

84379  
Recording Requested by  
and When Recorded Mail to:  
NAVY FEDERAL CREDIT UNION  
Security Place  
P.O. Box 3327  
Merrifield, VA 22119-3327

07-15-94P03:19 RCVD

Vol. m94 Page 21875

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K-46766  
**DEED OF TRUST AND ASSIGNMENT OF RENTS  
LINE OF CREDIT INSTRUMENT**

THIS DEED OF TRUST is made this 7TH day of JULY, 1994, between

DONALD R. MCCASLAND AND PHYLLIS J. MCCASLAND, HUSBAND AND WIFE

"Trustor," TRANSAMERICA TITLE INSURANCE COMPANY

herein called

, herein called

"Trustee," and Navy Federal Credit Union, a federal credit union, herein called "Beneficiary."

Trustor irrevocably grants, transfers and assigns to Trustee, in trust and with Power of Sale, all of the real property in the , County of KLAMATH, State of Oregon,

having the street address of 4913 DARWIN PLACE, KLAMATH FALLS, OR 97603-8335 and more specifically described as:

LOT 7 IN BLOCK 4 OF TRACT NO. 1078, SECOND ADDITION TO KELENE GARDENS ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

Together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Beneficiary 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."

**1. THIS DEED OF TRUST SECURES:**

a. All of the obligations of Trustor in favor of Beneficiary or order under the terms of a revolving credit agreement dated JULY 7TH, 1994, entitled Navy Federal Credit Union HOME EQUITY LINE Truth-in-Lending Disclosure and Agreement, herein called Agreement, which is due not later than thirty (30) years from the date of the Agreement unless otherwise indicated on the Agreement or limited by applicable law. The Agreement provides, among other things, for the payment of all sums advanced by Beneficiary from time to time pursuant to the Agreement and for the payment of interest. The maximum principal obligation under the Agreement to be secured by this Deed of Trust at any one time is

THIRTY THOUSAND AND 00/100

Dollars (\$ 30,000.00) unless Beneficiary, with Trustor's written consent, hereafter increases this amount. Advances made by Beneficiary to protect the security of this Deed of Trust or to preserve the Property shall not be subject to the limitation of the preceding sentence. The Agreement provided for the payment of interest at a rate that may vary from time to time as set forth in the Agreement.

The security of this Deed of Trust shall not be affected by the extension, renewal or modification from time to time of the Agreement described above.

b. Payment of any and all obligations and liabilities, whatsoever, whether primary, secondary, direct, indirect, fixed or contingent, whether now or hereafter due from Trustor (or any successor in interest to Trustor) whether created directly or acquired by assignment if the document evidencing such obligation or liability or any other writing signed by Trustor (or any successor in interest to Trustor) specifically provides that said obligation or liability is secured by this Deed of Trust.

c. Performance of each agreement of Trustor herein contained or contained in any other agreement, instrument or other writing to which Trustor is a part if the same is written in connection with any of the foregoing.

d. Payment of all sums to be expended by the Beneficiary or Trustee pursuant to the terms hereof.

**2. TRUSTOR WARRANTS THAT:**

- a. Title to Property. Trustor has, or on the date of first disbursement of the loan proceeds will have, good and marketable title to the property, free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, and such liens and encumbrances as may be approved in writing by the Beneficiary.
- b. Defense of Title. Trustor warrants and will forever defend the title against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Beneficiary or Trustee under this Deed of Trust, Trustor shall defend the action at its expense.

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

- a. To keep the Property in good condition and repair; not to remove or demolish any building or improvement thereon; to complete or cause to be completed any construction of buildings or other improvements thereon which are financed in whole or in part by the indebtedness secured hereby and to restore promptly and in good and workmanlike manner any building or other improvement which may be damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alteration or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of law; to cultivate, irrigate, weed, fertilize, fumigate, spray, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.
- b. To provide, maintain and deliver to Beneficiary fire and other insurance on the Property satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default hereunder or invalidate any act done pursuant to such notice.
- c. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
- d. To pay at least ten (10) days before delinquency all taxes and assessments affecting the Property, including, without limitation, assessment on appurtenant water stock, all encumbrances, charges and liens on the Property or any part thereof, and all costs, fees and expenses of this Trust.
- e. That should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may:
  - (1) Make or do the same in such manner and to such extent as either may deem necessary or appropriate to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes.
  - (2) Appear in and defend any action or proceeding purporting to affect the security hereof or the rights or power of Beneficiary or Trustee.
  - (3) Pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgement of either appears to be prior and superior hereto.
  - (4) In exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.
- f. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof or at the option of Beneficiary, such sums may be added to the principal balance of any indebtedness secured hereby and shall bear the highest rate of interest as any such indebtedness.
- g. To pay for any statement provided for by the law in effect on the date hereof regarding the obligation secured hereby in the amount demanded by the Beneficiary but not to exceed the maximum allowed by law at the time the statement is demanded.

**4. IT IS FURTHER AGREED THAT:**

- a. Any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- b. By accepting payment of any sum secured hereby after its due date, or after the filing of Notice of Default and of election to sell, Beneficiary shall not waive its right to require prompt payment when due of all other sums so secured, or to declare default for failure so to pay, or the proceed with the sale under any such Notice of Default and of election to sell, for any unpaid balance of said indebtedness. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby.
- c. Without affecting the liability of any person, including, without limitation, Trustor, for the payment of any indebtedness secured hereby, or the lien of this Deed of Trust on the remainder of the Property for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows:

(1) Beneficiary may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend to time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including deeds of trust or mortgages, (d) alter, substitute or release any of the Property securing the indebtedness.

(2) Trustee may, at any time, and from time to time, upon the written request of Beneficiary (a) consent to the making of any map or plat of the Property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof or, (d) reconvey, without any warranty, all or any part of the Property.

d. Upon (a) written request of Beneficiary or (b) performance of all obligations of the Trustor hereunder and under each and every note, guarantee, Agreement or other writing evidencing the indebtedness secured hereby, and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recital in such reconveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such reconveyance, Trustee may destroy said note, guarantee, Agreement or other evidence of indebtedness and this Deed of Trust (unless directed in such request to retain them).

e. Trustor hereby gives to and confers upon Beneficiary the right, power and authority during the continuance of these trusts to collect the rents, issues and profits of the Property and of any personal Property located thereon, and hereby absolutely and unconditionally assigns all such rents, issues and profits to Beneficiary; provided, however, that Beneficiary hereby consents to the collection and retention of such rents, issues and profits as they accrue and become payable only if Trustor is not, at such times, in default with respect to payment of any indebtedness secured hereby or in the performance of any agreement hereunder. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, without regard to the adequacy of any security for the indebtedness hereby secured and without limiting the generality of Section 3.e(1), above, enter upon and take possession of the Property or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine; also perform such acts of repair, nurturing, cultivation, irrigation, weeding, fertilizing, fumigation, spraying, pruning or protection, as may be necessary or proper to conserve the value of the Property or any trees, planting or crops growing thereon; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgement may dictate; also prepare for harvest, sever, remove, and sell any crops that may be growing upon the premises, and apply the net proceeds thereof to the indebtedness secured hereby. The entering upon and taking possession of the Property and performance or failure to perform any of the acts described in the preceding sentence, the collection of or failure to collect such rents, issues and profits, and the application thereof as aforesaid, shall not waive or cure any default or Notice of Default hereunder, or invalidate any act done pursuant to such notice and shall not constitute or otherwise result in any assumption by or liability of Beneficiary for maintenance, depreciation, misuse or risk of loss other than for damage or loss to the Property due to Beneficiary's gross negligence or intentional torts. Trustor also assigns to Trustee, as further security for the performance of the obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with said Trustor by any lessee of the premises herein described, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Trustee.

f. Each of the following, at the option of Beneficiary, will constitute a default under this Deed of Trust: (a) Trustor commits fraud or makes a material misrepresentation at any time in connection with the HOME EQUITY LINE Account (this can include, for example, a false statement or omission about Trustor's income, assets, liabilities, or any other aspects of Trustor's financial condition, or the use of funds for prohibited purposes); (b) Trustor does not meet the repayment terms of the HOME EQUITY LINE Account; (c) Trustor's action or inaction adversely affects the Property or Beneficiary's rights in the Property (this can include, for example, failure to maintain required insurance, waste or destructive use of the Property, failure to pay taxes, transfer of title or sale of the Property, creation of a lien on the Property without Beneficiary's permission, and foreclosure by the holder of another lien). Upon the occurrence of any default, Beneficiary may declare all sums secured hereby immediately due without notice or demand and no waiver of this right shall be effective unless in writing and signed by Beneficiary.

g. Waiver of right granted to Beneficiary hereunder as to one transaction or occurrence shall not be deemed to be a waiver of the right as to any subsequent transaction or occurrence. Beneficiary may rescind any notice before Trustee's sale by executing a Notice of Rescission and recording the same. The recordation of such notice shall constitute also a cancellation of any prior declaration of default and demand for sale, and of any acceleration of maturity of indebtedness affected by any prior declaration or Notice of Default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, nor impair the right of the Beneficiary to execute other declarations of default and demand for sale, or Notices of Default and of election to cause the Property to be sold, nor otherwise affect the note or deed of trust, or any of the rights, obligations or remedies of the Beneficiary or Trustee hereunder.

h. At least one hundred and twenty (120) days or any lesser period required by law having elapsed between the recordation of the Notice of Default and the date of sale, Trustee, having first given Notice of Sale as then required by law, shall sell the Property at the time and place of sale fixed by it in the Notice of Sale, either as a whole or in separate parcels, and in such order as the Trustee may determine, at public auction to the highest bidder for cash, in lawful money of the United States of America, payable at the time of sale except as otherwise permitted by law. Trustee may postpone sale of all or any portion of the Property by public announcement at the time of sale, and from time to time thereafter may postpone the sale by public announcement, all as permitted by law. Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. The recital in any such deed of any matters of facts, stated either specifically or in general

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terms, or as conclusions of law or fact, shall be conclusive proof of the truthfulness thereof. Any person, including Trustor or Trustee or Beneficiary, may purchase at the sale. After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with the sale and Trustees attorneys' fees, the Trustee shall apply the proceeds of the sale to the payment of all sums then secured hereby, in such order and manner as may be required by the Beneficiary; the remainder, if any, to be paid to the person or persons legally entitled thereto. If Beneficiary shall elect to bring suit to foreclose this Deed of Trust in the manner and subject to the provisions, rights and remedies relating to the foreclosure of a mortgage, Beneficiary shall be entitled to reasonable attorneys' fees and litigation costs.

i. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the Office of the Recorder of the county or counties where said Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

j. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including, without limitation, pledgees of the note, guarantee, Agreement, or other evidence of indebtedness secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

k. Trustee accepts this Trust when this Deed of Trust, 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 Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

l. If Trustor or any successor in interest to Trustor sells, transfers or encumbers any interest in the Property, whether voluntarily or involuntarily, or if a beneficial interest in Trustor is sold or transferred, voluntarily or involuntarily, and Trustor is not a natural person: (a) the transferor and the transferee shall each immediately give written notice of said transfer to the Beneficiary, at its address designated on the first page of this Deed of Trust; (b) if the deed of trust secures Trustor's obligation under an Agreement as defined herein, all credit extended by Beneficiary under the Agreement, whether before or after the Property is transferred, shall be secured under this Deed of Trust as if no transfer had occurred except for credit extended by Beneficiary more than five (5) days after it has received the written notices required by this paragraph.

m. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permitted by law.

##### 5. WITH REGARD TO HAZARDOUS SUBSTANCES, TRUSTOR AGREES:

a. As used in this Paragraph 5, the term "hazardous substance" means any substance which has characteristics of ignitability, corrosivity, toxicity, reactivity or radioactivity or has other characteristics which render the substance dangerous to health, safety or the environment if such substance is or becomes regulated by any federal, state or local law, regulation or ordinance. The term includes, without limitation, substances defined as "hazardous material," "toxic substances," "hazardous wastes" or "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., and in the regulations adopted and publications promulgated pursuant to said laws.

b. As used in this Paragraph 5, the terms "disposal," "release" and "threatened release" shall have the definitions assigned to them in CERCLA.

c. Trustor represents and warrants that during the period of Trustor's ownership or leasehold interest in the Property there has been no use, generation, manufacture, storage, disposal, release or threatened release of any hazardous substance by any person on, under or about the Property nor are there or have there been any claims of any kind asserted or threatened to be asserted by any third party relating thereto except as previously disclosed to and acknowledged by Beneficiary in writing. Trustor further represents and warrants that Trustor has no knowledge of, or reason to believe that there has been any use, generation, manufacture, storage, disposal, release or threatened release of any hazardous substance by any person on, under or about the Property before Trustor acquired an interest in the Property or any claims of any kind asserted or threatened to be asserted by any third party relating thereto except as previously disclosed to and acknowledged by Beneficiary in writing.

d. Trustor represents, warrants and agrees that neither Trustor nor any agent, contractor, tenant or other authorized user of the Property shall use, generate, manufacture, store, dispose or release any hazardous substance on, under or about the Property except as first disclosed to and acknowledged by Beneficiary in writing and that any such activity shall be conducted in compliance with all applicable federal, state or local laws, regulations or ordinances, including, without limitation, the provisions of the federal, state and local laws, regulations, ordinances and publications described in Paragraph 5a., above.

e. Trustor agrees to indemnify and hold Beneficiary and its successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, response costs, penalties and expenses, including, without limitation, all costs of litigation and attorneys' fees, which Beneficiary and its successors or assigns may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty or agreement contained in Paragraphs 5.c. and 5.d., above, or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property whether or not the same was or should have been known to Trustor.

f. The provisions of this Paragraph 5 shall not be affected by the acquisition by Beneficiary or its successors or assigns of any ownership or other interest in the Property beyond Beneficiary's security interest in the Property created under this Deed of Trust, whether or not such acquisition is pursuant to the foreclosure of this Deed of Trust or a merger of the interest of the Beneficiary or its successors and assigns in the Property.

#### 6. ADDITIONAL PROVISIONS:

a. The execution of this Deed of Trust by any person who has no present interest in the Property shall not be deemed to indicate that such an interest presently exists. Rather, execution of this Deed of Trust by such a person shall constitute such person's agreement that if such person hereafter acquires an interest in the Property, such interest shall be subject to Beneficiary's interest hereunder.

b. The execution of this Deed of Trust by any person who has a present interest in the Property shall not in itself be deemed to indicate that such person is liable to Beneficiary for any obligation described in Section 1., above. Any personal liability of such person to Beneficiary shall be determined on an independent basis (such as execution of the document or documents evidencing the obligation described in Section 1., above). Execution of this Deed of Trust by any such person shall nevertheless indicate that such person's interest in the Property shall be subject to Beneficiary's interest hereunder.

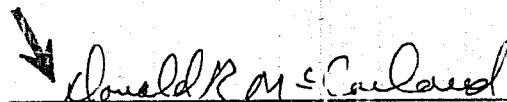
c. Time is of the essence in this Deed of Trust.

The undersigned Trustors request that a copy of any Notice of Default, and of any Notice of Sale hereunder, be mailed to their respective addresses set forth opposite each signature.

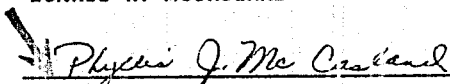
By signing below, Trustor agrees to all the terms and conditions of this Deed of Trust.

Signature of Trustor

Mailing Address For Notices

  
DONALD R. MCCASLAND

4913 DARWIN PLACE  
KLAMATH FALLS, OR 976038335

  
PHYLLIS J. MCCASLAND

4913 DARWIN PLACE  
KLAMATH FALLS, OR 976038335

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## Form of Acknowledgement (Individual)

STATE OF OREGON

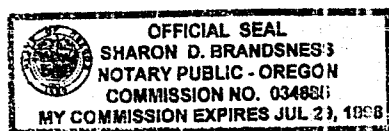
County of

)  
) SS.  
)

On this day personally appeared before me DONALD R. MCCASLAND and PHYLLIS J. MCCASLAND

to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that HE signed the same as HIS free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this

day of



[Signature]  
Notary Public of Oregon

My Commission Expires: 7-29-98

## Form of Acknowledgement (Individual)

STATE OF OREGON

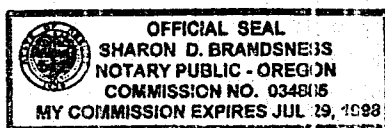
County of

)  
) SS.  
)

On this day personally appeared before me DONALD R. MCCASLAND and PHYLLIS J. MCCASLAND

to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that SHE signed the same as HER free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this

day of



[Signature]  
Notary Public of Oregon

My Commission Expires: 7-29-98

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co the 15th day of July A.D., 19 94 at 3:19 o'clock P.M., and duly recorded in Vol. M94, of Mortgages on Page 21875.

FEE \$35.00

Evelyn Biehn - County Clerk  
By [Signature]