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Vol. m 94 Page 20186

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PREPARED BY of

Kathy Mosley  
RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:

NOVUS Financial Corporation  
811 East 10th Street,  
Sioux Falls, SD 57103

Loan Number: 940-2-336-300711

K-6746

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

# NOVUS FINANCIAL CORPORATION

# OREGON DEED OF TRUST AND FIXTURE FILING

THIS DEED OF TRUST  
is made on

June 20, 1994

among the Trustor, (herein "Borrower")

GARY W. SHEPHERD and SHERRY L.  
SHEPHERD

with the Property Vesting/Relationship of

AS TENANTS BY THE ENTIRETY

whose mailing address is

5462 BRENTWOOD DR  
KLAMATH FALLS, OR 97603

the Trustee (herein "Trustee")

Hammons & Mills, Attorneys  
Terrence Hammons  
1342 High Street, Suite 3  
Eugene, OR 97401

and the Beneficiary (herein "Lender")

NOVUS FINANCIAL CORPORATION  
7700 Southwest Mohawk Street  
Building H  
Tualatin, OR 97062

**MAXIMUM AMOUNT SECURED: Twenty-One Thousand Five Hundred Fifty-Nine and 96/100 Dollars (\$21,559.96).**

## THIS AGREEMENT IS A SECOND DEED OF TRUST.

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

LOT 6 IN BLOCK 1, TRACT NO. 1064, FIRST ADDITION TO GATEWOOD, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

which has the address of:

5462 BRENTWOOD DR  
KLAMATH FALLS, OR 97603

(herein "Property Address");

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

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's note of even date herewith (herein "Note"), in the principal sum of Twenty-One Thousand Five Hundred Fifty-Nine and 96/100 Dollars (\$21,559.96), with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on July 2, 2009; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

ANY REFERENCES in this Deed of Trust to the "Note" shall be deemed to refer to the Agreement, and any references in this Deed of Trust to notes and promissory notes shall include loan agreements, as applicable.

All references to interest shall be deemed to include finance charges. All references to the "Security Instrument" shall be deemed to refer to this Deed of Trust.

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

**COVENANTS. Borrower and Lender covenant and agree as follows:**

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Agreement, and late charges as provided in the Agreement.
2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Agreement and paragraph 1 hereof shall be applied by Lender, (in the order Lender chooses) to any finance charges, collection costs and other charges owing under the Agreement or this Deed of Trust, second, to the principal balance under the Agreement.
3. **Prior Mortgage or Deed of Trust.** Borrower promises to perform all of Borrower's obligations under any mortgage, deed of trust, or other security instrument which has priority over this Deed of Trust ("Prior Encumbrance"), including Borrower's promise to make payments when due. Borrower shall not enter into any agreement with the holder of any Prior Encumbrance by which the Prior Encumbrance or the indebtedness secured by the Prior Encumbrance is modified, amended, extended, or renewed without the prior written consent of Lender. Borrower shall neither request nor accept any further advances under any Prior Encumbrance without the prior written consent of Lender.
4. **Charges; Liens.** Borrower shall pay all taxes, assessments, and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust and leasehold payments or ground rents, if any, the Property or any part thereof, or (c) secure from the holder of the lien an agreement satisfactory to Lender subordinating such lien to this Deed of Trust. Any default by Borrower under the terms of any Prior Deed of Trust shall constitute a default under this Deed of Trust.
5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and other hazards as Lender may require and in such amounts and for such periods as Lender may require. Unless Lender in writing requires otherwise, the policy shall provide insurance on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the hazard insurance policy. The amount of coverage shall be no less than Borrower's credit limit under the Agreement plus the full amount of any superior lien on the Property.

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

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

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

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

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and constituent documents if a condominium or planned unit development rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider shall be incorporated in and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider were a part hereof.

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

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on the outstanding principal under the Agreement unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take action hereunder. Any action taken by Lender under this paragraph 7 shall not cure any breach Borrower may have committed of any covenant or agreement under this Deed of Trust.

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

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

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

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

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

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

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

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

**13. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

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

**15. Uniform Deed of Trust; Governing Law; Severability.** This form of Deed of Trust combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a



uniform deed of trust covering real property. This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located, except to the extent pre-empted by federal law. In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

**16. Borrower's Copy.** Borrower shall be furnished with a conformed copy of the Agreement and this Deed of Trust at the time of execution or after recordation hereof.

**17. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at Lender's option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**18. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Deed of Trust) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Deed of Trust. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

**19. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two (2) sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary actions in accordance with Environmental Law.

As used in this paragraph 19, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 19, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**20. Post Judgment.** Borrower agrees that the interest rate payable after a judgment is entered on the Note or in an action of mortgage foreclosure, shall be the rate stated in the Note or, if the State does not permit the Lender to charge the Note rate, then the judgment rate required under applicable law shall apply.

Any advances made by Lender after a judgment is entered on the Note or in an action of mortgage foreclosure, including but not limited to payments of insurance premiums and real estate taxes, shall become additional indebtedness of the Borrower and shall continue to be the obligation of the Borrower until indebtedness is paid in full.

**21. Acceleration; Remedies.** In the event of a default hereunder, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 21 including, but not limited to, reasonable attorney's fees.

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

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence

of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and cost of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess if any, to the person or persons legally entitled thereto.

**22. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five (5) days before the sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Agreement or notes securing Future Advances, if any, and no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses, as allowed by Oregon law, incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 21 hereof, including, but not limited to, reasonable attorney's fees. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**23. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 21 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 21 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

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

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

**26. Request for Notice.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address.

**27. Statement of Obligation.** Lender may collect the maximum fee for furnishing the statement of obligation provided by applicable law.

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

**29. Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

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

**31. Affirmation of Loan Purpose.** Borrower warrants that the proceeds of the loan represented by the above described Note and this Deed of Trust are primarily for the Borrower's personal, family, household or agricultural purposes.

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



GARY W. SHEPHERD's Signature

6-23-94  
Date



SHERRY L. SHEPHERD's Signature

6-23-94  
Date

08105

20191

STATE OF OREGON KLAMATH COUNTY SS:

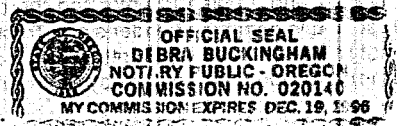
On this 23rd day of June, 1994 before me, the undersigned a Notary Public

personally appeared GARY W. SHEPHERD and SHERRY L. SHEPHERD known to me to be the person(s) whose name(s) subscribed to the foregoing instrument, and acknowledged that (he) (she) (they) executed the same.

My Commission Expires: 12-19-96

Debra Buckingham  
Notary Public for Oregon

Residing at Klamath Falls, Oregon



TO TRUSTEE:

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

Date:

(Space Below This Line Reserved For Lender and Recorder)

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co the 29th day of June A.D., 1994 at 11:03 o'clock A.M., and duly recorded in Vol. M94 of Mortgages on Page 20186

FEE \$35.00

Evelyn Biehn County Clerk  
By Pauline Anderson