

61200

93 MAY 10 AM 9 32

Recording Requested by:

Vol 93 Page 10301

WHEN RECORDED MAIL TO:

Tri-State Livestock Credit Corporation
P.O. Box 15890
Sacramento, CA 95852

MTC 28750

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made this 24th day of February, 1993, between JOHN D. O'CONNOR and JOANNE O'CONNOR, husband and wife, not as Tenants in Common, but with the Right of Survivorship, as to an undivided one-half interest, and JAMES B. O'CONNOR and RHONDA G. O'CONNOR, husband and wife, not as Tenants in Common, but with the Right of Survivorship, as to an undivided one-half interest.

as Trustor, and MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, as Trustee, and TRI-STATE LIVESTOCK CREDIT CORPORATION, a California corporation, as Beneficiary, Bank of America, N.A., as a depository having its principal place of business in Sacramento County, California.

WITNESSETH: That Trustor (IRREVOCABLY GRANTS, CONVEYS AND ASSIGNS unto said Trustee, in trust, with power of sale together with right of entry and possession the following described real property situated in the County of Klamath..... State of Oregon..... ("Property"):

See Exhibit "A" attached hereto and made a part hereof for legal description.

TOGETHER WITH: all buildings, structures, equipment, fixtures (including trees, vines and shrubs) and improvements of every kind and description now or hereafter constructed or placed thereon; all existing and future water rights, however evidenced, to the use of water for irrigation, livestock and domestic purposes, including irrigation and watering equipment and systems, ditches, laterals, conduits, and rights-of-way used to convey such water or to drain the Property, all of which rights are hereby made appurtenant to the Property; and all pumping plants, electrical generators, wind machines, and fencing and storage tanks, now or hereafter used in connection with the Property, all of which are hereby declared to be fixtures; all grazing rights, leases, permits and licenses; all oil, gas, and mineral leases, permits and rights used with the Property; and all tenements, hereditaments, easements, rights-of-way and appurtenances to the Property.

TRUSTOR ABSOLUTELY AND UNCONDITIONALLY ASSIGNS, transfers, conveys and sets over to Beneficiary all the rents, royalties, issues, profits, revenue, income and other benefits of the Property arising from the use or enjoyment of all or any portion thereof or from any lease, mineral lease, or agreement pertaining thereto (collectively the "Rents"); SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Trustor by Paragraph 8.J hereof.

FOR THE PURPOSE OF SECURING: (1) payment of the indebtedness evidenced by guarantees or by the following promissory notes) payable by Trustor and/or others to the Beneficiary at the times, in the manner and with interest as therein set forth:

Face Amount	Dated	Face Amount	Dated	Face Amount	Dated
\$200,000.00	2-24-93				
\$515,650.00	2-24-93				

(2) the payment of such additional loans or advances, including advances under a revolving line of credit, with interest thereon, as hereafter may be made to Trustor, or Trustor's successors or assigns, including the additional parties named below, evidenced by a promissory note, guaranty or otherwise; PROVIDED HOWEVER, THAT, such additional loans or advances shall be secured by this Deed of Trust only if the promissory note, guaranty, or other document evidencing such loans or advances shall recite that: (1) the performance of every obligation and agreement of Trustor under and pursuant to the terms of this Deed of Trust, together with interest thereon as herein provided, is secured by this Deed of Trust; and (2) the payment of all sums expended or advanced by Beneficiary with respect to any loan or advance secured by this Deed of Trust; and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms of this Deed of Trust, together with interest thereon as herein provided.

A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

10302

1. To use loan proceeds solely for the purposes set forth in the loan application(s); to comply with the Farm Credit Act of 1971, as amended, and/or the regulations of the Farm Credit Administration, now existing or as hereafter amended.

2. To keep the Property in good condition, working order and repair; care for the Property in accordance with standards of good husbandry and to keep all trees, vines and crops on said land properly cultivated, irrigated, fertilized, sprayed, and managed; not to remove, destroy or suffer the removal or destruction of any building, fence, canal, well or other improvements or fixtures thereon; not to remove, replace or alter any horticultural or vocational tree, vine or shrub planted thereon without the prior written consent of Beneficiary, except in the ordinary course of business; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions in any building which may be constructed, damaged or destroyed thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; to observe and perform all obligations of Trustor under any lease of the Property.

3. To provide, maintain and deliver to Beneficiary fire and all other types of insurance of the type and in amounts as Beneficiary may require, with loss payable clauses solely in favor of Beneficiary. In the event of loss, the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the Property damaged. In the event that the Trustor shall fail to provide satisfactory hazard insurance, the Beneficiary may procure, on the Trustor's behalf, insurance in favor of the Beneficiary alone. If insurance cannot be secured by Trustor to provide the required coverage, such liability shall constitute an event of default hereunder.

4. To appear in and litigate any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Beneficiary or Trustee; Beneficiary or Trustee may appear in and litigate any such action or proceedings, including any bankruptcy, partition or condemnation proceeding, affecting the Property, or Beneficiary's interest therein, in which event Trustor agrees to pay all costs and expenses thereof, including attorney's fees and costs of securing evidence of title.

5. To pay on or before the due date all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens, on the Property or any part thereof, which at any time appear to be prior or superior hereto.

6. To pay the reasonable amount of any attorney's fees, together with costs, incurred by Beneficiary in the event the obligation secured hereby is referred to an attorney for enforcement of Beneficiary's rights hereunder or if Beneficiary retains an attorney to advise Beneficiary in connection with this Deed of Trust or any other agreement related to the indebtedness secured by this Deed of Trust. The fees and costs described herein and elsewhere in this Deed of Trust shall be in addition to those set forth in the loan agreement or any other written agreement between Trustor and Beneficiary.

7. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and litigate any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, including any bankruptcy proceeding affecting the Property; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including attorney's, accountant's, and appraisal fees and costs of securing evidence of title, and all amounts so expended shall be obligations of Trustor secured by this Deed of Trust. Nothing contained herein shall prohibit Beneficiary and/or Trustee from entering the Property, at a reasonable time and upon reasonable notice to Trustor, without incurring or assuming any obligations or liabilities whatsoever, for the sole purpose of inspecting the Property.

8. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the same rate as is provided for in the note or notes secured by this Deed of Trust. In the event that such sums are not immediately paid, they shall be added, along with the appropriate amount of capital stock or participation certificates, to the principal balance of the indebtedness secured hereby and shall accrue interest as herein set forth. All such sums shall be secured hereby.

9. Environmental Representations, Warranties and Covenants.

(a) Except as disclosed in writing to Beneficiary, or except as otherwise provided in any Loan Agreement between Beneficiary and Trustor which specifically refers to said Property, to the best knowledge of Trustor after due inquiry, Trustor hereby further represents, warrants and covenants as follows:

(i) No pollutants, contaminants (including oil or other petroleum products), toxic or hazardous substances, or solid or hazardous wastes, as such terms are defined under any federal, state or local Environmental Law, regulation or ordinance (hereinafter "Contaminants") have been, are being or will be generated, manufactured, produced, stored, disposed of, discharged, released, threatened to be released, or otherwise allowed to migrate or escape on, under or from said Property in such quantities or concentrations as would violate any federal, state or local Environmental Law, regulation or ordinance or as would require Trustor to report such condition to any governmental authority or to undertake removal or remedial action to clean up such contaminants;

(ii) No Contaminants are located on, in or under any property located adjacent to the Property in such quantities or concentrations as would constitute a violation of any Environmental Law or as would require the owner of the adjacent property to report such condition to any governmental authority or to undertake removal or remedial action to clean up such Contaminants;

(iii) Neither the Property, nor any portion thereof, nor any adjacent property or portion thereof, has been or is proposed to be listed under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.) or any analogous state law. Trustor shall immediately notify Beneficiary if Trustor acquires any information concerning the listing or proposed listing of the Property or any adjacent property and shall provide Beneficiary with any documents in Trustor's possession relative thereto;

(iv) No hazardous wastes, as defined under the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), or any analogous state law ("Hazardous Wastes"), have been, are being or will be stored or treated in surface impoundments or other structures or facilities that are located partially or entirely below the ground surface.

(v) No litigation, investigation, administrative order, consent order, agreements, or other action, proceeding or settlement (hereinafter "Action") has previously been brought, is now pending, or to the best knowledge of Trustor threatened against or initiated by Trustor, with respect to Trustor's use or management of Hazardous Materials or Hazardous Wastes or the environmental condition of the Property, including any underlying groundwater. Upon learning thereof, Trustor shall immediately notify Beneficiary of any such Action or threatened Action and provide Beneficiary with copies of all documentation relative thereto;

(vi) Except as disclosed in writing to Beneficiary, no underground tanks, wells (except domestic water wells), septic tanks, ponds, pits, or any other storage tanks ("Tanks") (whether currently in use or abandoned) are or were located on or under said Property

and no Tanks are or were serving said Property described herein. With respect to any Tanks disclosed in writing to Beneficiary, Trustor shall comply with all federal, state and local laws, regulations and ordinances and any requirements of city or county fire departments, applicable to the maintenance and use of such Tanks, including, without limitation, Title 40 of the Code of Federal Regulations Part 112.

10303

(b) Nothing herein shall be deemed to prohibit Trustor from (i) using, handling or storing hazardous materials or substances, as defined under any federal, state or local law, regulation or ordinance ("Hazardous Materials") or (ii) storing or treating non-hazardous wastes, so long as such activities are carried out (a) in a good and husbandlike manner in the ordinary course of business, and (b) in compliance with all applicable environmental laws, regulations, permits, orders or other requirements.

(c) In the event that Trustor is in breach of any of its representations, warranties or covenants as set forth above, Trustor, at its sole expense, shall take all action required, including environmental cleanup of the Property, to comply with the representations, warranties and covenants herein or applicable legal requirements and, in any event, shall take all action deemed necessary by appropriate governmental authorities. Beneficiary shall have the right, but not the obligation, to advise appropriate governmental authorities of any environmental condition on or affecting the Property that constitutes or may constitute a breach of Trustor's obligations hereunder.

(d) Trustor and its successors and assigns shall indemnify, defend, protect, and hold harmless Beneficiary and/or Trustee, its directors, officers, employees, agents, shareholders, successors and assigns and their officers, employees or agents, from and against any and all claims, suits, damages, liens, losses, liabilities, interest, judgments, response and cleanup costs, demands, actions, causes of action, injuries, administrative proceedings and orders, consent agreements and orders, penalties, costs and expenses (including any fees and expenses incurred in enforcing this indemnity, any out-of-pocket litigation costs and the reasonable fees and expenses of counsel) of any kind whatsoever ("Claims") paid, incurred or suffered by, or asserted against Beneficiary and/or Trustee, including but not limited to Claims arising out of loss of life, injury to persons, trespass or damage to or contamination of property or natural resources, or injury to business, in connection with or arising out of the activities of Trustor on the Property. Trustor's predecessors in interest, third parties who have been invited, permitted or trespassed on the Property, or parties in a contractual relationship with Trustor, or any of them, or which directly or indirectly arise out of or result from or in any way connected with the Property, whether or not caused by Trustor or within the control of Trustor, including without limitation: (i) the presence, use, generation, treatment, storage, disposal, release, threatened release, or discharge of any Hazardous Material or Contaminant at or from said Property and/or the cleanup of Hazardous Materials or Contaminants within, on or under said Property; (ii) Trustor's breach of any of the representations, warranties and covenants contained herein; and (iii) Trustor's violation or alleged violation of any applicable Environmental Law, regulation or ordinance.

(e) Trustor's representations, warranties, covenants and indemnities contained herein shall survive the occurrence of any event whatsoever, including without limitation the payoff of the promissory note secured hereby, the reconveyance or foreclosure of this Deed of Trust, the acceptance by Trustee of a deed in lieu of foreclosure, or any transfer or abandonment of the Property.

(f) The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance, regulation, rule in effect or hereinafter enacted, pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Property, including but not limited to enactments requiring the removal or containment of asbestos-containing materials in private buildings.

10. **Grazing Rights.** If any portion of the Property described in this Deed of Trust is used by Trustor as the basis for obtaining grazing permits or other grazing rights issued by any governmental agency, including without limitation the Forest Service, U.S. Department of Agricultural or the Bureau of Land Management, U.S. Department of Interior, Trustor covenants and agrees as follows:

(a) Said grazing permits or other rights are in good standing and have not been modified, reduced or limited in any other respect, except as fully disclosed in writing to beneficiary.

(b) Trustor will perform all obligations imposed as a requirement of exercise of said grazing permits or other rights and will comply with all laws, rules and regulations applicable thereto.

(c) Trustor will take such timely action as may be required to cause the renewal or reissuance of said grazing permits or other rights from time to time as they expire during the term thereof. Trustor agrees and acknowledges that the failure to renew or cause the reissuance of any said permits for any reason, whether the result of an act or omission of Trustor or for reasons beyond Trustor's control, is an event of default hereunder and Beneficiary shall have the right to exercise the rights hereinafter set forth in this Deed of Trust.

(d) Trustor agrees to pay all fees, charges, rents or other payments accruing under said permits or any renewals thereof prior to delinquency. In the event Trustor fails to pay any such payment, the amount unpaid shall become a part of the indebtedness secured by this Deed of Trust and shall be immediately due and payable.

11. Trustor shall furnish Beneficiary as soon as possible, but in no event later than 120 days after each fiscal year end, financial reports for each of the undersigned, including a balance sheet and a profit and loss statement.

3. IT IS MUTUALLY AGREED THAT:

(1) Any award of damages in connection with any taking or condemnation or injury to the Property by reason of public use, or for damages resulting from private trespass or injury to the Property, is absolutely and unconditionally assigned and shall be paid to Beneficiary, under the terms and conditions of this Deed of Trust pertaining to Rents. Upon receipt of such money Beneficiary may apply the same on the indebtedness secured hereby. Trustor agrees to execute such further documents as may be required to effect the assignments herein made as Beneficiary or Trustee may require.

(2) At any time, without affecting the liability of any person for the payment of the indebtedness secured hereby, and without otherwise affecting the security hereof, Trustee may (a) consent to or join in the making of any map or plat of the Property; (b) grant any easement or create any restriction thereof; (c) subordinate this Deed of Trust; (d) extend or modify the term of the loan or loans secured hereby; and (e) reconvey without warranty, all or any part of the Property. Trustor agrees to pay reasonable Trustee's fees for any of the foregoing services.

(3) Prior to any default by Trustor in the payment, observance, performance and discharge of any condition, obligation, covenant, or agreement of Trustor contained herein, Trustor may, as the agent and fiduciary representative of Beneficiary for collection and disbursement purposes only, collect and receive the Rents as they come due and payable; the Rents are to be applied by Trustor to the payment of the principal and interest and all other sums due or payable on any promissory note or guaranty secured by this Deed of Trust and to the payment of all other sums payable under this Deed of Trust and, thereafter, so long as arrearage has occurred, the balance shall be disbursed to the account of Trustor. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the amount of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in his own name, or of whomever collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine; also perform such acts of repair, cultivation, irrigation or protection, as may be necessary or proper to conserve the value of the Property; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for harvest, remove, and sell any crops that may be growing upon the Property, and apply the proceeds thereof upon the indebtedness secured hereby.

4. The entering upon and taking possession of the 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 of or damage to the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary and in accordance with applicable state law. In the event of default, Beneficiary may employ counsel to enforce payment of the obligations secured hereby, may cause the Trustee to sell the trust property in accordance with the power of sale granted herein and the applicable state law, and may exercise such other rights and remedies granted by law and equity, which rights and remedies shall be cumulative and not exclusive. Trustee may sell the Property either as a whole or in separate parcels, and in such order as it may determine. The purchase price shall be payable in lawful money of the United States at the time of the sale. In exercising the power of sale contained herein, Trustee may hold one or more sales of all or any portion of the Property by public announcement at the time and place of sale set forth in the notice thereof, and from time to time thereafter may postpone such sale or sales of all or any portion of the Property to the same or separate days by public announcement at such time fixed by the preceding postponement. Any person, including Trustee or Beneficiary, may purchase at such sale. Beneficiary may credit bid at any such sale, and if Beneficiary is the successful purchaser, it may apply any of the outstanding obligations secured hereby in settlement of the purchase price. Beneficiary may resort to and realize upon the security hereunder and any other real or personal property security now or hereafter held by Beneficiary for the obligations secured hereby in such order and manner as Beneficiary may, in its sole discretion, determine. Resort to any or all such security may be taken concurrently or successively and one or several consolidated or independent judicial actions or lawful nonjudicial proceedings, or both. If the obligation secured by this Deed of Trust is also secured by personal property, fixtures or crops, Beneficiary may enforce its security interest in the personal property, fixtures and crops and its lien under this Deed of Trust in any manner and in any order or sequence permitted by applicable law. All remedies are cumulative and none are exclusive; no election by Beneficiary to pursue one remedy or item of collateral shall be deemed to be a release or waiver of any other item of collateral or a release or modification of the liability of Trustor or any guarantor to pay and perform in full all obligations to Beneficiary.

6. The failure on the part of the Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent defaults. Subsequent acceptance of any payment by the holder hereof shall not be deemed a waiver of any default by Trustor, or of Beneficiary's rights hereunder as the result of any sale, agreement to sell, conveyance, or alienation, regardless of holder's knowledge of such default, sale, agreement to sell, conveyance, or alienation at the time of acceptance of such payment.

7. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the holder and owner of any note secured hereby, or, if the note has been pledged, the pledgee thereof. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several.

8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

9. Beneficiary may, from time to time or at any time, substitute a Trustee or Trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the county in which the Property herein described is situated, it shall be conclusive evidence of the appointment of such Trustee or Trustees, and such new Trustee or Trustees shall succeed to all of the powers and duties of the Trustee or Trustees named herein.

10. In the event the herein-described Property, or any part thereof, or any interest therein, is sold, agreed to be sold, conveyed or alienated by Trustor, or by operation of law or otherwise, except by inheritance, all obligations secured hereby, irrespective of the maturity dates, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable. Failure to exercise such option shall not constitute a waiver of the right to exercise this option in the event of subsequent sale, agreement to sell, conveyance or alienation.

11. In the event any one or more of the provisions contained in this Deed of Trust or in any Promissory Note hereby secured 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 Deed of Trust or said Promissory Note, but this Deed of Trust and said Promissory Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

12. The undersigned Trustor agrees that he is entitled only to those notices required by applicable law and requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth below.

Address

Signature of Trustor

10305

TRUSTOR:

Address:

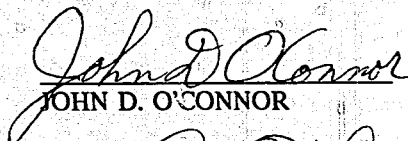
Address:

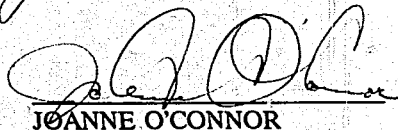
Address:

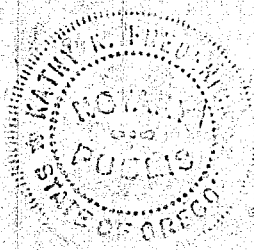
Address:


JAMES B. O'CONNOR


RHONDA G. O'CONNOR


JOHN D. O'CONNOR


JOANNE O'CONNOR



Kathy K. Frederick
Notary for: Oregon
Expires: 7-17-93

EXHIBIT "A"
LEGAL DESCRIPTION

10306

PARCEL 1

That portion of the N1/2 S1/2 of Section 28, Township 40 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, lying West of the Southern Pacific Railroad right of way and East of the centerline of the U.S.B.R. "C" Canal.

ALSO that portion of the SE1/4 SW1/4 of Section 28, Township 40 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, lying East of the centerline of the U.S.B.R. "C" Canal.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 10th day
of May A.D. 19 93 at 9:32 o'clock A.M., and duly recorded in Vol. M93
of Mortgages on Page 10301.

FEE \$35.00

Evleyn Biehn County Clerk

By Paul M. Mulholland