pay all taxes, assessments, and other charges of every nature which may be levied or assessed upon or against the said premises when due and payable, according to law, and before the same become delinquent, and will also pay all taxes which may be levied or assessed on this mortgage or the debt thereby secured, and will promptly pay and satisfy any mechanics' liens or other incumbrances that might by operation of law or otherwise become a lien upon the mortgaged premises superior to the lien of this mortgage;

That he will keep all the improvements erected on said premises in good order and repair and will not commit or suffer any waste of the premises hereby mortgaged. At the request of the mortgagee, the mortgagor shall join with the mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code, in form satisfactory to the mortgagee and will pay for filing the 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 mortgagee.

That so long as this mortgage shall remain in force he will keep the buildings now erected, or any which may hereafter be erected on said premises insured against loss or damage by fire, with extended coverage, to the extent of \$ Max ins. Amt. in some company or companies acceptable to said mortgagee and for the benefit of both parties hereto as their interests may appear, and will deliver all the policies and renewals thereof to said mortgagee.

NOW, THEREFORE, if the said mortgagor shall pay said promissory note and shall fully satisfy and comply with the covenants hereinbefore set forth, then this conveyance shall be void, but otherwise to remain in full force and virtue as a mortgage to secure the payment of said promissory note in accordance with the terms thereof and the performance of the covenants and agreements herein contained; it being agreed, that any failure to make any of the payments provided for in said note or this mortgage when the same shall become due or payable, or to perform any agreement herein contained, shall give to the mortgagee the option to declare the whole amount due on said note, or unpaid thereon or on this mortgage, at once due and payable and this mortgage by reason thereof may be foreclosed at any time thereafter. And if the said mortgagor shall fail to pay any taxes or other charges or any lien or insurance premium as herein provided to be done, the mortgagee shall have the option to pay the same and any payment so made shall be added to and become a part of the debt secured by this mortgage, and draw interest at the rate of ten per cent per annum, without waiver, however, of any right arising from breach of any of the covenants herein.

In case a complaint is filed in a suit brought to foreclose this mortgage, the court shall, upon motion of the holder of the mortgage, without respect to the condition of the property herein described, appoint a receiver to collect the rents and profits arising out of said premises, and apply such rents and profits to the payment and satisfaction of the amount due under this mortgage, first deducting all proper charges and expenses of the receivership.

* IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; If warranty (a) is applicable and if the mortgagee is a creditor, as such word is defined in the Truth-in-Lending Act and Regulation Z, the mortgagee MUST comply with the Act and Regulation by making required disclosures; for this purpose, if this instrument is to be a FIRST lien to finance the purchase of a dwelling, use Stevens-Ness Form No. 1305 or equivalent; if this instrument is NOT to be a first lien, use Stevens-Ness Form No. 1306, or equivalent.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and which may hereafter thereto belong or appertain, and the rents, issues and profits therefrom, and any and all fixtures upon said premises at the time of the execution of this mortgage or at any time during the term of this mortgage;

TO HAVE AND TO HOLD the said premises with the appurtenances unto the said mortgagee, his successors and assigns forever.

THIS CONVEYANCE is intended as a mortgage to secure the payment of the sum of Twenty Nine Thousand Eight Hundred Dollars (\$ 29,000.00) in accordance with the terms of that certain promissory note of which the following is substantially a true copy to-wit:

PROMISSORY NOTE

\$ 29,800.00

Date November 8, 1991

FOR VALUE RECEIVED William H. Martella and Shirley R. Martella, Husband & Wife

(Maker) hereby promises to pay, in lawful money of the United States of America, to the order of Shasta Cascade Factor, Inc.

(Payee).

at 409 Pine St., Klamath Falls, Oregon 97601

the sum of Twenty Nine Thousand Eight Hundred DOLLARS (\$ 29,800.00), together with simple interest thereon at 15% per annum from November 14, 19 91, until paid. Interest shall be calculated on a 360 day basis and the total principal and interest due hereunder shall be payable in Thirty Six installments of \$ 372.50 per month, with the first installment due December 14, 1991, and a like installment due on the 14th day of each month thereafter, with a final payment of all principal, accrued interest, late charges, default charges and other expenses payable by Maker, due and payable, in full on November 14, 19 94

SECURITY: This Promissory Note is secured by a Mortgage of even date herewith, given to the Payee on the real property located generally at 2423 Briarwood, Klamath Falls, Oregon

PREPAYMENT: Maker may prepay this note, in whole, or in part, at any time, without penalty, except there shall be a minimum Twelve months interest paid to Payee on this note. No partial payment shall excuse the payment of installments next coming due.

LATE CHARGE: Maker shall pay a late charge equal to five % if any installment which is not received by Payee or collecting agent within fifteen days after installment is due.

DEFAULT: Maker shall be deemed in default of this promissory note, without notice or demand, if Maker has failed to pay installment within thirty (30) days after its due date. Maker shall also be deemed in default hereof in the event of breach of any of the terms and conditions set forth in the security instrument, security agreement or other document which secures the obligation evidenced by this Note, subject to any notice provisions set forth therein. A default under the terms of any underlying security instrument, Land Sales Contract, Mortgage and/or Trust Deed on the subject property shall constitute a default under the terms of this promissory note. Upon default, Payee shall be entitled to exercise all those remedies provided herein, in the security instrument and agreement, together with any and all other legal remedies available to Payee. All remedies shall be cumulative

ACCELERATION CLAUSE: Maker's default herein shall, at Payee's option and without notice or demand to Maker, render the entire principal balance, plus all accrued interest, late charges, default charges and other expenses due hereunder, immediately due and payable in full.

DEFAULT CHARGES: In the event of default under the terms of this promissory note or under the terms of any security instruments or agreements given in connection herewith, Maker shall pay all collection charges, attorney fees and expenses incurred by Payee, whether or not litigation is instituted hereon. In the event suit, action or other legal proceeding is brought to interpret or enforce the provisions of this note, Maker shall pay all of Payee's costs, disbursements, and litigation expenses, including Payee's reasonable attorney fees incurred in such suit, action, legal proceeding and any appeal therefrom.

ADVANCES FROM PAYEE: In the event Payee elects to pay any sum due from Maker to any third party pursuant to the terms of this Note, the security instrument, security agreement and/or any underlying Note, security instrument or contract, the sum so paid by Payee shall be immediately added to the unpaid balance of this note and shall bear interest at the stated rate from the date of such payment. Payee's election to make one or more such advances shall not constitute a waiver of Payee's right to declare a default hereunder.

MISCELLANEOUS: In no event shall the interest collected hereunder exceed the maximum rate allowed by law. In the event any terms or provision of this Note, or any provision of the security instrument given in conjunction herewith, is found to be unenforceable or unlawful for any reason, the remainder shall be carried into effect as though the unenforceable portion was stricken herefrom. As the context requires, the singular includes the plural, the plural the singular and masculine includes the feminine and neuter. The obligation of all Makers named below is joint and several. All captions used herein are solely for convenience of reference and shall not affect the interpretation of this instrument.

The Maker, Endorsers and Guarantors hereto severally waive notice of acceptance, presentment for payment, demand, notice of demand, notice of non payment and notice of protest of this note. All such Makers, Endorsers and Guarantors hereby consent to any modification of the terms of this note, including any extension of the due date, without waiver of their liability hereon. No waiver of any default, nor any modification or waiver of any terms or conditions set forth herein shall constitute a waiver of any subsequent default nor shall it affect the liability of any Maker, Endorser or Guarantor hereto.

Maker:

X William H. Martella

X Shirley R. Martella

X

X