

13388

## TRUST DEED

THIS TRUST DEED, made on day 13 of February, 1996, between  
 THOMAS H. GASTALDI, as Grantor,  
 MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, as Trustee, and  
 HENRY J. CALDWELL, JR. AND DEBORAH L. CALDWELL, AS TRUSTEES OF THE CALDWELL FAMILY TRUST,  
 and JANUARY 5, 1996, AND THEIR SUCCESSOR IN TRUST, as Beneficiary

## WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with  
 power of sale, the property in KLAMATH County, Oregon, described as:  
 SEE EXHIBIT A WHICH IS MADE A PART HEREOF BY THIS REFERENCE

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 the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of  
 \*\*ONE HUNDRED THOUSAND\*\* Dollars, with interest thereon  
 according to the terms of a promissory note of even date herewith, payable to beneficiary or order and made payable by grantor, the  
 final payment of principal and interest hereof, if not sooner paid, to be due and payable February 13 2006.

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, agreed to be  
 sold, conveyed, assigned, or alienated by the grantor without first having obtained the written consent or approval of the beneficiary,  
 then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein or  
 herein, shall become immediately due and payable.

To protect the security of this trust deed, grantor agrees:

1. To protect, preserve and maintain said property in good condition and repair; not to remove or demolish any building or im-  
 provement thereon; not to commit or permit any waste of said property.
2. To complete or restore promptly and in good workmanlike manner any building or improvement which may be constructed,  
 damaged or destroyed thereon, and pay when due all costs incurred therefor.
3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the 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 buildings now or hereafter erected on said premises against loss or damage  
 by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than the full insurable value,  
 written in companies acceptable to the beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the  
 beneficiary as soon as insured; if grantor shall fail for any reason to procure any such insurance and to deliver said policies to the  
 beneficiary at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on said buildings, the  
 beneficiary may procure same at grantor's 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 option of beneficiary the  
 entire amount so collected, or any part thereof, may be released to grantor. Such application or release shall not cure or waive and  
 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 become past due or delinquent and  
 promptly deliver receipts therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance  
 premiums, liens or other charges payable by grantor, 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 obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become  
 a part of the debt secured by 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 grantor, 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.
6. To pay all costs, fees and expenses of this trust deed 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 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 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 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgement or  
 decrees of the trial court, grantor further agrees 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 shall be taken 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

NOTE: The Trust Deed Act provides that the Trustee hereunder must be either an attorney, who is an active member of the Oregon  
 State Bar, a bank, trust company, or savings and loan association authorized to do business under the laws of Oregon or the United  
 States, a title insurance company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches,  
 the United States or any agency thereof, or an escrow agent licensed under ORS 696.505 to 696.585.

## T R U S T D E E D

THOMAS H. GASTALDI  
 6829 HENLEY ROAD  
 KLAMATH FALLS, OR 97603  
 Grantor  
 HENRY J. CALDWELL, JR. AND DEBORAH L. CALDWELL  
 7990 HILL ROAD  
 KLAMATH FALLS, OR 97603  
 Beneficiary

After recording return to  
 MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY  
 222 S. 6TH STREET  
 KLAMATH FALLS, OR 97601

in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any such 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 grantor agrees, at its 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 deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the 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 \$5.

10. Upon any default by grantor hereunder, beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the 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 hereunder or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in his 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 his 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 his written notice of default and his 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 5 days before the date the trustee conducts the sale, the grantor or any other 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 no default 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 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 grantor 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 (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the grantor or to his successor 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 proper appointment of the successor trustee.

17. Trustee accepts this trust 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 grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

The grantor covenants and agrees to and with the beneficiary and the beneficiary's successor in interest that the grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto

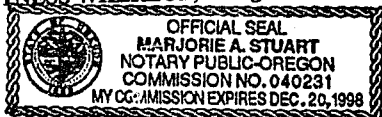
and that the grantor will warrant and forever defend the same against all persons whomsoever.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are: ~~for the personal, family, household or business purposes of the grantor or for business or commercial purposes.~~

(b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes. This 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 herein.

In construing this mortgage, it is understood that the mortgagor or mortgagee may be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, said grantor has hereunto set his hand the day and year first above written.



*Thomas H. Gastaldi*  
THOMAS H. GASTALDI

STATE OF OREGON, County of Klamath ss.

This instrument was acknowledged before me on 2-13-96  
By THOMAS H. GASTALDI

My Commission Expires 12/20/98

*Marjorie A. Stuart*  
Notary Public for Oregon

REQUEST FOR FULL RECONVEYANCE (To be used only when obligations have been paid)

TO: \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed the estate now held by you under the same. Mail reconveyance and documents to:

DATED: \_\_\_\_\_, 19\_\_\_\_

Do not lose or destroy this Trust Deed OR THE NOTE which it secures.  
Both must be delivered to the trustee for cancellation before reconveyance will be made.

Beneficiary

EXHIBIT "A"  
LEGAL DESCRIPTION

4221

PARCEL 1

A piece of parcel of land situate in the Southeast quarter of Section 24, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the intersection of the centerline of the U.S.B.R. No. A-7(K) Lateral as the same is presently located and constructed and the old existing fence generally accepted as the South line of Section 24, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, from which the iron monument marking the Southeast corner of said Section 24 bears North 89 degrees 16' 50" East 890.1 feet distant; thence South 89 degrees 16' 50" West along said fence line 20.0 feet to an iron pin reference monument; thence continuing South 89 degrees 16' 50" West along said fence line 989.50 feet to an iron pin, thence North 00 degrees 12' 50" West 300 feet; thence South 89 degrees 16' 50" West 674.90 feet to an iron pin; thence South 00 degrees 12' 50" East 300 feet; thence South 89 degrees 16' 50" West 100.10 feet to an iron pin; thence North 0 degrees 12' 50" West along an old existing fence 1361.6 feet to an iron pipe, thence North 1 degree 27' 50" East along said old existing fence 693.9 feet to an iron pin on the centerline of the U.S.B.R. No. 1-C-1-C Lateral as the same is presently located and constructed thence along the centerline of the 1-C-1-C Lateral the following courses and distances:

South 87 degrees 27' East 266.6 feet and South 48 degrees 34' 20" East 1700.4 feet, more or less, to the intersection with the centerline of the A-7(K) Lateral as the same is presently located and constructed; thence along the centerline of the A-7(K) lateral the following courses and distances:

South 31 degrees 32' 10" West 116.6 feet, South 11 degrees 31' West 205.3 feet, South 2 degrees 18' West 299.1 feet, and South 49 degrees 18' East 454.5 feet, more or less, to the point of beginning, with bearings based on Survey No. 1411 and Major Partition 80-37 as filed in the Klamath County Engineer's Office.

EXCEPTING THEREFROM that portion thereof conveyed to the United States of America for laterals by deed recorded April 28, 1908 in Book 24, page 131, Deed Records of Klamath County, Oregon.

PARCEL 2

A parcel of land situate in the N1/2 of the NE1/4 of Section 25, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the North line of Section 25, 774.9 feet East from the North Quarter corner thereof; thence South 0 degrees 27' East to a point on the North line of the County Road; thence North 89 degrees 33' East along the North line of the County Road 60 feet to a point; thence North 0 degrees 27' West to a point on the North line of said Section 25; thence West along the North line of Section 25 a distance of 60 feet, more or less, to the point of beginning.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title the 14th day  
of Feb A.D., 19 96 at 11:47 o'clock A M., and duly recorded in Vol. M96  
of Mortgages on Page 4219.

FEE \$20.00

By Bernetha G. Letsch, County Clerk  
Dorothy Miller