

2008-11-19

84-95612

84-95612

Faint, mostly illegible text at the top of the page, possibly bleed-through from the reverse side.

SPACE ABOVE THIS LINE RESERVE FOR RECORDING DATA

OREGON TRUST DEED

THIS TRUST DEED, made this 2nd day of October, 1996 between Gene H. Smagge and Edna E. Smagge husband and wife (herein "Grantor"), whose address is 5447 Lockford Dr., Klamath Falls, Or. 97603 AND Krista L. White, Esq., c/o Bishop & Lynch, P.S., 720 Olive Way, Suite 1600, Seattle, Washington 98191 (herein "Trustee"), AND Community Improvements (herein "Beneficiary"), whose address is 11919 NE Glisan Portland, Or 97220

WITNESSETH: In consideration of the indebtedness herein recited and the trust herein created, Grantor irrevocably GRANTS, BARGAINS, SELLS AND CONVEYS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, the following described property located in Klamath County, State of Oregon, to-wit:

LOT 4 IN BLOCK 2 OF LOCKFORD, TRACT 1228, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

which has the address of 5447 Lockford Dr., Klamath Falls, Oregon, 97603 (herein "Property Address"); which real property is not currently used for agricultural, timber or grazing purposes, together with all the improvements now or hereafter erected on the property, and all easements, rights, hereditaments, appurtenances and rents (subject however to the rights and authorities given herein to Beneficiary to collect and apply such rents), in fee simple forever, all of which shall be deemed to be and remain a part of the property covered by this Trust Deed; and all of the foregoing, together with said property are hereinafter referred to as the "Property."

THIS TRUST DEED SECURES to Beneficiary a) all sums, with Service Charge thereon, advanced in accordance with this Trust Deed; b) the payment of indebtedness evidenced by a Retail Installment Contract between Grantor and Beneficiary of even date herewith, and any extensions or renewals thereof (herein "Contract"), in the Principal Sum of U.S. \$ 15,372.55 with Service Charge thereon as specified in the Contract, payable in 180 monthly installments of \$ 199.58 commencing 30 days from the Disbursement Date of the Contract and continuing on the same day of each month thereafter until paid in full on or before 1996; and c) the performance of Grantor's covenants and agreements under this Trust Deed and the Contract.

GRANTOR COVENANTS that Grantor is lawfully seized of the estate hereby conveyed and has the good right to sell and convey the same, and that the Property is unencumbered, except for encumbrances of record. Grantor covenants that Grantor shall warrant and forever defend generally the title to the Property and quits possession thereto against all claims and demands, subject to encumbrances of record.

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

- 1. Payment of Indebtedness. Grantor shall promptly pay when due the principal and Service Charge evidenced by the Contract, and any other charges specified in the Contract.
2. Taxes. Grantor shall protect the title and possession of the Property and pay when due all taxes, liens, assessments any other charges whatsoever now existing or hereafter levied or assessed upon the Property, or upon the interest therein created by this Trust Deed, and to preserve and maintain the liens created hereby on the Property, including any improvements hereafter made a part of the realty.
3. Prior Mortgages and Deeds of Trust. Grantor shall perform all of Grantor's obligations under any security agreement with a lien which has priority over this Trust Deed, including Grantor's covenants to make payments when due.
4. Insurance. Grantor shall keep all buildings, improvements and other insurable parts of the Property insured against loss or damage by fire, windstorm, hazards included within the term "extended coverage", and such other hazards, including flood, as Beneficiary may reasonably require from time to time and in such amounts and for such periods as Beneficiary shall require. The insurance carrier providing the insurance shall be chosen by Grantor subject to approval by Beneficiary, which approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall include a standard mortgage clause in favor of and in a form acceptable to Beneficiary. Beneficiary shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Trust Deed. In the event of loss or damage, Grantor shall give prompt notice to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly by Grantor. Beneficiary is authorized to collect and apply the insurance proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Trust Deed.
5. Preservation and Maintenance. Grantor shall keep the Property in good condition and repair, shall not commit waste or permit impairment or deterioration of the Property, shall not remove, demolish, or substantially alter any structure or fixture on the premises without prior written consent of Beneficiary. Grantor shall cause to be complied with all laws, ordinances, regulations or requirements of any governmental authority applicable to the premises.
6. Protection of Beneficiary's Security. If Grantor fails to perform the covenants and agreements contained in this Trust Deed, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, upon notice to Grantor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Beneficiary's interest. Any amounts disbursed by Beneficiary pursuant to this paragraph, with Service Charge thereon, at the Contract rate, shall become additional indebtedness of Grantor secured by this Trust Deed. Unless Grantor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Grantor requesting payment thereof. Nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder.
7. Inspection. Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that Beneficiary shall give Grantor notice prior to any such inspection specifying reasonable cause therefor related to Beneficiary's interest in the Property.
8. 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 Beneficiary, subject to the terms of any superior trust deed.

ck 15-

88088

0028009

9. **Grantor Not Released.** Extension of the time for payment or modification of amortization of the sums secured hereby granted by Beneficiary to any successor in interest of Grantor shall in any manner release the liability of the original Grantor and Grantor's successors in interest. Beneficiary is not required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured hereby by reason of any demand made by the original Grantor and Grantor's successors. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not waive or preclude the exercise of any right or remedy.

10. **Successors and Assigns, Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Grantor. All covenants and agreements of Grantor shall be joint and several. Any Grantor who co-signs this Trust Deed, but does not execute the Contract acknowledges receipt of a direct or indirect financial benefit from the transaction, is co-signing this Trust Deed to grant and convey that Grantor's interest in the Property under the terms of this Trust Deed, and agrees that Beneficiary and any other Grantor may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Trust Deed in the Contract, without that Grantor's consent and without releasing that Grantor or modifying this Trust Deed as to that Grantor's interest in the Property.

11. **Notices.** All notices to Grantor and Beneficiary shall be deemed to be duly given if and when mailed, with postage prepaid, to the respective addresses of Grantor and Beneficiary appearing on the first page hereof, or at such other address as Grantor or Beneficiary may designate in writing, or if and when delivered personally.

12. **Governing Law; Severability.** The state and local laws applicable to this Trust Deed shall be the laws of the jurisdiction in which the Property is located, subject to preemption by applicable Federal law. If any provision of this Trust Deed is prohibited by or unenforceable under applicable law, such provision shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

13. **Transfer of Property.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Grantor is sold or transferred and Grantor is not a natural person) without Beneficiary's prior written consent, Beneficiary may, at its option, require immediate payment in full of all sums secured by this Trust Deed, unless prohibited by federal law. If Beneficiary exercises this option, Beneficiary shall give Grantor notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Grantor must pay all sums secured by this Trust Deed. If Grantor fails to pay these sums prior to the expiration of this period, Beneficiary may invoke any remedies permitted by this Trust Deed without further notice or demand on Grantor.

14. **Default.** Upon the default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder or under the Contract, Beneficiary may, after giving proper notice and time to cure as required by applicable law, declare all sums secured hereby immediately due and payable. Upon default, Beneficiary at its election may proceed to foreclose this Trust Deed in equity in the manner provided by law for mortgage foreclosures or direct the Trustee to foreclose this Trust Deed by advertisement and sale. In the latter event, 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 obligations secured hereby and proceed to foreclose this Trust Deed in a manner provided by law. If after default and prior to the time and date set by Trustee for the Trustee's sale, the Grantor or other person pays the entire amount then due under the terms of the Trust Deed and the obligations secured thereby, the Grantor or other person making such payment shall also pay to Beneficiary all costs and expenses actually incurred in enforcing the terms of the obligation as permitted by law. After a lawful lapse of time following the recording of the notice of default and the giving of notice of sale, Trustee shall sell the Property as provided by law at public auction to the highest bidder for cash payable at the time for sale. Trustee shall deliver to the purchaser a deed without express or implied warranty. Any person, excluding Trustee, may purchase at the sale. The proceeds of such sale shall be applied (1) to the expense of sale, including reasonable attorney's fees and Trustee's compensation; (2) to pay the indebtedness herein secured or intended to be secured, with accrued Service Charge thereon; (3) to the persons legally entitled thereto.

15. **Assignment of Rents.** As additional security for the indebtedness secured hereby, Grantor hereby gives to and confers upon Beneficiary the right, power and authority to collect the rents, issues and profits of said Property, reserving unto Grantor the right, prior to default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any default, Beneficiary may at any time without notice, either in person, by agent or otherwise, 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 his 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 attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

16. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured hereby to Trustee. Trustee shall reconvey the Property without warranty to the persons legally entitled to it. Such persons shall pay any recordation costs and the Trustee's reconveyance fee.

17. **Trustee.** Beneficiary, at its option, may from time to time remove any Trustee and appoint a successor trustee to any Trustee by an instrument executed and acknowledged by Beneficiary and recorded in the county in which the Property is located. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

18. **Expenses.** It is hereby expressly provided and agreed that if any action, suit, matter or proceeding be brought for the enforcement of this Trust Deed or in protecting and enforce the rights of and obligations to Trust Deed under any provision of this Trust Deed, including without limitation, taking any action in any insolvency or bankruptcy proceedings concerning Trust Deed, and all such expenses shall be part of the sums secured hereby and shall bear Service Charge from the date paid or incurred by Beneficiary at the same rate as the Contract.

19. **Flood Insurance.** Grantor agrees to maintain flood insurance with Grantor as loss payee in an amount equal to the principal outstanding during the term of said indebtedness pursuant to the Flood Disaster Protective Act (42 U.S.C. 4012a).

**REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER ANY SUPERIOR MORTGAGES OR DEEDS OF TRUST**  
 Grantor requests that copies of the notice of default and notice of sale be sent to Grantor's address which is the Property Address. Grantor and Beneficiary request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Trust Deed to give Notice to Beneficiary, at Beneficiary's address set forth on page one of this Trust Deed, of any default under the superior encumbrance and of any sale or other foreclosure action.

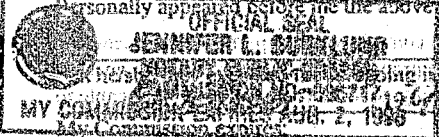
IN WITNESS WHEREOF, Grantor has executed this Trust Deed on the day and year first above written.

(PLEASE SIGN AND NOTARIZE ORIGINAL WHITE COPY)

Witness: \_\_\_\_\_ Signature: Gene H. Smagge, L.S.  
 Name of Grantor: Gene H. Smagge

Witness: \_\_\_\_\_ Signature: G. Smagge, L.S.  
 Name of Grantor: Gene H. Smagge

STATE OF OREGON, Klamath County ss: \_\_\_\_\_  
 Personally appeared before me the above named Gene H. Smagge and Edna E. Smagge and acknowledged



WITNESS my hand and Seal this 2nd day of \_\_\_\_\_, 1996  
 Notary Public Jennifer L. Durkin

**TRUST DEED**  
 I, \_\_\_\_\_ Grantor,  
 do hereby certify that the within instrument was received for record on the \_\_\_\_\_ day of \_\_\_\_\_, 1996 at \_\_\_\_\_ o'clock \_\_\_\_\_ of the \_\_\_\_\_ day of \_\_\_\_\_, 1996 and recorded in Book \_\_\_\_\_ on Page \_\_\_\_\_ of the Record of Mortgages of said County.  
 Witness my hand and seal of County affixed.

STATE OF OREGON, County of Klamath : SS  
 I certify that the within instrument was received for record on the \_\_\_\_\_ day of \_\_\_\_\_, 1996 at 1:21 o'clock \_\_\_\_\_ of the \_\_\_\_\_ day of \_\_\_\_\_, 1996 and recorded in Book M96 on Page 38008 of the Record of Mortgages of said County.  
 Witness my hand and seal of County affixed.

AFTER RECORDING, RETURN TO:  
 EMPIRE FUNDING CORP.  
 5000 Plaza on the Lake, Suite 100  
 Austin, Texas 78746

Bernetha G. Letsch, Co. Clerk, County Clerk Recorder  
 By Patricia Rose, Deputy  
 Fee: \$15.00