

78588

After recording return to:
M.D.I.C. Financial Services, Inc.
P.O. Box 848
Eugene, OR 97440

04-05-94A11:16 RCVD
K-46350

Vol. 94 Page 10003

TRUST DEED

THIS TRUST DEED is made on the 29 day of March, 1994, between WALTER L. MILLER, VERA M. MILLER and E.E. COOKE, INC., or the survivor as Grantors, EUGENE ESCROW SERVICE, INC., as Trustee, and M.D.I.C. FINANCIAL SERVICES, INC., as Beneficiary.

WITNESSETH:

Grantors irrevocable grant, bargain, sell and convey to Trust in trust, with power of sale, the property in Klamath County, Oregon, described as shown in Exhibit "A", attached hereto and by this reference made a part hereof, 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. For the purpose of securing performance of each agreement of Grantors herein contained and payment of the sum of Seventy-Five Thousand and No/100 Dollars (\$75,000.00) with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order and made by Grantors, the final payment of principal and interest hereof, if not sooner paid, to be due and payable on February 18, 2000. 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, without first having obtained the written consent or approval of the Beneficiary, all obligations secured by this instrument, shall become due and payable immediately. Beneficiary agrees not to unreasonably withhold consent to sale or assignment of the property.

To protect the security of this Trust Deed, Grantors agree:

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 therefore;
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 agencies as may be deemed desirable by the Beneficiary;

4. To provide and continuously maintain insurance on the building now or hereafter erected on the said premises against loss or damage by fire and such other hazards as the Beneficiary may from time to time require, in an amount no less than the full insurable replacement value of said improvements written in companies acceptable to the Beneficiary as soon as insured; if the Grantors shall fail for any reason to procure any such insurance and to deliver said policies to the Beneficiary at least 15 days prior to expiration of any policy of insurance now or hereafter placed on said improvements, the Beneficiary may procure the same at Grantors' expense. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of the Beneficiary, the entire amount so collected, or any part thereof, may be released to Grantors. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice;
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 becomes past due or delinquent and promptly deliver receipts therefor to Beneficiary; failure in performance of the foregoing shall constitute a default hereunder and under the promissory note secured hereby. Should the Grantors fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantors, 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 set forth in the note secured hereby, together with the obligations described in paragraphs six and seven of this Trust Deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the Grantors, 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 and constitute a breach of this Trust Deed. Nothing contained herein shall prevent the Grantors from bona fide disputing any claims in regard to liens or assessments charged or levied against the property;
6. To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the Trustee incurred in connection with or in enforcing this obligation and the 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 the foreclosure of this Trust Deed, to pay all costs and expenses, including evidence of title and the Beneficiary's or Trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph seven in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, Grantors further agree to pay such sum as the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's attorney's fees on such appeal.

IT IS MUTUALLY AGREED THAT:

8. In the event that any portion or all of said property under the right of eminent domain or condemnation, Beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by Grantors in such proceedings, shall be paid to Beneficiary and applied first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and Grantors agree, at their own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon Beneficiary's request;

9. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the note for endorsement (in the case of reconveyances, for cancellation) without affecting the liability of any person for the payment of indebtedness, Trustee may;

- a. consent to the making of any map or plat 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. reconvey, without warranty, all or any part of the property.

The Grantee in any reconveyance 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 truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than five dollars;

10. Upon any default by Grantors hereunder, Beneficiary may at any time without notice, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue or otherwise collect the 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;

11. 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 thereunder or invalidate any act done pursuant to such notice;

12. Upon default by Grantors in payment of any indebtedness secured hereby or in their performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the Beneficiary may declare all sums secured hereby immediately due and payable. In such an event the Beneficiary at its election may proceed to foreclose this Trust Deed in equity as a mortgage or direct the Trustee to foreclose this Trust Deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded its written notice of default and its election to sell the said described real property to satisfy the obligation secured hereby whereupon the Trustee shall fix the time 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 86.735 to 86.795;

13. After the Trustee has commenced foreclosure by advertisement and sale, and at any time prior to five days before the date the Trustee conducts the sale, the Grantors or any person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the Trust Deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had the default not 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 pay to the Beneficiary all costs and expenses actually incurred in enforcing the obligation of the Trust Deed together with Trustee's and attorney's fees not exceeding the amounts provided by law;

14. Otherwise, the sale shall be held on the date and 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 in 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 the form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the

deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the Trustee, but including the Grantors and Beneficiary, may purchase at the sale;

15. When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of:

- a. The expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney;
- b. To the obligation secured by the Trust Deed;
- c. To all persons having recorded liens subsequent to the interest of the Trustee in the Trust Deed as their interest may appear in the order of their priority, and;
- d. The surplus, if any, to the Grantors or to their successors 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. Upon such appointment, and without conveyance to the successor Trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein 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 be conclusive proof of property appointment of successor Trustee;

17. Trustee accepts this Trust Deed when this deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Grantors, Beneficiary or Trustee shall be a party unless such action or proceeding is brought by Trustee.

IT IS FURTHER AGREED

18. As soon as practicable following the execution of this Trust Deed, the parties shall deliver in escrow to EUGENE ESCROW SERVICE, INC., 1355 Oak Street, Eugene, OR 97401:

- a. The original promissory note;
- b. An executed copy of this Trust Deed;
- c. Request for Full Reconveyance.

19. The escrow agent, shall receive for Beneficiary's account the balance of the installment payments provided for. Upon full payment of the principal and interest provided for herein, the escrow agent shall deliver to Grantors, the instruments specified above. If Grantors shall fail to pay any installment before the expiration of 30 days after the due date thereof, the escrow agent is authorized to surrender to the

Beneficiary, upon demand, but with notice to Grantors, all of the documents specified above, thereby terminating the escrow.

20. This agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns, but no interest of Grantors shall be assigned, subcontracted or otherwise transferred, voluntarily or involuntarily, without the prior written consent of the Beneficiary, which consent shall not be unreasonably withheld. Consent by Beneficiary to one transfer shall not constitute consent to other transfers or a waiver of this section. Any attempted assignment in violation of this provisions shall be void and of no effect with respect to Beneficiary. Grantors and any other person at any time obligated for the performance of the terms of this agreement hereby waive notice and consent to any and all extensions and modifications of this agreement granted by Beneficiary. Any such extensions or modifications will not in any way release, discharge, or otherwise affect the liability of any person at any time obligated under this agreement.

The Grantors covenant and agree to and with the Beneficiary and those claiming under it, that they are lawfully seized in fee simple of said described real property and have a valid, unencumbered title thereto, and that they will warrant and forever defend the same against all persons whomsoever, except as to Parcel No. 1, said property is subject to Contract of Sale, including the terms and provisions thereof, by and between Vernon LeRoy Romine and Evelyn B. Romine, sellers, and E.E. Cooke, Inc., an Oregon corporation, purchaser, dated April 25, 1984, in Volume M84 Page 8614, Deed records of Klamath County, Oregon, the unpaid balance of which is \$56,213.41 as of January 17, 1994. Also, this Trust Deed is intended to secure all future loans or advances that may be made during the time this obligation is outstanding, up to an additional twenty percent of the original face amount stated herein and also any advances made in accordance with the covenants of this agreement to protect collateral. Any such advances shall bear interest from the date made and at the rates set forth in the promissory note hereinabove referred to.

The Grantors warrant that the proceeds of the loan represented by the above described note and this Trust Deed are for an organization or, even if Grantors are natural persons, are for business or commercial purposes other than agricultural, or for financing the acquisition of an interest in the real property described herein and more specifically will be used in part to payoff the above referred Lane Sale Contract on Parcel No. 1.

This Trust Deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term Beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a Beneficiary named herein. In construing this Trust Deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

10009

IN WITNESS WHEREOF, said parties have hereunto set their hands
the day and year first hereinabove written.

GRANTORS:

Walter L. Miller
Walter L. Miller

Vera M. Miller
Vera M. Miller

E.E. Cooke, Inc.

By Walter L. Miller
President

By Vera M. Miller
Secretary

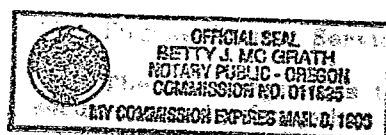
STATE OF OREGON
STATE OF OREGON,
County of Lane
County of Lane

FORM NO. 22 — ACKNOWLEDGMENT
STEVENS-NEES LAW PUB. CO., PORTLAND, ORE.

BE IT REMEMBERED, That on this 29th day of March, 1994,
before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within
named Walter L. Miller and Vera M. Miller, individually, and Walter L. Miller as
President of E.E. COOKE, INC., and Vera M. Miller as Secretary of E.E. COOKE, INC.

known to me to be the identical individual's described in and who executed the within instrument and
acknowledged to me that they executed the same freely and voluntarily.

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



Betty J. McGrath
Notary Public for Oregon.
My Commission expires 3-8-95

payment to you of any sum of money or other consideration in full satisfaction of the
Trust Deed pursuant to statute, to cancel all evidences of indebtedness
secured by said Trust Deed, which are delivered to you herewith
together with said Trust Deed, and to reconvey, without warranty, to
the parties designated by the terms of said Trust Deed, the estate
now held by you under the same. Mail reconveyance documents to
Grantors at Box 155, Two Rivers North, Chemult, OR 97731.

Dated, _____.

M.D.I.C. Financial Services, Inc.

By Fred C. Beckley, Secretary

10010

DESCRIPTION

The following described real property situate in Klamath County, Oregon:

PARCEL 1:

A tract of land in the SW¹/₄ of Section 21, Township 27 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at an iron pin on the Easterly right of way line of the Dalles-California Highway which lies South 19°24' East a distance of 504.2 feet from the Southwest corner of Block 8 of Chemult, and running thence continuing South 19°24' East along the Easterly right of way of the Dalles-California Highway a distance of 145 feet to an iron pin; thence North 70°36' East a distance of 325.6 feet to an iron pin on the Westerly right of way line of the S.P. Railroad right of way; thence North 20°54' West along the Westerly right of way line of the S.P. Railroad right of way a distance of 145 feet to an iron pin; thence South 70°36' West a distance of 321.8 feet, more or less, to the point of beginning.

PARCEL 2:

Lot 27 in Block 15 Tract No. 1042, Two Rivers North, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co the 5th day of April A.D. 19 94 at 11:16 o'clock A M., and duly recorded in Vol. M94 of Mortgages on Page 10003

FEE \$45.00

Evelyn Biehn County Clerk
By Pauline Mullender

EXHIBIT

A