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K-45899

## TRUST DEED

DATE: 18  
January 3, 1994

GRANTOR: James P. O'Keefe, David R. Noble and Luther R. Noble  
Each as to an undivided 1/3 interest \*\* aka James P. O'Keefe

TRUSTEE: Klamath County Title Company

BENEFICIARY: Silas W. Kilgore

WHEREAS, Grantor is the owner of the real property described below; and

WHEREAS, Beneficiary has agreed to the terms of a Promissory Note in the principal balance of \$40,000.00 executed concurrently with this Trust Deed, a copy of which is attached hereto marked Exhibit "B" and incorporated herein by reference. Said note represents the balance of the purchase price owed to Beneficiary by Grantor.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Grantor irrevocably grants, bargains, sells, conveys, assigns and transfers to Trustee in trust for the benefit and security of the Beneficiary, with power of sale and right of entry and possession, all of Grantor's right, title, and interest in and to the real property located in Klamath County, state of Oregon, and more particularly described as follows:

Township 40 South, Range 14½ East of the Willamette Meridian, Klamath County, Oregon:

Section 25:  
Section 36:

W½W½

W½NE¼, also 40 acres, more or less, lying East of fence existing on November 2, 1959, across E½SW¼ of said Section, Township and Range; N½NW¼ and SE¼, EXCEPT that part of said SE¼ lying Southeasterly of the line parallel with and 225 feet Northwesterly from the Northerly line of Bear Flat-Deer Spring Road.

ALSO the E½NE¼

TOGETHER WITH all interests, estates, and rights that Grantor now has or may acquire in (1) all easements, rights of way, and rights used in connection with the Property or as a means of access to the Property; and (2) all tenements, hereditaments, and appurtenances in any manner belonging, relating, or appertaining to the Property; and

TOGETHER WITH all rights, titles, and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures, located on the Property or attached to, contained in, or used in any such buildings and other improvement, and all appurtenances and additions to and substitutions and replacements of the Property (all of the foregoing being collectively referred to below as the "Improvements"); and

TOGETHER WITH any and all mineral, oil and gas rights, water rights, and water service contracts, drainage rights and other similar rights or interests that benefit or are appurtenant to the Property or the Improvements or both, and any of their proceeds; and

TOGETHER WITH all present and future rights in and to all present and future licenses, permits, approvals, and agreements with or from any municipal corporation, county, state, or other governmental or quasi-governmental entity or agency relating to the development, improvement, division, or use of all or any portion of the Property and all other general intangibles relating to the Property, the Improvement, or their

## 1 - TRUST DEED

AFTER RECORDING RETURN TO:  
Klamath County Title Company  
422 Main St.  
Klamath Falls, OR 97601

use and operation; and

TOGETHER WITH all rights, interests, and claims that Grantor now has or may acquire with respect to any damage to or taking of all or any part of the Property or the Improvements, including without limitation any and all proceeds of insurance in effect with respect to the Improvements, any and all awards made for taking by eminent domain or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property or the Improvement, and any and all awards resulting from any other damage to the Property or the Improvements, all of which are assigned to Beneficiary and, subject to the terms of this Trust Deed, Beneficiary is authorized to collect and receive such proceeds, to give proper receipts and acquittances for the proceeds, and to apply them to the Obligations secured by this Trust Deed.

All of the above is sometimes referred to below as the "Trust Property."

TO HAVE AND TO HOLD the Trust Property to Trustee and its successors and assigns for the benefit of Beneficiary and its successors and assigns, forever.

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be reconveyed.

TO PROTECT THE SECURITY OF THIS TRUST DEED, GRANTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

#### ARTICLE I

##### Particular Covenants and Warranties of Grantor

**1.01 Obligations Secured.** This Trust Deed secures the following, collectively referred to as the "Obligations":

(1) The payment of all indebtedness, including but not limited to principal and interest, and the performance of all covenants and obligations of Grantor, under the Note, whether such payment and performance is now due or becomes due in the future;

(2) The payment and performance of all covenants and obligations in this Trust Deed;

(3) The payment and performance of any and all other indebtedness and obligations of Grantor to Beneficiary of any nature whatsoever, whether direct or indirect, primary or secondary, joint or several, liquidated or unliquidated, whenever and however arising and whether or not reflected in a written agreement or instrument.

**1.02 Payment of Indebtedness; Performance of Covenants.** Grantor shall duly and punctually pay and perform all of the Obligations.

**1.03 Property.** Grantor warrants that it holds good and merchantable title to the Property and the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in Exhibit A. Grantor covenants that it shall forever defend Beneficiary's and Trustee's rights under this Trust Deed against the adverse claims and demands of all persons.

**1.04 Further Assurances; Filing; Refiling; Etc.**

(1) Grantor shall execute, acknowledge, and deliver, from time to time, such further instruments as Beneficiary or Trustee may require to accomplish the purposes of this Trust Deed.

## 2 - TRUST DEED

**1.05 Compliance with Law.** Grantor further represents, warrants, and covenants that:

(1) Grantor and its operations upon the Property currently comply, and will hereafter comply in all material respects with all applicable Laws and Covenants.

**1.06 Definitions; Environmental Covenants; Warranties and Compliance**

(1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §§9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §§6901-6992.

(2) For the purposes of this section, "Hazardous Substance" includes without limitation;

(a) All "hazardous substances" as designated pursuant to 40 CFR Part 302 or any similar regulation now existing or hereafter promulgated;

(b) All "hazardous wastes" within the meaning provided in 40 CFR §261.3 or any similar regulation now existing or hereafter promulgated;

(c) All "extremely hazardous substances" as listed in 40 CFR Part 355 or any similar regulation now existing or hereafter promulgated;

(d) All "hazardous chemicals" as defined under 29 CFR §1910.1200(c) or any similar regulation now existing or hereafter promulgated;

(e) All "toxic chemicals" listed in 40 CFR Part 372 or any similar regulation now existing or hereafter promulgated;

(f) Those substances defined as "hazardous" or "toxic" in the Hazardous Materials Transportation Act, 49 USC §§1801-1819 or in any amendment thereto, or listed in 49 CFR Part 172 or any similar regulation now existing or hereafter promulgated;

(g) All materials, wastes, and substances that are designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 USC §§1251-1387 (33 USC §1321) or listed pursuant to Section 3076 of the Clean Water Act (33 USC §1317);

(h) All "hazardous wastes" as defined in ORS 466.005(7), in any amendments thereto and in any rule or order promulgated pursuant thereto;

(i) All materials, substances, and wastes that are or which contain (A) asbestos; (B) polychlorinated biphenyls; (C) explosives, except such explosives as are used during construction in accordance with law; (D) petroleum, and any fractions thereof; or (E) radioactive materials; and

(j) Such other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations.

(3) Grantor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such hazardous Substances that may be used in the ordinary course of Grantor's business and in compliance with all



Environmental Laws, including but not limited to those relating to licensure, notice, and recordkeeping.

(4) Grantor will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.

(5) Grantor shall give prompt written notice to Beneficiary of:

(a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substances on the Property or the migration of any Hazardous Substance from or to other premises;

(b) All known claims made or threatened by any person against Grantor or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;

(c) The existence of any Hazardous Substance on or about all or any portion of the Property; or

(d) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Grantor's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.

(6) Grantor shall promptly provide to Beneficiary copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. Beneficiary shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by Grantor, if Beneficiary determines that such participation is reasonably necessary to protect its interest in the Trust Property.

(7) If, at any time, Beneficiary has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements has occurred or is threatened, or if Beneficiary has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, Beneficiary may require Grantor to obtain or may itself obtain, at Grantor's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Grantor shall promptly provide to Beneficiary a complete copy of any environmental assessment obtained by Grantor.

(8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Grantor shall, within 30 days after written demand by Beneficiary for Grantor's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Grantor including, without limitation, Beneficiary's reasonable attorney fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Grantor shall fail to timely commence, or cause to be commenced, such Remedial Work, Beneficiary may, but shall not be required to, cause such Remedial

Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest until paid at the rate provided in the Note.

(9) Grantor shall hold Beneficiary, its directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Grantor's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties and fines.

**1.07 Maintenance and Improvements.** Grantor shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without Beneficiary's prior written consent. Grantor shall maintain every portion of the Property and Improvements in good repair, working order, and condition, except for reasonable wear and tear, and shall at Beneficiary's election restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below). Grantor shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property.

**1.08 Liens.** Grantor shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Grantor shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, the lien of this Trust Deed, except as specifically provided in Exhibit A.

**1.09 Impositions.**

(1) Grantor shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges of every nature now or hereafter assessed or levied against any part of the Trust Property or on the lien or estate of Beneficiary or Trustee (collectively, the "Impositions"); provided, however, that if by law any such Imposition may be paid in installments, whether or not interest shall accrue on the unpaid balance, Grantor may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.

(2) Grantor may, at its expense and after prior notice to Beneficiary, contest by appropriate legal administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application, in whole or in part, of any Imposition or lien on the Trust Property or any claim of any laborer, materialman, supplier, or vendor or lien, and may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Grantor pays the amount or satisfies the condition being contested, and Grantor would have the opportunity to do so in the event of Grantor's failure to prevail in the contest; (c) neither Beneficiary nor Trustee shall, by virtue of such permitted contest, be exposed to any risk of liability for which Grantor has not furnished additional security as provided in clause (d) below; and (d) Grantor shall have furnished to Beneficiary cash, corporate surety bond, or other additional security in respect of the claim being contested or the loss or damage that may result from Grantor's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Grantor shall promptly satisfy any final judgment.

(3) Grantor shall furnish to Beneficiary, promptly upon request, satisfactory evidence of the payment of all Impositions. Beneficiary is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

#### 1.10 Insurance

(1) **Property and Other Insurance.** Grantor shall obtain and maintain in full force and effect during the term of this Trust Deed; (a) all risk property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance; (b) comprehensive general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to Beneficiary and in no event less than \$1,000,000 combined single limit coverage. In addition, Grantor shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as Beneficiary may require.

(2) **Insurance Companies and Policies.** All insurance shall be written by a company or companies reasonably acceptable to Beneficiary; shall contain a long form mortgagee clause in favor of Beneficiary with loss proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed; shall require 30 days' prior written notice to Beneficiary of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Grantor or any occupant will affect the validity or enforceability of such insurance as against Beneficiary; and shall be accompanied by proof of premiums paid for the current policy year. Beneficiary shall be named as additional insured on all liability policies. Grantor shall forward to beneficiary, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.

(3) **Blanket Policy.** If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and Beneficiary are insured under such policy in the proper designated amount.

(4) **Insurance Proceeds.** All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1.12.

**1.11 Assignments of Policies upon Foreclosure.** In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Grantor in and to all policies of insurance procured under Section 1.10 shall inure to the benefit of and pass to the successors in interest of Grantor or the purchaser or grantee of all or any part of the Trust Property.

#### 1.12 Casualty/Loss Restoration

(1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Grantor shall give prompt written notice of the casualty to Beneficiary, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. Beneficiary may make proof of loss if it is not made promptly and to Beneficiary's satisfaction by Grantor.

(2) Grantor assigns to Beneficiary all insurance proceeds that Grantor may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by Beneficiary as collateral to secure performance of the Obligations secured by this Trust Deed. Grantor may elect either to restore or not to restore the damaged Improvements. If Grantor shall repair or replace the damaged Improvements in a manner satisfactory to Beneficiary, and provided that Grantor is not in default under the Trust Deed,



Beneficiary shall, upon satisfactory proof of performance of work, pay or reimburse Grantor from the insurance proceeds for the reasonable cost or repair or restoration completed. If Grantor notifies Beneficiary in writing that, pursuant to its rights under this Trust Deed, it elects not to repair or replace the damaged Improvements, Beneficiary shall apply the proceeds not to be so used, toward payment of all or part of the indebtedness secured by this Trust Deed in such order as Beneficiary may determine. Any insurance proceeds that have not been paid out within one year after their receipt for the repair, replacement, or restoration of the Trust Property shall forthwith be applied by Beneficiary toward payment of all or part of the indebtedness secured by this Trust Deed in such order as Beneficiary may determine.

### 1.13 Actions to Protect Trust Property; Reserves

(1) If Grantor shall fail to obtain the insurance required by Section 1.10, make the payments required by Section 1.09 (other than payments that Grantor is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Trust Deed, Beneficiary may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of Beneficiary's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Grantor upon demand, together with interest at the rate provided in the Note. No payment or other action by Beneficiary under this section shall impair any other right or remedy available to Beneficiary or constitute a waiver of any default.

(2) If Grantor fails to promptly perform any of its obligations under Section 1.09 or 1.10 of this Trust Deed, Beneficiary may require Grantor thereafter to pay and maintain with Beneficiary reserves for payment of such obligations. In that event, Grantor shall pay to Beneficiary each month a sum estimated by Beneficiary to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Grantor shall pay any deficiency to Beneficiary upon demand. The reserves may be commingled with Beneficiary's other funds, and Beneficiary shall not be required to pay interest to Grantor on such reserves. Beneficiary shall not hold the reserve in trust for Grantor, and Beneficiary shall not be the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

## ARTICLE II Condemnation

### 2.01 Condemnation

(1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Grantor receive any notice or other information regarding such action, Grantor shall give immediate notice to such action to Beneficiary.

(2) Beneficiary shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Grantor's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at Beneficiary's election, shall become immediately due and collectible.

(3) Beneficiary may, at its sole option, apply the Condemnation Proceeds to the reduction of the Obligations in such order as Beneficiary may determine, or apply all or any portion of the Condemnation Proceeds to the cost of restoring and improving the remaining Trust Property. In the event

that Beneficiary elects to apply the Condemnation Proceeds to restoration and improvement, the proceeds shall be held by Beneficiary and shall be released only upon such terms and conditions as Beneficiary shall require in its sole discretion, including but not limited to prior approval of plans and release of liens. No Condemnation Proceeds shall be released if Grantor is in default under this Trust Deed.

### ARTICLE III Events of Default; Remedies

**3.01 Events of Default.** Each of the following shall constitute an event of default under this Trust Deed and under each of the other Loan Documents:

- (1) **Nonpayment.** Failure of Grantor to pay any of the Obligations before the due date.
- (2) **Breach of Other Covenants.** Failure of Grantor to perform or abide by any other covenant included in the Obligations, including without limitation those covenants in the Note, in this Trust Deed, or in any other Loan Document.
- (3) **Misinformation.** Falsity when made in any material respect of any representation, warranty, or information furnished by Grantor or its agents to Beneficiary in or in connection with any of the Obligations.
- (4) **Other Default.** The occurrence of any other event of default under the Note or any of the other Obligations.
- (5) **Bankruptcy.** The occurrence of any of the following with respect to Grantor, any guarantor of the Obligations, or the then-owner of the Trust Property: (a) appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.
- (6) **Transfer; Due-on-Sale; Due-on-Encumbrance.** Any sale, gift, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Trust Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without Beneficiary's prior written consent, shall constitute an event of default. The provisions of this subsection (6) shall apply to each and every Transfer, regardless of whether or not Beneficiary has consented or waived its rights in connection with any previous Transfer. Beneficiary may attach such conditions to its consent under this subsection (6) as Beneficiary may determine in its sole discretion, including without limitation an increase in the interest rate or the payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by Beneficiary.

**3.02 Remedies in Case of Default.** If an Event of Default shall occur, Beneficiary or Trustee may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

- (1) **Acceleration.** Beneficiary may declare all or any portion of the Obligations immediately due and payable.
- (2) **Receiver.** Beneficiary may have a receiver appointed for the Trust Property. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment



by Trustee or Beneficiary shall not disqualify a person from serving as receiver. Grantor consents to the appointment of a receiver at Beneficiary's option and waives any and all defenses to such an appointment.

(3) **Possession.** Beneficiary may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as Beneficiary shall deem appropriate in its sole discretion. Upon request after an Event of Default, Grantor shall peacefully relinquish possession and control of the Trust Property to Beneficiary or any receiver appointed under this Trust Deed.

(4) **Power of Sale.** Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Property by advertisement and sale under applicable law.

(5) **Foreclosure.** Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Property and giving Beneficiary the right to collect any deficiency remaining due after disposition of the Trust Property.

(6) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

(7) **Abandonment.** Beneficiary may abandon all or any portion of the Trust Property by written notice to Grantor.

**3.03 Sale.** In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as Beneficiary may elect, without regard to the right of Grantor, any person claiming under Grantor, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Grantor, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Beneficiary, its officers, agents, and employees, may purchase at any such sale. Beneficiary and each of its officers are irrevocably appointed Grantor's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for the purpose, Beneficiary and its officers may execute all appropriate instruments of transfer. Nevertheless, Grantor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Beneficiary or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Beneficiary, for such purpose.

**3.04 Cumulative Remedies.** All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by Beneficiary to cure under Section 1.13 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

**3.05 Receiver or Trustee-in-Possession.** Upon taking possession of all or any part of the Trust Property, Trustee, Beneficiary, or a receiver may:

(1) **Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.

(2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance,

and improvements.

(3) **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.

(4) **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, Beneficiary, Trustee, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

**3.06 Application of Proceeds.** All proceeds realized from the exercise of the rights and remedies under this Section 3 shall be applied as follows:

(1) **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 4.07 below.

(2) **Indebtedness.** To pay all Obligations, in such order as Beneficiary shall determine in its sole discretion

(3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

**3.07 Deficiency.** No sale or other disposition of all or any part of the Trust Property pursuant to this Section 3 shall be deemed to relieve Grantor of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations. If the proceeds of a sale, a collection, or other realization of or upon the Trust Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, Grantor shall remain liable for any deficiency to the fullest extent permitted by law.

**3.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws.** To the fullest extent permitted by law, Grantor waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property.

#### ARTICLE IV General Provisions

**4.01 Time is of the Essence.** Time is of the essence with respect to all covenants and obligations of Grantor under this Trust Deed.

**4.02 Reconveyance by Trustee.** At any time upon the request of Beneficiary, payment of Trustee's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Trustee may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or person legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

**4.03 Notice.** Any notice under this agreement shall be in writing and shall be effective when



actually delivered in person or deposited in the United State mail registered or certified return receipt requested, postage prepaid and addressed to the party at the address stated in this agreement or such other address as either party may designate by written notice to the other.

James P. O'Keefe  
3178 E. Langell Valley Rd.  
Bonanza, OR 97623

David R. Noble  
26161 Highway 70  
Bonanza, OR 97623

Luther R. Noble  
40805 Gift Road  
Bonanza, OR 97623

Silas W. Kilgore  
21221 E. Langell Valley Rd.  
Bonanza, OR 97623

**4.04 Substitute Trustee.** In the event of dissolution or resignation of Trustee, Beneficiary may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

**4.05 Trust Deed Binding on Successors and Assigns.** This Trust Deed shall be binding upon and inure to the benefit of this successors and assigns of Grantor, Trustee, and Beneficiary. If the Trust Property or any portion thereof shall at any time be vested in any person other than Grantor, Beneficiary shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as Beneficiary deems appropriate in its sole discretion, without notice to or approval by Grantor and without impairing Grantor's liability for the Obligations.

**4.06 Indemnity.** Grantor shall hold Beneficiary and Trustee and their respective directors, officers, employees, agents, and attorneys, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Trustee's or Beneficiary's interest under this Trust Deed, except Grantor shall not be liable for acts performed by Beneficiary or Trustee in violation of applicable law.

**4.07 Expenses and Attorney Fees.** If Beneficiary refers any of the Obligations to an attorney for collection or seeks legal advice following a default; if Beneficiary is the prevailing party in any litigation instituted in connection with any of the Obligations; or if Beneficiary or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and an attorney is employed by Beneficiary to (1) appear in any such action, suit, or proceeding, or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce Beneficiary's interest, then in any such event Grantor shall pay reasonable attorney fees, costs, and expenses incurred by Beneficiary or its attorney in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Trust Deed and, if not paid upon demand, shall bear interest at the rate specified in the Note.

**4.08 Applicable Law.** The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon.

**4.09 Captions.** The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

**4.10 "Person" Defined.** As used in this Trust Deed, the word "person" shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.



4.11 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

4.12 Entire Agreement. This Trust Deed contains the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained herein shall be binding or valid.

## GRANTOR

James P. O'Keeffe by David R. Noble his attorney in fact David R. Noble

Luther R. Noble  
Luther R. Noble

STATE OF OREGON )  
County of Klamath ) ss.

On this \_\_\_ day of December, 1993, before me personally appeared JAMES P. O'KEEFFE and acknowledged the foregoing instrument to be his voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

STATE OF OREGON )  
County of Klamath ) ss.

On this 18 day of December, 1993, before me personally appeared DAVID R. NOBLE and acknowledged the foregoing instrument to be his voluntary act and deed. \*\*for himself and as Attorney in fact for James P. O'Keeffe

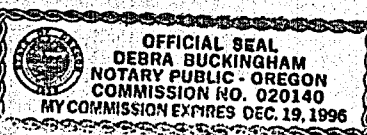
Debra Buckingham  
Notary Public for Oregon  
My commission expires: 12-19-96

STATE OF OREGON )  
County of Klamath ) ss.

On this 18 day of December, 1993, before me personally appeared LUTHER R. NOBLE and acknowledged the foregoing instrument to be his voluntary act and deed.

Debra Buckingham  
Notary Public for Oregon  
My commission expires:- 12-19-96

12 - TRUST DEED



2184

EXHIBIT "A"

1. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. Taxes for the year 1993-94 and possible prior years have been deferred pursuant to ORS 308.370 to 308.403. These, plus earned interest are due and payable when said reason for the deferment no longer exists.

## PROMISSORY NOTE

\$40,000.00

January \_\_, 1994  
Klamath Falls, Oregon

This Note is secured by a Trust Deed of even date.

FOR VALUE RECEIVED, the undersigned James P. O'Keefe, David R. Noble, and Luther R. Noble ("Maker"), jointly and severally promise to pay to the order of Silas W. Kilgore ("Payee"), in installments as hereinafter set forth, the sum of FORTY THOUSAND AND 00/100ths DOLLARS (\$40,000.00), together with interest thereon at the rate of seven percent (7%) per annum on the unpaid balance in annual installments of not less than \$4,392.00 including interest. The first payment shall be due and payable on January 3, 1995, and a like payment on the same day of each year thereafter until January 3, 2004, at which time the entire remaining balance of principal and interest will be due and payable.

Principal and interest shall be payable in lawful money of the United States and shall be delivered to Klamath County Title Company, ATTN: Escrow Department, 422 Main Street, Klamath Falls, Oregon 97601, for subsequent disbursement in accordance with appropriate escrow instructions or at such other place as the Payee may from time to time specify by notice duly directed to Maker.

If any payments called for pursuant to the terms of this Promissory Note are not paid within thirty (30) days from the due date, then all principal and interest, at the option of the holder of this Promissory Note, shall become immediately due and collectible.

All sums received shall be applied first to interest and then to principal.

This Note is personal to Maker and not assignable. In making it Seller has relied upon Purchaser's credit and financial conditions at the time that this sale is made. If Purchaser hereafter assigns title to the property, then Seller may declare the entire balance of principal and interest immediately due and payable. Excess payments or prepayments shall be applied first to any payment due, including interest. The balance of prepayment or excess payments shall be applied to principal and shall not be credited as regular future payments, nor excuse maker from making the regular annual payments provided above.

Maker expressly agrees that this Promissory Note, or any payment hereunder, may be extended from

1 - PROMISSORY NOTE

EXHIBIT NO. B  
PAGE 1 OF 3



time to time without in any way affecting the liability of Maker.

If this Promissory Note is placed in the hands of an attorney for collection, Maker promises to pay holder's reasonable attorney's fees, collections costs, and costs incurred in obtaining a foreclosure title report even though no suit or action is filed hereon; if a suit or action filed, Maker also promises to pay holder's reasonable attorney's fees which will be fixed by the court or courts in which the suit or action, including any appeal therein, is heard or decided.

In no event shall interest hereunder exceed the maximum rate permitted by law. In the event interest exceeds the maximum rate, such rate shall be reduced to the highest rate recoverable under law.

This Promissory Note shall be governed by and construed in accordance with the laws of the State of Oregon.

IN WITNESS WHEREOF, this document is executed on the date first above written.

MAKER:

\_\_\_\_\_  
James P. O'Keeffe

\_\_\_\_\_  
David R. Noble

\_\_\_\_\_  
Luther R. Noble

For valuable consideration, the undersigned jointly and severally, absolutely guarantee payment of the above promissory note to payee. If the above maker, or any of the, default in payment of the promissory note according to its terms, the undersigned will pay to payee the unpaid balance thereon on demand.

The undersigned waive notice of acceptance, notice of non-payment, protest and notice of protest.

The undersigned further agree that payee may make, alter or renew the terms of the promissory note

as may be agreed upon and may deal with maker as he may elect without diminishing or discharging the liability of the undersigned guarantors.

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

\_\_\_\_\_  
Cheri L. Noble

\_\_\_\_\_  
Mary Noble

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title co the 20th day  
of Jan A.D., 19 94 at 10:53 o'clock AM., and duly recorded in Vol. M94  
of Mortgages on Page 2152.

FEE \$85.00

Evelyn Biehn County Clerk

By *Christine Nielsen*

3 - PROMISSORY NOTE

EXHIBIT NO. B  
PAGE 3 OF 3