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TRUST DEED

FROM: WRAYCO, INC.  
2833 Washburn Way  
Klamath Falls, Oregon

DATED:

December 30, 1996

RECORD AND RETURN TO:

ROME McGUIGAN SABANOSH, P.C.  
ONE STATE STREET  
HARTFORD, CT 06103  
ATTN: DAVID H. FLYNN, ESQ.

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TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, that WRAYCO, INC., with an office in the City of Klamath Falls, Klamath County and State of Oregon (hereinafter called the "Borrower"), for the true and actual consideration of \$2,100,000, which includes or consists of other value as part of the consideration received to the Borrower's full satisfaction of FLEET NATIONAL BANK, a national banking association with an office at 777 Main Street, Hartford, Connecticut 06115 (hereinafter called the "Lender"), does hereby give, grant, bargain, sell, convey and confirm to AmeriTitle of Klamath Falls (hereinafter called the "Trustee"), for the benefit of the Lender, and the Lender's successors and assigns forever:

### THE PROPERTY

(A) LAND - That certain piece or parcel of real property known as 2833 Washburn Way, Klamath Falls, Oregon, and more particularly, described in Schedule A attached hereto and made a part hereof (the "Land").

(B) IMPROVEMENTS - All the buildings, structures and improvements now or hereafter placed on the Land (the "Improvements").

(C) SERVICE EQUIPMENT - All fixtures, appliances, machinery and equipment now or hereafter installed, including without limitation gas and electric fixtures, radiators, heaters, engines and machinery, boilers, stoves, ranges, elevators, escalators, incinerators, motors, dynamos, sinks, disposals, dishwashers, water closets, basins, medicine chests, pipes, flues and other plumbing and heating fixtures, ventilating apparatus, dryers, washing machines, heating, ventilating and air-conditioning equipment and units, panelling, refrigerating plants, refrigerators, whether mechanical or otherwise, fire prevention and extinguishing apparatus, shades, awnings, screens, blinds, carpeting, wall cabinets, furniture and equipment, and such other goods as constitute fixtures and are now or hereafter attached to, used, or furnished in connection with the operation of the Property (hereinafter defined) or in connection with the activities conducted thereon, and all renewals or replacements thereof or additions thereto or articles of substitution thereof (the "Service Equipment").

(D) EASEMENTS, ETC. - All easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, including the land lying in the bed of any street, opened or proposed, in front of or adjoining the Land, and all appurtenances whatsoever, in any way belonging, relating or appertaining to the Land, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower (the "Easements").

(E) CONDEMNATION PROCEEDS - All awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of the Property, to the extent of all

UPON RECORDING RETURN TO:

ROME MC GUIGAN SABANOSH, P.C., ATTENTION: DAVID H. FLYNN, ESQ.  
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amounts which may be secured by this Trust Deed in accordance with, and subject to, the terms and conditions of Section 1.4 hereof.

(F) **LEASES** - All right, title and interest of the Borrower in and to any and all leases, tenancies or rights of use and occupancy, with amendments, if any, and any extensions, renewals or guarantees of the tenants' obligations thereunder, now or hereafter on or affecting the Property, whether or not recorded, including all those leases listed on Schedule C herein, with all security therefor and all monies payable thereunder, and all books and records which reflect payments made under the leases (hereinafter the "Leases") in accordance with, and subject to, the terms and conditions of Section 1.8 hereof.

**TO HAVE AND TO HOLD** the above granted and bargained premises, with the privileges and appurtenances thereof (collectively referred to herein as the "Property") but subject to those encumbrances, if any, listed upon Schedule B (the "Permitted Encumbrances") unto the Lender and the Lender's successors and assigns forever, to the Lender's and their own proper use and behoof.

**THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.**

**THE CONDITION OF THIS DEED IS SUCH THAT:**

**WHEREAS**, the Borrower is justly indebted (the "Loan") to the Lender pursuant to a certain Promissory Note (the "Note") in the principal amount of \$2,100,000.00, a copy of which Note is attached hereto and made a part hereof as Schedule E and subject to the following additional terms and conditions:

#### **ARTICLE I** **COVENANTS OF THE BORROWER**

The Borrower covenants, agrees, represents and warrants to the Lender, or any successor holder of the Note as follows:

##### **1.1 PAYMENT AND PERFORMANCE**

The Borrower will pay the Loan in lawful money of the United States (including the principal thereof, the interest thereon and all other sums due thereunder) and pay and perform all of its obligations under the Note, this Trust Deed, the commitment letter signed and accepted by the Borrower in connection with the Loan (the "Commitment Letter") and every other instrument now or hereafter securing, evidencing or relating to the Loan (collectively referred to herein as the "Loan Documents") at the times and in the manner set forth in the Loan Documents. The Loan, if not sooner paid, is due and payable in full on January 1, 2002. The

date of maturity of the Mortgage Debt (as defined herein) is the date, stated above, on which the final installment of the Note becomes due and payable. All amounts due the Lender under any of the aforesaid instruments shall be secured by the lien of this Trust Deed and shall hereinafter be referred to as the "Mortgage Debt". If the Borrower consists of one or more parties, all of the obligations, covenants and warranties of the Borrower contained in this Trust Deed shall be the joint and several obligations of the parties constituting the "Borrower".

## 1.2 INSURANCE

A. The Borrower shall keep the Property insured against loss by fire, flood and other hazards, casualties, contingencies and all other "extended coverage" risks, including rent, business interruption, liability, indemnity, earthquake, demolition, war risk and war damage insurance, if available, in such amounts and with such deductibles and companies as the Lender may reasonably require. Borrower shall promptly pay when due the premiums on such insurance policies.

B. Each insurance policy maintained pursuant to subsection A. above shall contain, in a form acceptable to the Lender, (1) a provision to the effect that the policy will not be cancelled without at least fifteen (15) days' prior written notice to the Lender, (2) the standard non-contributing mortgagee endorsement (entitling the Lender to collect all proceeds payable under such insurance), (3) the standard waiver of subrogation endorsement, and (4) any other endorsement required by the Lender. All insurance carried on the Property must show the Lender as an additional insured. The Borrower shall deliver copies of all existing policies to the Lender at the Lender's request and shall deliver copies of all additional and renewal policies, with current premium bills therefor marked "Paid", to the Lender at least thirty (30) days before the expiration of the old policies. The Borrower shall not cancel any policy or return any premium until either the Borrower obtains a replacement policy reasonably acceptable to the Lender or until the redemption of this Trust Deed by the Borrower.

C. In the event of any loss or damage to the Property, the Borrower shall give prompt notice thereof to the Lender. The Borrower authorizes the Lender, at its option, to collect, adjust and compromise any losses under any hazard insurance policy maintained hereunder and to endorse the Borrower's name on any instrument in payment of any insured loss; provided, if such option is not exercised, the Lender shall not be responsible or liable for the collection, adjustment or compromise of any such loss and the Borrower does hereby indemnify the Lender and hold the Lender harmless against and from any and all claims and liabilities asserted against the Lender in connection with the collection, adjustment or compromise of any insured loss. In case of loss and payment by any insurance company, the amount of insurance proceeds received shall be applied either in whole or in part, as the Lender may elect in its sole discretion, (1) upon the payment of the Mortgage Debt or (2) to rebuilding or restoring the Property in which event the Lender shall not be obligated to see the proper application thereof, nor shall the amount so released be deemed a payment upon the Mortgage Debt.

D. Upon the request of the Lender, the Borrower shall pay to the Lender, together with and in addition to each monthly installment of principal and interest provided in the Note, sufficient funds (as estimated from time to time by the Lender in its sole discretion) to permit the Lender to pay said insurance premiums when due. The Lender shall hold such

sans in trust, but without payment of interest thereon. Said funds shall be held in trust along with, and in accordance with the provisions applicable to, escrow payments under subsection 1.3.G. hereof.

E. In the event that the Borrower shall fail to maintain such insurance or shall fail, upon request, to make the payments of insurance premiums required under this Section 1.2, the Lender may pay same and the amount of such payments shall constitute Lender Advances pursuant to Section 3.4 hereof.

#### **Insurance Warning (ORS 746.201(2))**

Unless the Borrower provides the Lender with evidence of the insurance coverage required by the Loan Documents, the Lender may purchase insurance at the Borrower's expense to protect the Lender's interest. This insurance may, but need not, also protect the Borrower's interest. If the Property becomes damaged, the coverage the Lender purchases may not pay any claim the Borrower makes or any claim made against the Borrower. The Borrower may later cancel this coverage by providing evidence that the Borrower has obtained property coverage elsewhere.

The Borrower is responsible for the cost of any insurance purchased by the Lender. The cost of this insurance may be added to the Borrower's loan balance. If the cost is added to the Borrower's balance on the Loan, the interest rate on the Loan will apply to this added amount. The effective date of coverage may be the date the Borrower's prior coverage lapsed or the date the Borrower failed to provide proof of coverage. The coverage the Lender purchases may be considerably more expensive than insurance the Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

### **1.3 TAXES**

A. Subject to the provisions of subsection E. below, the Borrower shall pay within any applicable grace period and before the same become delinquent, all (1) taxes, assessments, utility charges, water rates and sewer use or rental charges of any kind, (2) payments of any kind in lieu thereof which may be required by law; and (3) governmental charges and impositions of any kind whatsoever for which lien rights exist, which may now or hereafter be assessed or levied upon any part of the Property, or upon the rents, issues, or profits thereof, or upon the Loan or this Trust Deed or the lien hereof, in lieu of or in addition to a tax on the Property (all such charges and payments hereinafter collectively referred to as the "Taxes").

B. The Borrower shall pay any installment of any assessment for local improvements for which an official bill has been issued by the appropriate authorities and which may now or hereafter affect the Property and may be or become payable in installments, within any applicable grace period and before the same become delinquent.

C. If the Borrower fails to pay any Taxes due pursuant to subsections A. or B. above, the Lender may pay same and the amount of such payments shall constitute Lender Advances pursuant to Section 3.4 hereof.

D. The Borrower will deliver to the Lender, at its request, receipts for the payment of each item specified in subsections A. and B. above, prior to the date the item will become delinquent if not paid.

E. The Borrower may, subject to the following conditions, in good faith, with due diligence and by appropriate proceedings contest the validity, applicability or amount of any asserted Taxes. Pending the result of such contest, an Event of Default (as defined in Section 2.1 herein) shall not be deemed to have occurred hereunder, provided that before the due date of the asserted Tax the Borrower establishes an escrow acceptable to the Lender in an amount estimated by the Lender to be adequate to cover the payment of such Tax with interest, costs and penalties. If the amount of such escrow is insufficient to pay any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, the Borrower shall pay such deficiency no later than the date such judgment becomes final. Such contest shall only be allowed if the non-payment of the whole or any part of any Tax will not result in the delivery of a tax deed or similar instrument to the Property or any part thereof because of such non-payment.

F. The Borrower shall promptly notify the Lender of (1) the delinquency in the payment of any Taxes due pursuant to subsections A. or B. above and (2) the Borrower's contest of such Taxes pursuant to subsection E. above.

G. Upon the request of the Lender, the Borrower shall pay to the Lender, together with and in addition to the installments of principal and interest provided in the Note, an amount equal to (1/12th) of the yearly Taxes assessed against the Property as estimated by the Lender. All escrow payments shall be held in a non-interest bearing account and may be commingled with other assets of the Lender. If the total payments made by the Borrower to the Lender, on account of the Taxes, up to the time when they become due and payable, exceed the amount of escrow payments actually made by the Lender for the Taxes, the excess shall be credited by the Lender to the next subsequent payment due from the Borrower to the Lender on account of the Taxes. If, however, the Tax escrow payments are not sufficient to pay the Taxes on the date they become due and payable, then the Borrower shall pay to the Lender the amount necessary to make up the deficiency on or before said date. Upon, and any time after, the occurrence of an Event of Default, the Lender may, at its option, apply the accumulated Tax escrow balance remaining as a credit against the Mortgage Debt.

#### 1.4 CONDEMNATION

A. The Borrower will give the Lender prompt notice of the actual or (if known to the Borrower) threatened commencement of any proceedings by any public or quasi-public entity under eminent domain affecting, injuring, or otherwise diminishing the value of all or any part of the Property, including without limitation severance and consequential damage and change in grade of streets, and will deliver to the Lender copies of all papers served in connection therewith. The Borrower hereby appoints the Lender as its attorney-in-fact, coupled with an



interest, and authorizes, directs and empowers the Lender at its option and on behalf of the Borrower to collect, receive, and retain, subject to the terms hereof, the proceeds of any such award or payment, to give proper receipts therefor and, if an Event of Default has occurred, to adjust, compromise and settle the claim therefor.

The Lender shall have the right to intervene and participate in any eminent domain proceedings unless prohibited by the court having jurisdiction, in which event the Borrower shall consult with the Lender in all matters pertaining to the adjustment, compromise or settlement of such proceedings and shall not enter into any agreement with respect to such matters without the prior written consent of the Lender. The Borrower further agrees to execute and deliver upon request any other instruments deemed necessary by the Lender to confirm or assign to the Lender all awards and other compensation to be made for any taking of the Property under eminent domain proceedings.

B. After deducting its collection costs, disbursements, expenses and reasonable counsel fees, the Lender may, in its sole discretion, retain and apply said award or payment toward payment of the Mortgage Debt, or pay same over wholly or in part to the Borrower for the purpose of altering, restoring or rebuilding any part of the Property which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Property, or for any other purpose or object satisfactory to the Lender, but the Lender shall not be obligated to see to the application of any amount paid over to the Borrower.

C. If a part of the Property shall have been taken in any eminent domain proceedings and the remaining part of the Property shall have been sold on foreclosure of this Trust Deed prior to the receipt by the Lender of the award or payment, the Lender, to the extent permitted by applicable law, shall have the right to receive the award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, and including reasonable counsel fees, costs and disbursements incurred by the Lender in connection with the collection of such award or payment, whether or not a deficiency judgment on this Trust Deed shall have been sought or recovered or denied.

## 1.5 COMPLIANCE WITH LAW, ETC.

A. The Borrower warrants that it presently does and covenants that it will continue to observe and comply with (1) all laws, regulations, ordinances, rules, and orders affecting the Property or the business operations thereon (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, wetlands, health and safety of any federal, state, municipal or other governmental authority relating to the Property or business activities conducted at or from the Property); (2) the terms of each insurance policy covering or applicable to the Property and required under the terms of this Trust Deed, all requirements of the issuer of each such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Property or any use or condition of the Property which must be complied with, in order to maintain the insurance required hereunder in full force and effect; and (3) all conditions and requirements necessary to preserve and maintain all rights, licenses, permits (including without limitation zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Property or

business activities conducted at or from the Property, or which have been granted to or contracted for by the Borrower or any tenant under the Leases.

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B. The Borrower shall provide the Lender with copies of all notices, orders, summonses, correspondence and other similar items delivered to or served upon the Borrower pertaining to any of the foregoing. Upon request, the Borrower shall furnish to the Lender, or its designee, copies of all correspondence from the Oregon Department of Environmental Quality (the "ODEQ"), or the Federal Environmental Protection Agency (the "EPA"), or any similar entity, to the Borrower (other than routine mass informational mailings) and, upon request, shall direct such entity to send copies of all such correspondence directly to the Lender. Upon request, the Borrower shall furnish to the Lender copies of all correspondence from the Borrower to the ODEQ, the EPA, or any similar entity, copies of all periodic reports required by any environmental law or any permit, and copies of all records, forms and documents which the Borrower is required to produce or maintain pursuant to any environmental law or any permit.

C. The Lender may, at any time and from time to time, cause to be conducted and completed by engineers, consultants and others selected by the Lender, such investigations, studies, sampling and testing of the condition of the Property and the compliance by the Borrower and all occupants of the Property with applicable environmental laws as the Lender, in its sole discretion, shall deem reasonably appropriate. All such investigations, studies, sampling and testing shall be at the Borrower's expense. The Borrower agrees to cooperate with the Lender and all persons retained by the Lender to conduct such investigations and to provide them with access to the Property and the books and records of the Borrower.

D. The Borrower shall indemnify the Lender and hold the Lender harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the Lender, whether as holder of this Trust Deed, as mortgagee in possession or as a successor in interest to the Borrower as owner of the Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of Chapters 465-475 of the Oregon Code, as amended (the "Act") or related regulations, or any similar applicable federal laws or regulations, including the assertion of any lien thereunder or (ii) with respect to any discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous waste, including without limitation any material, substance or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous or toxic under any federal, state or local statute, ordinance, rule, regulation or law (a "Spill") or (iii) with respect to any other matter affecting the Property and governed by the provisions of the Act or related regulations or any similar applicable federal laws or regulations.

E. In the event of any "Spill" affecting the Property, whether or not the same originates or emanates from the Property or any contiguous real estate, the Borrower shall contain, remove or mitigate same immediately and in accordance with any directives of the State of Oregon. If the Borrower shall fail to remedy such Spill or otherwise comply with any of the requirements of the or related regulations or any other environmental law or regulation, the Lender may at its election, but without the obligation to do so, give such notices and/or cause such work to be performed at the Property and/or take any and all other actions as the Lender shall deem necessary or advisable in order to remedy the Spill or cure such failure of compliance, and any amounts paid as a result thereof shall be reimbursed by the Borrower upon demand by



the Lender, shall bear interest at the "Default Rate" provided for in the Note and shall be secured by the lien of this Trust Deed.

#### 1.6 MAINTENANCE AND REPAIR; INSPECTION

A. The Borrower will (1) keep and maintain the Property in good condition, working order and repair; (2) not commit or suffer any waste of the Property; (3) repair, replace, rebuild or restore any part of the Property which may be damaged or destroyed by any casualty or affected by eminent domain, whether or not the proceeds of any insurance or eminent domain proceedings are available therefor; (4) complete and pay for when due any construction undertaken on the Property; and (5) make all other repairs and replacements to the Property which the Lender may reasonably require. All such repairs, replacements, rebuilding and restoration shall be done promptly in good and workmanlike manner, utilizing materials of like quality and grade as those utilized in the original construction of the portion of the Property being so repaired, replaced, rebuilt or restored. If the Borrower fails to make such required repairs and replacements, the Lender may perform same and the cost thereof shall constitute Lender Advances pursuant to Section 3.4 hereof.

B. The Lender and any person authorized by the Lender shall have the right to enter and inspect the Property at all reasonable times.

#### 1.7 SALE, ENCUMBRANCE AND USE

A. The Borrower, and if applicable any guarantor, shall not, without the Lender's prior written consent which may be withheld in the Lender's sole discretion for any reason whatsoever, (1) initiate or allow any transfer or other disposition of (as said terms are defined in subsection D. below) title to all or any part of the Property; (2) voluntarily create or grant any liens, mortgages or encumbrances against such title except (1) purchase money financing of machinery and equipment which are fixtures and (2) liens existing as of the date hereof in favor of Ford Motor Credit Co.; (3) initiate or allow any change in the nature of the use and occupancy which was intended for the Property on the date of this Trust Deed, unless the change is required by law; (4) initiate or allow any change in the nature of the use and occupancy of the Property which materially increases the possibility of a Spill; or (5) record any Declaration of Common Interest Community.

B. The Borrower will keep and maintain the Property free from the claim of all persons supplying labor or materials in connection with the construction or repair of any Improvements constituting a part of the Property, whether or not the Borrower contracted for the supply of such labor or materials. The Borrower will furnish, at the Lender's request, all waivers and releases of liens or claims upon or with respect to the Property or any Service Equipment.

C. The Borrower will not by act or omission permit any building or other improvements on premises not subject to the lien of this Trust Deed to rely on the Property, any part thereof, or any interest therein, to fulfill any municipal or governmental requirement for the existence of such premises or such building or improvements. No Improvement on the Property shall rely on any premises not subject to the lien of this Trust Deed or any interest therein to fulfill any governmental or municipal requirement. The Borrower shall not by act or omission

impair the integrity of the Property as a single, separate, subdivided and zoned lot separate and apart from all other premises.

D. The term "transfer or other disposition" as used in this Section 1.7 shall mean:

- (1) any sale, conveyance, transfer, gift or other disposition, whether voluntary, involuntary, or by operation of law or the Borrower's entry into any contract or option agreement to accomplish same;
- (2) if the Borrower is a corporation, a merger, consolidation, division, recapitalization, spin-off, or other corporate reorganization of the Borrower;
- (3) if the Borrower is a corporation, any change in ownership of ten percent (10%) or more of the voting stock of the Borrower;
- (4) any dissolution or liquidation of, or the filing of a suit to dissolve or liquidate Borrower;
- (5) a lease or leases of more than fifty percent (50%) of the Land, Improvements or Service Equipment, wherein the proposed tenant or tenants do not intend to occupy the Property but intend to sell, sublease or assign their interest in a lease or leases of the Land and/or Improvements. It is the express intention of this provision to prohibit a long-term lease or sale and leaseback for either financing purposes or to effectuate a transfer of the Property;
- (6) any other act by which the economic benefit, entrepreneurial risk, or management responsibility with respect to the Property is shifted to someone other than the Borrower or a corporation in which the Borrower is the sole stockholder or a limited or general partnership in which the Borrower is the sole general partner.

E. The Borrower shall promptly notify the Lender if any lien, attachment or encumbrance is recorded against the Property without the Borrower's consent and will cause the lien to be cancelled and discharged of record within thirty (30) days after its recording. If the Borrower fails to obtain the release of such lien or encumbrance, the Lender may take such action and make such payments as are necessary to accomplish same and the cost thereof shall constitute Lender Advances pursuant to Section 3.4 hereof.

F. Any attempted action contrary to the provisions of this Section 1.7 shall be void, but shall constitute an Event of Default hereunder. The Borrower agrees that if the ownership of the Property or any part thereof becomes vested in a person or entity other than the Borrower, the Lender may, upon notice to the Borrower, deal in any way with such successor or successors in interest without in any way impairing or discharging the Borrower's liability hereunder, under the Note or the Mortgage Debt.

A. The Borrower will not assign the Leases without the prior written consent of the Lender. The Lender shall have the right, at any time and from time to time, to notify any tenant of the rights of the Lender as provided by this Section 1.8.

B. The Borrower represents that (1) the Schedule of Leases set forth in Schedule C is true and correct and lists all present Leases, together with all amendments and modifications thereof and all collateral documents affecting such Leases; (2) all such Leases are presently in effect; (3) no default exists in such Leases; (4) it has not accepted rent under the Leases more than thirty (30) days in advance of its due date; and (5) the Leases are valid and enforceable and unmodified except as stated in Schedule C; and there is no present default by any party thereto.

C. When any Lease expires or terminates, or as any new lease is made, the Borrower shall so notify the Lender in order that at all times the Lender shall have a current list of all Leases affecting the Property. All subsequent Leases shall be and are hereby made subject to all of the terms hereof. The Borrower, upon the Lender's request, shall further assign and transfer such subsequent Leases to the Lender by assignment in satisfactory form to the Lender.

D. The Borrower shall, at its sole cost and expense, perform every obligation of the landlord and shall enforce, short of termination, every obligation of and any default against the tenant in every Lease. The Borrower will promptly notify the Lender if the Borrower transmits or receives any notice of default under any Lease, or of any change in the occupancy of the Property, and shall forward a complete copy of such notice to the Lender. The Borrower's obligations under any Lease shall be made a part of this Trust Deed as if set forth herein.

E. The assignment of Leases contained herein shall not be deemed to impose upon the Lender any of the obligations or duties of the Borrower provided in any Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any Lease) in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Trust Deed and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Property or any part thereof.

F. The Borrower will not take any action which would cause any Lease to cease to be in full force and effect, and will not, except with the prior written consent of the Lender, (1) cancel or terminate any Lease, or consent to any cancellation, termination or surrender thereof, or any assignment thereof; (2) amend, modify or subordinate any Lease; (3) enter into any new Lease; (4) waive any default under or breach of any Lease; (5) consent to any prepayment or discount of rent or advance rent under any Lease; or (6) take any other action in connection with any Lease which may impair or jeopardize the validity of such Lease or the Lender's interest therein. The Lender shall have the right to review and reasonably refuse written consent to any of the above proposed actions of the Borrower based upon the substance of the proposed transaction, the creditworthiness of the Borrower or the tenant, the financial condition of the Property or otherwise.

G. The Lender shall not be obligated to perform or discharge any obligation under any Lease, or under or by reason of this Trust Deed, and the Borrower agrees to indemnify, defend and hold harmless the Lender against and from any and all liability, loss, claims, demands or damage whatsoever, including the defense thereof, which may be asserted against it (1) under any Lease or under or by reason of this Trust Deed and (2) by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms of any Lease. Should the Lender incur any such liability, loss or damage, the amount thereof shall be treated as a Lender Advance pursuant to Section 3.4 hereof.

H. Subject to the provisions of Section 1.7 hereof, the Borrower shall not convey the Property to any tenant now or hereafter occupying the Property or any part thereof, unless the deed or other conveyance contains a provision in form satisfactory to Lender that the Lease of such tenant shall not merge into the fee by reason of such conveyance and that the Lease, together with the obligation to pay rent and other charges thereunder, shall continue in full force and effect.

#### 1.9 INTENTIONALLY LEFT BLANK

#### 1.10 REMOVALS, ALTERATIONS AND DEMOLITION

A. No Improvement or Service Equipment constituting part of the Property shall be removed, altered, demolished or erected without the prior written consent of the Lender. Borrower shall have the right, however, at the Borrower's sole cost and expense, to make such nonstructural changes, additions and alterations in or to the Property as the Borrower deems necessary or desirable for the conduct of the business operations to be carried on at the Property. When completed, such alterations shall be of such a character as not to adversely affect the value of the Property or the economic utility of the business operations conducted thereon. All work done in connection therewith shall be done promptly, in good workmanlike manner, utilizing materials of like quality and grade as those utilized in the original construction of the portion of the Property subject to such change, addition or alteration. All such changes, additions and alterations shall become part of the Property immediately upon the installation thereof.

B. The Borrower may, without the consent of the Lender, remove and dispose of any item of Service Equipment which has become worn out or obsolete if, simultaneously with such removal, the item is replaced with other Service Equipment which is of at least equivalent type and quality as the replaced item of Service Equipment when it was originally installed or located at the Property and if the Lender is given prior notice of the removal and replacement. Any replacement equipment shall constitute Service Equipment and be subject to the lien of this Trust Deed, and shall be free and clear of all other liens and encumbrances other than set forth on Schedule B. The Borrower agrees to execute any mortgage, security agreement or other document the Lender may require with respect thereto.

#### 1.11 PROTECTION OF LIEN AND OTHER EXPENSES

The Borrower shall pay, indemnify, defend and hold the Lender harmless from:

A. All costs, disbursements, expenses and reasonable counsel fees (including without limitation recording fees and costs of a title search, continuation of abstracts and preparation of surveys) incurred by the Lender in protecting or sustaining the lien of this Trust Deed or by reason of any proceeding, action, suit, hearing, motion or application in which the Lender is a party by reason hereof, including condemnation, bankruptcy, administrative or other proceedings where proof of claim is required to be filed or in which in the Lender's opinion it becomes necessary to defend and uphold the terms or priority of this Trust Deed.

B. All costs incurred upon or after the occurrence of an Event of Default, in the preparation for enforcement of the Lender's Loan Documents, whether or not suit or other action is actually commenced or undertaken, including without limitation (1) expenses incurred with respect to enforcing and administering the Lender's right to take possession and operate the Property under Section 3.3 hereof, (2) negotiations with Borrower in connection with the existence or cure of such Event of Default and (3) costs and expenses, including reasonable attorneys fees as may be incurred by the Lender to collect the Mortgage Debt from the Borrower after judgment of foreclosure of the Trust Deed or judgment on or with respect to the Mortgage Debt in favor of the Lender including those incurred by the Lender to foreclose any judgment lien or to otherwise satisfy such judgment.

C. All appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorney's fees, court costs, fees of inspecting architect(s) and engineer(s) and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by the Lender in connection with: (1) the issuance of its Commitment Letter; (2) the preparation and execution of the Loan Documents; (3) the funding of the Loan; (4) enforcement of the Loan Documents; (5) any proposed refinancing by the Lender of the Mortgage Debt; (6) the transfer of the Property in lieu of foreclosure; and (7) the approval by the Lender of actions taken or proposed to be taken by the Borrower or other person or entity which approval is required by the terms of this Trust Deed or any other instrument securing the Mortgage Debt.

D. All such expenses which have been incurred or which shall be incurred by the Lender and all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, attorney's fees) which may be imposed upon, asserted against, or incurred or paid by the Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against the Lender on account of any act performed or omitted to be performed hereunder (other than such acts or omissions constituting the gross negligence of the Lender) or on account of any transaction arising out of or in any way connected with the Property, or with this Trust Deed or the Mortgage Debt including, without limitation, any alleged obligation for which the Lender is indemnified by the Borrower pursuant to subsection 1.2.G. hereof.

E. All amounts paid or incurred by the Lender under this Section 1.11 shall constitute Lender Advances pursuant to Section 3.4 hereof.

### 1.12 ESTOPPEL CERTIFICATES; INSTRUMENTS OF FURTHER ASSURANCE

The Borrower will deliver to the Lender within ten (10) days after any request (or such longer period of time if Borrower uses its best efforts and due diligence in obtaining such delivery) a duly acknowledged (1) certificate of the Borrower setting forth the amount of principal and interest due and payable on the Mortgage Debt and whether any offsets or defenses exist with respect to this Trust Deed or the Mortgage Debt; (2) certificate of any person having or acquiring an interest in or encumbrance on all or any part of the Property setting forth the nature and extent of the interest and stating (i) that the interest is subordinate to this Trust Deed and (ii) whether any offsets or defenses exist with respect to this Trust Deed or the Mortgage Debt; and (3) lease ratification and estoppel agreement with respect to any Lease executed by the Borrower and the tenant thereunder, indicating that (i) the date the original Lease term has commenced, (ii) the Lease is in full force and effect and no default exists thereunder, (iii) the tenant is in possession of that portion of the Property subject to the Lease, and (iv) no rental payments have been made more than thirty (30) days in advance of the date such payments are due except with the Lender's approval.

### 1.13 BOOKS, RECORDS AND ACCOUNTS

The Borrower will keep and maintain proper and accurate books, records and accounts reflecting all items of income and expense received or paid by the Borrower or any other person in connection with the Property and all business operations conducted at or from the Property. The Lender shall have the right at any time during normal business hours to examine and copy any such books, records and accounts wherever located. Within ninety (90) days following the end of each fiscal year, the Borrower shall furnish to the Lender, without expense, (a) a balance sheet and statement of financial condition of the Borrower and each maker, guarantor or endorser of the Note, (b) a complete income and expense statement concerning the Property and all business operations conducted at or from the Property in a form, and prepared by an independent certified public accountant satisfactory to the Lender, and (c) a rent schedule of the Property showing as to each tenant of space at the Property the name of and space occupied by such tenant, the expiration date of such tenant's lease, the last date to which rent was paid by such tenant, the rent and any additional sums due and payable from such tenant, the original amount and balance of such tenant's security deposit, and whether or not such tenant is then in default under any term or provision of his lease. All financial statements and reports required hereby shall, at Lender's request, (1) be certified and (2) include, in addition to all relevant fiscal information, such other information relating to the Property income and expenses of the Property as the Lender may require.

### 1.14 FINANCING STATEMENT

This Trust Deed is intended to be effective as a financing statement pursuant to the Oregon Uniform Commercial Code with respect to the Service Equipment. The Lender is the secured party and the Borrower is the debtor with respect to this financing statement and the mailing addresses of the secured party and the debtor for the purpose of this financing statement are set forth in Section 4.4 hereof. Upon request the Borrower shall execute and deliver to the Lender any security agreement, financing or continuation statement or other document the Lender deems necessary to protect or perfect its lien on the Service Equipment, and pay all filing fees



and other costs, disbursements, expenses and reasonable counsel fees incurred by the Lender in connection therewith. The Borrower authorizes the Lender, to the extent permitted by applicable law, to sign and file any financing or continuation statement at any time with respect to the Service Equipment in the absence of any signature by or on behalf of the Borrower. All amounts paid or incurred by the Lender under this Section 1.14 shall constitute Lender Advances pursuant to Section 3.4 hereof.

### **1.15 REQUIRED NOTICES**

The Borrower shall notify the Lender promptly of the occurrence of any of the following: (1) an event requiring notice with respect to the following matters under the following subsections of this Trust Deed:

- (i) 1.2.C. (Loss or Damage to Property)
- (ii) 1.3.F. (Taxes)
- (iii) 1.4.A. (Condemnation)
- (iv) 1.5.B. (Compliance with Law)
- (v) 1.7.E. (Reconciliation of Liens)
- (vi) 1.8.C. and D. (Leases)
- (vii) 1.10.B. (Removal of Service Equipment);

(2) receipt of notice from any governmental authority relating to the Property; (3) receipt of any notice from the holder of any other lien or security interest in the Property; or (4) commencement of any judicial or administrative proceedings arising out of the default under the terms of any loan against the Borrower or any entity controlled by or under common control of the Borrower, or which affects the Property.

### **1.16 PLANS AND SPECIFICATIONS, ETC.**

The Borrower upon request shall deliver to the Lender copies or originals of all plans and specifications, blueprints, schematic and other drawings, architectural and engineering studies and reports, licenses, permits, approvals, orders, contracts, agreements, rights, options, franchises and applications relating to or affecting the Property and all business operations conducted at or from the Property.

### **1.17 GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

The Borrower represents, warrants and covenants that:

A. Subject only to the Permitted Encumbrances described in Schedule B attached hereto and incorporated herein and made a part hereof, the Borrower has an indefeasible estate in fee simple in, and has good and absolute title to, the Property, specifically including the Land, the Easements, the Improvements, the Service Equipment, the Leases and the Property Income, and the Lender may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Property in accordance with the terms hereof.

B. The Borrower will maintain and preserve the lien of this Trust Deed until the indebtedness and other sums secured hereby have been paid in full.

C. The Borrower is generally paying its debts as such debts become due, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency proceedings are pending or contemplated by or against the Borrower.

D. All reports, statements and other data furnished by the Borrower to the Lender in connection with the Loan are true, correct and complete in all material respects and do not omit any fact or circumstance which would make the statements contained therein misleading; present fairly the financial position of the Borrower as of the date stated therein, and the results of the Borrower's operation and changes in financial position for the years then ended and the statements are prepared in conformity with generally accepted accounting principles applied on a consistent basis; and that no material adverse change has occurred in the financial condition of the Borrower or the Property since the date of said financial statement.

E. The Property and all Improvements thereon are in good order and repair, have not suffered any damage from fire or other casualty, no part of the Property has been condemned or taken by eminent domain and no condemnation or other taking of the Property or any part thereof is threatened or pending, or has been threatened with, any other title proceedings.

F. There does not now exist any condition, nor will the current or proposed operations cause there to exist any condition upon the Property or such contiguous land which would materially increase the possibility of the occurrence of (1) a Spill, or (2) a material violation of the Act or any related regulations or any similar federal laws or regulations.

G. The Borrower, if a corporation, is a valid corporation in good standing under the laws of the jurisdiction of incorporation and is authorized to do business in the state in which the Land and the Improvements are located.

H. The Borrower has the legal capacity and is authorized to execute and deliver all Loan Documents; the Loan Documents are valid and binding obligations enforceable in accordance with their respective terms and the execution and delivery thereof do not contravene any contract or agreement to which the Borrower is a party or by which the Borrower or any of its respective properties may be bound and do not contravene any law, order, decree, rule or regulation to which the Borrower is subject.

I. There is no action, suit or proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower or the Property or the business operations conducted at or from the Property or which involve the possibility of any judgment or liability not fully covered by insurance or which, in the Borrower's opinion, might result in any material adverse change in the business, assets or operations of the Borrower which would, in any way, materially adversely affect the Property or the validity or enforceability of the Loan Documents.

J. The Borrower is not a party to or bound by any contract, agreement or other instrument, or subject to any charter or other restriction or any judgment, order, writ, injunction, decree, rule or regulation which materially and adversely affects or in the future may,

so far as the Borrower can now foresee, materially adversely affect the business, operations, properties, assets or condition, financial or otherwise, of the Borrower.

K. The Borrower has filed all required federal, state and local tax returns, and no claims have been asserted and/or unpaid with respect to such taxes.

L. All costs arising from construction of the Improvements, if any, and the purchase of all Service Equipment located on the Property have been paid.

M. The Property is improved with those Improvements described in Schedule D attached hereto and incorporated herein and made a part hereof and has frontage on, and direct access for ingress and egress to, the street(s) described therein.

N. Electric, gas, sewer, septic, water facilities and any other necessary utilities are and at all times hereafter shall be, available in sufficient capacity to service the Property satisfactorily, and any easements necessary to the furnishing of such utility service by the Borrower have been obtained and duly recorded.

O. The Borrower is not in default under the terms of any instrument evidencing or securing any indebtedness of the Borrower and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time, or both.

P. The Borrower will not incur any term indebtedness in addition to that existing on the date hereof without the prior written consent of the Lender.

Q. The Borrower shall not:

(a) Permit the ratio of the Borrower's [current total liabilities] to [tangible net worth] to exceed 9.0 as of December 31, 1996 or 8.0 as of December 31, 1997 or 7.0 as of December 31, 1998 or 6.0 as of December 31, 1999 and thereafter. This covenant shall be measured based on the schedules to the Federal Income Tax Return Form 1120S of WC Ranch, Inc.

(b) Permit its Debt Service Coverage to be less than 1.20, as measured quarterly based on the monthly factory financial statements provided to the Lender pursuant to Section 1.17.R. below, and as measured annually based on the annual compiled financial statements of the Borrower prepared by a certified public accountant and provided to the Lender pursuant to Section 1.17.S. below. As used herein, the phrase "Debt Service Coverage" shall mean [(earnings before interest, taxes, depreciation and amortization) plus or minus (reduction/increase in working capital) minus (unfinanced capital expenditures) minus (dividends paid)] divided by [current maturities of long term debt] plus (interest expense)]. As used in the above formula, the "current maturities of long term

debt" determination will be based on the amortization of the mortgage debt of the Borrower to the Lender.

(c) Permit advances to any affiliate to exceed fifty percent (50%) of available cash flow in excess of the Debt Service Coverage minimum described in (b) above.

R. Borrower agrees to provide to Lender within fifteen (15) days after the end of each calendar month a copy of the most recent factory financial statements for the dealership.

S. Borrower agrees to furnish to the Lender (a) on or before March 31st of every year, its annual financial statement compiled by a certified public accountant and (b) on or before April 15th of every year, a copy of its federal income tax return.

## ARTICLE 2 DEFAULT

### 2.1 EVENTS OF DEFAULT

Any one or more of the following shall constitute an "Event of Default" hereunder:

A. The failure to pay the Mortgage Debt in full by the "Maturity Date" as defined in the Note, or the failure to pay any other installment of principal and/or interest or any other sums due with respect to the Mortgage Debt upon maturity or within ten (10) days from the date when such installment is otherwise due and payable in accordance with the provisions of Section 1.1 hereof.

B. The occurrence of an Event of Default (as defined therein) under any of the Loan Documents.

C. The failure to (1) pay the premiums on or keep in force any insurance required under Section 1.3 hereof; or (2) either deliver the policies of insurance or reimburse the Lender for premiums paid on such insurance, after notice and demand as herein provided.

D. The failure to pay any Taxes or other installments within the applicable time periods set forth under Section 1.3 hereof.

E. The failure to reimburse the Lender for Lender Advances pursuant to Section 3.4 hereof.

F. The transfer, encumbrance or change in use of, or other action or non-action with respect to, the Property or the composition of the Borrower in contravention of the provisions of Section 1.7.

G. The failure of the Borrower to contain, remove or mitigate any Spill or the Borrower's failure to immediately upon request reimburse the State of Oregon or the Lender for any amounts expended by them with respect to any Spill.

H. The failure to have any lien, attachment or encumbrance which is enforced or levied against the Property without the Lender's consent (other than the lien for ad valorem taxes not yet due) discharged, released and/or satisfied within the period specified in subsection 1.7.E. hereof.

I. [INTENTIONALLY LEFT BLANK]

J. The actual or threatened waste, removal or demolition of, or material alteration to, any part of the Property, except as permitted pursuant to the provisions of Section 1.10 hereof.

K. The breach of any warranty or the untruth or inaccuracy of any representation of the Borrower or any guarantor contained in the Loan Documents.

L. The existence of any material inaccuracy in any of the financial statements, certificates or in any other information furnished or to be furnished by the Borrower or any guarantor to the Lender pursuant to the provisions of this Trust Deed or furnished or to be furnished to the Lender to induce the Lender to make the Loan.

M. The failure to observe or perform any other agreements, covenants or representations of the Borrower contained in this Trust Deed for a period of thirty (30) days after the occurrence of such failure.

N. The occurrence of an event of default by the Borrower under any Lease and the failure to cure such default within the lesser of (i) thirty (30) days or (ii) the applicable grace, notice or cure period provided in such Lease, the passage of which would entitle the tenant to terminate said Lease.

O. The occurrence of a default under, or demand for the payment of, any other note or obligation of the Borrower or any guarantor to the Lender.

P. The occurrence of a default under, or demand for the payment of, any other note or obligation secured by a mortgage on or security interest in the Property.

Q. The cancellation, revocation, suspension or failure to receive a grant or renewal of any and all franchises, concessions, licenses and permits pertaining to or necessary for the operation of the business of the Borrower or any tenant on the Property.

R. The filing by or against the Borrower or any guarantor of any petition, arrangement, reorganization, or the like under any insolvency or bankruptcy law, and if such filing is involuntary, the failure to have same dismissed within one hundred twenty (120) days from the date of filing, or the making of an assignment for the benefit of creditors, or the appointment of a receiver for any part of the Borrower's or any guarantor's properties, or the

admission in writing by the Borrower or any guarantor of the inability to pay debts as they become due.

S. The taking of all or any part of the Property through condemnation, or if the value of the Property shall be impaired by condemnation or casualty, either temporarily for a period in excess of thirty (30) days, or permanently.

T. The passage of any federal, state, or local law, regulation, rule or order, or the rendition of a decision of any court (other than a law or decision with respect to a tax upon the general revenues of the Lender) in any way directly changing or affecting the Mortgage Debt or lessening the net income thereon in a fashion which cannot be, and is not, corrected or reimbursed by the Borrower.

U. The passage or enforcement of any federal, state, or local law or the rendition of a final decision of any court in any way impairing the Lender's liability to charge and collect the interest stated under the Note, including without limitation, the ability to vary the interest payable under the Note in accordance with the terms hereof.

V. The attempted revocation or termination by any guarantor of any guaranty of the Loan.

W. If the Borrower shall be deprived of title, possession or control of the Property by process or operation of law or order of any court, or if any foreclosure proceeding shall be instituted with regard to any lien or mortgage of any kind affecting the Property.

X. The cancellation, revocation, suspension or failure to receive a grant or renewal of any and all licenses and permits pertaining to or necessary for the operation of the business of the Borrower or any tenant on the Property.

Y. The material impairment of the value of any part of the Property by condemnation or casualty.

Z. Upon any distribution of the principal of any trust under which any or all of Nancy B. Coffin, Michael B. Wray, John W. Dey or Nancy L. Dey are a beneficiary (collectively, the "Barnes Family Trusts") or in the event of any material change in the terms of any of the Barnes Family Trusts.

AA. WC Ranch, Inc. shall not permit its Debt Service Coverage (as defined in 1.17.Q. above) to be less than 1.10, as measured annually based on the compiled financial statements and federal income tax return Form 1120S of WC Ranch, Inc.

### ARTICLE 3 REMEDIES

Whenever an Event of Default shall have occurred, the Lender may take any one or more of the following remedial steps:



### 3.1 ACCELERATION

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The Lender may declare, without demand or notice to the Borrower, the outstanding principal amount of the Loan and the interest accrued thereon, and the Mortgage Debt, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become, and be, due and payable.

### 3.2 FORECLOSURE

A. The Lender may foreclose this Trust Deed and exercise its rights as a secured party for all or any portion of the Mortgage Debt which is then due and payable, subject to the continuing lien of this Trust Deed for the balance not then due and payable.

B. In the event this Trust Deed is foreclosed, there shall be included in the Mortgage Debt, to the extent permitted by law, the costs, disbursements, and fees paid or incurred by the Lender in connection with the foreclosure proceedings.

### 3.3 POSSESSION OF PROPERTY: APPOINTMENT OF RECEIVER

A. Without notice to the Borrower and without regard to the adequacy of the security for the Mortgage Debt, proof of depreciation of the value of the Property or the financial condition of the Borrower, the Lender may, at its option:

(1) By itself or by agent, with or without bringing any action, suit or proceeding, immediately enter upon and take possession and control of the Property and the Property Income with those rights and powers more particularly set forth in subsection 3.3 C. hereof.

(2) Either in addition to, by supplement to, as an alternative to, but not by way of limitation of those rights of the Lender set forth in subsection 3.3A.(1) make application to a court of competent jurisdiction for and obtain the immediate ex parte appointment of a receiver authorized to immediately enter upon and take possession and control of the Property and the Property Income with those rights and powers more particularly set forth in subsection 3.3 C. hereof.

(3) [INTENTIONALLY LEFT BLANK]

(4) The Lender may judicially foreclose this Trust Deed and obtain a judgment foreclosing the Borrower's interest in all or any part of the Property and giving the Lender the right to collect any deficiency remaining due after disposition of the Property.

B. The Borrower hereby waives to the fullest extent permitted by law all rights to prior notice or court hearing in connection with any action by Lender of the types set forth in subsections 3.3 A.(1), (2), and (3), and the Borrower further waives any requirement that Lender provide any bond, surety, or other security in connection with any said action.

C. In the event the Lender, the Lender's agent and/or a receiver enters upon and takes possession and control of the Property pursuant to subsections 3.3A.(1) or (2) said person or entity shall have all of the Borrower's rights and powers with respect to the Property, in addition to such other rights and powers as may subsequently be authorized, including without limitation the right and power to:

(1) hold, store, use, operate, manage and control the Property and conduct the business which is or may be conducted therefrom;

(2) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements to the Property and purchase or otherwise acquire additional fixtures, personalty and other property;

(3) obtain such insurance with respect to the Property and the business operations conducted therefrom as may be determined necessary;

(4) manage and operate the Property and the business conducted therefrom and exercise all the rights and powers of the Borrower in its name or otherwise with respect to the same;

(5) enter into agreements with others to exercise the powers herein granted, all as the Lender, its agents or a receiver from time to time may determine;

(6) [INTENTIONALLY LEFT BLANK]

(7) enforce all terms of existing Leases at the Property and all other contracts or agreements pertaining to the Property or the business operations conducted therefrom; and

(8) enter into such new or additional leases and such other contracts or agreements pertaining to the Property or the business operations conducted at or from the Property from time to time as the Lender, its agents or the receiver may determine necessary in its sole discretion.

D. [INTENTIONALLY LEFT BLANK]

E. [INTENTIONALLY LEFT BLANK]

F. All costs, expenses and liabilities of every character incurred by the Lender in managing, operating and maintaining the Property shall constitute and be treated as Lender Advances pursuant to Section 3.4 hereof.

G. The Borrower shall pay monthly, in advance, to the Lender, its agent or any receiver in possession and control of the Property pursuant to subsections 3.3 A.(1), (2) or (3) the fair and reasonable rental value for all or any part of the Property which is in the use, occupancy and possession of the Borrower.

H. In the event of foreclosure, the Lender, its agent or any receiver acting pursuant to subsections 3.3 A.(I), (2) or (3) may remain in possession of the property until (i) the foreclosure sale; (ii) the redemption of the Property; or (iii) the expiration of any redemption period of the United States of America extending subsequent to the foreclosure sale, if a deficiency exists. The Lender, its agents or the receiver shall incur no liability for, nor shall Borrower assert any claim or setoff as a result of, any action taken while the Lender, its agent or a receiver is in possession of the Property.

### **DEFICIENCY**

No sale or other disposition of all or any part of the Property shall be deemed to relieve the Borrower of the Mortgage Debt, except to the extent that the proceeds are applied to the payment of such Mortgage Debt. If the proceeds of a sale, a collection, or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Mortgage Debt, the Borrower shall remain liable for any deficiency to the fullest extent permitted by law.

### **3.4 LENDER ADVANCES**

The Lender may, without notice or demand, pay any amount which the Borrower has failed to pay ("Lender Advances"), or perform any act which the Borrower has failed to perform hereunder (including, without limitation, (1) the payment of insurance premiums and/or the furnishing of insurance required under Section 1.2 hereof; (2) the payment of Taxes required under Section 1.3 hereof; (3) performance of and the payment for repairs and replacements required under Section 1.6 hereof; (4) the cost of discharging any liens or encumbrances under subsection 1.7.E. hereof; (5) the payment of amounts for which the Lender has been indemnified under subsection 1.8.H. hereof; (6) all expenses incurred or other amounts paid by the Lender pursuant to Section 1.11 and 1.14 hereof; (7) the payment of costs attendant to the Lender's possession as set forth in subsection 3.3.F. hereof; and (8) the payment of sums for all purposes for which Loan Advances are otherwise allowable under the Loan Agreement. In such event the costs, disbursements, expenses and reasonable counsel fees thereof, together with interest thereon from the date the expense is paid or incurred, at the highest interest rate allowed under the Note shall be (i) added to the Mortgage Debt, (ii) payable on demand to the Lender and (iii) secured by the lien of this Trust Deed, prior to any right, title, interest, lien or claim attaching or accruing to the Property subsequent to the lien hereof.

### **3.5 NO MARSHALLING**

The Lender shall not be (1) compelled to release, or be prevented from foreclosing or enforcing this Trust Deed upon all or any part of the Property, unless the entire Mortgage Debt shall be paid in lawful money as aforesaid; (2) required to accept any part or parts of the Property, as distinguished from the entire whole thereof, as payment of or upon the Mortgage Debt to the extent of the value of such part or parts; (3) compelled to accept or allow any apportionment of the Mortgage Debt to or among any separate parts of the Property or (4) prevented from selling the Property in one or more parcels or as an entirety and in such manner and order as the Lender in its sole discretion may elect.

The Lender, in exercising any remedy provided herein (including the making of any Lender Advances) which relates to (1) any Taxes, insurance premiums or other amounts to be paid by the Borrower hereunder, including without limitation, payments due pursuant to Sections 1.2 and 1.3 hereof, may do so in accordance with any notice, bill, statement or estimate procured from the appropriate public office or insurer without inquiry into the accuracy or validity thereof; (2) any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim or charge, shall be the sole judge of the legality or validity thereof; (3) any repair, maintenance or replacement expense or other amount to be paid by the Borrower under Section 1.6 hereof, or any expense incurred in connection with the Lender's possession under Section 3.3, shall be the sole judge of the state of repair of the Property and the necessity of incurring the expense; and (4) any other item or purpose not otherwise specifically provided for herein, may do so whenever in its sole judgment and discretion such payment or performance is necessary or desirable to protect the full security intended by this Trust Deed.

### 3.7 REMEDIES CUMULATIVE

No remedy conferred upon or reserved to the Lender here under is or shall be deemed to be exclusive of any other available remedy or remedies. Each such remedy shall be distinct, separate and cumulative, shall not be deemed to be inconsistent with or in exclusion of any other available remedy, may be exercised in the sole discretion of the Lender at any time, in any manner, and in any order, and shall be in addition to and separate and distinct from every other remedy given the Lender under this Trust Deed or any other Loan Documents, or now or hereafter existing in favor of the Lender at law or in equity or by statute.

### 3.8 DELAY, OMISSION OR RELEASE NO WAIVER

A. Time and punctuality shall be of the essence in this Trust Deed, but any delay, omission or failure by the Lender to insist upon the strict performance by the Borrower of any of the covenants, conditions and agreements herein set forth, or to exercise any right or remedy available to it upon the occurrence of an Event of Default hereunder, shall not impair any such right or remedy or be considered or taken as a waiver or relinquishment of the right in the future to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the Borrower with all of the covenants, conditions and agreements herein, or of the right to exercise any such rights or remedies if such Event of Default by the Borrower be continued or repeated.

B. The Lender may, without notice to or the consent of any of the holders of any subordinate lien on the Property, (1) release any part of the security described herein, (2) release the obligation of any person primarily or contingently liable for the Mortgage Debt secured hereby, (3) extend the time for payment or otherwise modify the terms of the Mortgage Debt or this Trust Deed, and (4) take any additional security for the Mortgage Debt. No such release, extension, modification or additional security shall impair or affect the lien of this Trust Deed or its priority over any subordinate lien.

C. Neither the Borrower nor any other person primarily or contingently liable for the payment of the Mortgage Debt secured hereby shall be relieved of any liability by reason of (1) any such release, extension, modification or taking of additional security; (2) the failure of the Lender to comply with any request of the Borrower or any such person to foreclose this Trust Deed or exercise any other remedy available hereunder or under or with respect to the Mortgage Debt; or (3) any agreement or stipulation between any subsequent owner of the Property and the Lender extending the time of payment or modifying the terms of the Mortgage Debt or this Trust Deed.

### 3.9 POWER OF ATTORNEY

The Borrower hereby irrevocably appoints, grants and constitutes the Lender its attorney-in-fact, coupled with an interest, to so execute, deliver and submit all applications, requests, forms or reports of any kind for all applicable, desirable or necessary licenses, permits, approvals, authorizations, tax credits or abatements or benefits, of any kind relating, applicable to or affecting the use and enjoyment of, or construction on, or the business operations conducted at or from the Property; provided, the foregoing power of attorney shall be exercisable by the Lender only after the occurrence of one or more Events of Default. Any party dealing with the Lender shall not be required to investigate the right of the Lender to exercise its authority or to take any action under or pursuant to this power of attorney nor inquire as to whether or not any Event of Default exists or has occurred.

### 3.10 NO MERGER

In the event the Lender shall acquire title to the Property by conveyance from the Borrower or as a result of the foreclosure of any other mortgage which the Lender at any time holds with respect to the Property, this Trust Deed shall not merge in the fee of the Property but shall remain and continue as an existing and enforceable lien for the Mortgage Debt secured hereby until the same shall be released of record by the Lender in writing.

## ARTICLE 4. MISCELLANEOUS PROVISIONS

### 4.1 GOVERNING LAW; BINDING EFFECT

This Trust Deed shall be governed by and construed, interpreted, regulated and enforced in accordance with the applicable laws of the State of Oregon. All covenants, conditions and agreements herein shall run with the land, and shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Lender and the Borrower.

### 4.2 MODIFICATIONS, ETC.

No modification, amendment, change, or discharge of any term or provision of this Trust Deed shall be valid or binding unless the same is in writing and signed by the Lender and the Borrower. The modification of this Trust Deed or of the Mortgage Debt or any other instrument securing the Mortgage Debt or the release of any part of the Property from the lien hereof shall not impair the priority of the lien of this Trust Deed.

#### 4.3 NOTICE

40441

A. Any notice, report, demand or other written instrument required under Section 1.15 hereof or otherwise permitted to be given, made, or sent under this Trust Deed, shall be in writing, signed by the party giving or making the same, and shall be sent by certified mail, return receipt requested, to all parties hereto simultaneously at their respective addresses as follows:

As to the Lender:

Fleet National Bank  
c/o Jeffrey G. Calder  
Vice President

with a copy to:

Rome McGuigan Sabanash, P.C.  
One State Street  
Hartford, CT 06103  
Att: David H. Flynn, Esq.

As to the Borrower:

WRAYCO, Inc.  
2833 Washburn Way  
Klamath Falls, OR 97603

with a copy to:

Wilson C. Mulheim, Esq.  
700 U.S. Bank Center  
800 Willamette Street  
Eugene, OR 97401

B. The date of receipt of any notice shall be deemed to be, and shall be effective from, the earlier of (1) the date of the actual receipt of such notice, or (2) three days after same is deposited in the United States mail as provided above, whether or not the same is actually received by such party.

C. Any party hereto shall have the right to change the place to which any such notice shall be sent by a similar notice sent in like manner to all parties hereto.

#### 4.4 NO AGENCY OR JOINT VENTURE

Nothing contained in this Trust Deed shall be construed to cause the Borrower to become the agent for, or joint venturer with, the Lender for any purpose whatsoever, nor shall the Lender be responsible for any shortage, discrepancy, damage, loss or destruction of any part of the Property for whatever cause unless same is the direct result of the gross negligence of the Lender.

#### 4.5 INVALID PROVISIONS

If any clause, provision, section or subsection of this Trust Deed shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, section or subsection shall not affect any of the remaining provisions hereof. Such invalid or unenforceable term or provision shall be severed and all other terms and provisions herein shall continue to be effective and binding; provided, however, if any term or provision herein is invalid or unenforceable then the same shall be reduced in scope to the extent necessary to be valid or enforceable.



In this Trust Deed, unless the context otherwise requires:

A. The term "Borrower" shall mean and include any guarantor of all or any part of the Mortgage Debt or any other person directly or indirectly responsible for the payment of all or any part of the Mortgage Debt.

B. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Trust Deed, shall refer to this Trust Deed, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this Trust Deed.

C. Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

D. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

E. Any headings or captions preceding the texts of the several sections of this Trust Deed shall be solely for convenience of reference and shall not constitute a part of this Trust Deed, nor shall they affect its meaning, construction or effect.

Upon the payment in full of the Mortgage Debt, Lender shall request Trustee to reconvey the Property and shall surrender this Trust Deed and all notes evidencing the Mortgage Debt to Trustee. Upon payment of its fees and any other sums owing to it under this Trust Deed, Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such reconveyance of any matters or 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".

IN WITNESS WHEREOF, the Borrower has caused this instrument to be executed and delivered this 30<sup>th</sup> day of December, 1996.

Signed and delivered  
in the presence of

B. Jean Shuff

WRAYCO, INC.

By:

Its

William R. Shuff  
President

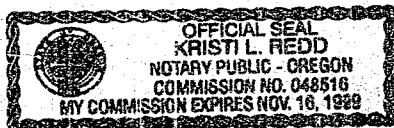
STATE OF OREGON )

40443

COUNTY OF Klamath

) ss.: 12/30/96

On this 30<sup>th</sup> day of December, 1996, before me, the undersigned officer, personally appeared MICHAEL BARNES WRAY, President of WRAYCO, INC., signer of the foregoing instrument and acknowledged the same to be his/her free act and deed and the free act and deed of said corporation.



Kristi L. Redd  
Notary Public

By mail - 1645022274.04

SCHEDULE A

40444

Description of Land

Lot 4 in Block 5 of TRACT 1080 WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Permitted Encumbrances

1. The premises herein described are within and subject to the statutory powers, including the power of assessment, of Klamath County Drainage District.
2. The premises herein described are within and subject to the statutory powers, including the power of assessment, of South Suburban Sanitary District.
3. Reservations and restrictions as contained in plat dedication, to wit:  
"said plat subject to: Building set-back lines as prescribed in present applicable ordinances; all existing easements and/or as shown on the annexed plat; additional restrictions as provided for in any recorded protective covenants."
4. Subject to a 10 foot building setback from Broadmore Street as shown on dedicated plat.
5. Subject to a 25 foot building setback from Washburn Way as shown on dedicated plat.
6. Reservations and restrictions, subject to the terms and provisions thereof, as contained in instrument recorded May 31, 1984 in Volume M84, page 9081, Microfilm Records of Klamath County, Oregon, wherein Washburn Enterprises, Inc., an Oregon corporation, is grantor and W.C. Ranch, Inc., an Oregon corporation is grantee, to wit:  
"This grant is made subject to the following conditions and restrictions: (a) Grantee, and any one claiming by, through or under Grantee, shall not cause or permit any permanent building, structure or other obstruction, other than signs, gasoline pumps or similar service facilities, to be placed or located on the Westerly 70 feet of said parcel parallel with Washburn Way. Said 70 foot strip shall be maintained in such manner as to permit vehicular traffic to pass on either side of such permitted service facilities in the most direct Northerly and Southerly direction. (b) Said 70 foot strip shall be reserved for the use of the owners and occupants of the above described property and the owners and occupants of adjoining properties to the North bordering on Washburn Way upon which similar conditions and restrictions are imposed for the use and enjoyment of the owners and occupants, their customer, employees and invitees, for parking of automobiles and access to and egress from said parcels. (c) Grantees, in consideration of the reservation or granting of similar conditions and restrictions upon adjoining properties to the North, agree to maintain said 70 foot strip in a safe and suitable condition for the uses and purposes herein recited. (d) The foregoing reservation and conditions are deemed to be appurtenant to the parcel herein conveyed for the sue and benefit of the owners and occupants, their employees, customers and invitees, of the subject property and the owners and occupants, their employees and invitees, of the adjoining properties to the North similarly restricted."
7. Right of Way Easement, subject to the terms and provisions thereof recorded May 23, 1986 in Volume M86, page 8903, Microfilm Records of Klamath County, Oregon between WC Ranch, Inc., an Oregon corporation as Grantor and Pacific Power and Light Company, a corporation, as Grantee.
8. Right of Way Easement, subject to the terms and provisions thereof, dated October 27, 1986, recorded November 4, 1986 in Volume M86, page 19983, Microfilm Records of Klamath County, Oregon between Harvest Ford, as Grantor and CP National Corporation, as Grantee.
9. Underground Rights of Way Easement, subject to the terms and provisions thereof dated January 23, 1987 and recorded February 18, 1987 in Volume M87, page 2530,

SCHEDULE B

continued

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Microfilm Records of Klamath County, Oregon from WC Ranch, Inc., an Oregon corporation to Pacific Power and Light Company, a corporation.

10. Subject to any unrecorded leases and tenancies, if any.
11. Financing Statements or Federal Tax Liens, if any, filed with the Secretary of State.

SCHEDULE C

40447

Leases on or affecting the Property

NONE



SCHEDULE D

Improvements

40448

THOSE APPARENT UPON THE LAND AS OF THE DATE OF THIS TRUST DEED

Copy of Promissory Note

COPY

COPY

PROMISSORY NOTE

\$2,100,000.00

Klamath Falls, Oregon  
December 30 1996

FOR VALUE RECEIVED, the undersigned (hereinafter sometimes referred to as the "Borrower" promises to pay to the order of FLEET NATIONAL BANK, at its office at 777 Main Street, Hartford, CT (hereinafter referred to as the "Lender"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of Two Million One Hundred Thousand Dollars (\$2,100,000.00) (the "Loan"), with interest from the date hereof until this Note is fully paid, until the occurrence of an Event of Default (as defined herein) or until maturity, whichever is applicable, at the fixed interest rate of 8.89% per annum. The interest rate shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days in each period for which interest is charged.

Payments of principal and interest under this Note shall be made as follows: fifty-nine (59) equal monthly installments of principal and interest in the amount of \$12,745.94 each, commencing February 1, 1997 and continuing on the first day of each successive month thereafter through and including November 1, 2001, with the sixtieth (60th) and final installment being due and payable on January 1, 2002, such final installment to be in an amount equal to the outstanding balance of all principal and accrued interest. Each installment shall be applied first to the payment of late charges, then to accrued and unpaid interest and the balance on account of the unpaid principal of this Note.

The Borrower promises to pay, in addition to such principal sum and interest, all taxes and assessments which may be levied against the Lender upon this indebtedness, or upon any collateral securing this Note, together with all costs of collection including reasonable attorney's fees incurred by the Lender (the "Loan Indebtedness") to (1) collect the Loan Indebtedness due hereunder from any party liable for the payment of the Loan Indebtedness whether as maker, endorser, guarantor, surety or otherwise (hereinafter the "Parties") and realize its rights under this Note, (2) enforce, foreclose and realize its rights under this Note or any other documents now or hereafter evidencing, securing or relating to the Loan Indebtedness including the commitment letter signed and accepted by the Borrower in connection with the Loan (collectively referred to herein as the "Loan Documents"), and (3) defend and protect the validity of the Loan Documents in connection with any litigation or controversy arising from or connected with the Loan Documents. Such costs, expenses and attorney's fees enumerated above shall expressly include those as may be incurred by the Lender to collect the Loan Indebtedness due hereunder from any of the Parties after judgment in favor of the Lender by any court of competent jurisdiction including those incurred by the Lender to foreclose any judgment lien, or to realize upon any collateral or to otherwise obtain payment and satisfaction of such judgment from any of the Parties. The Borrower's obligation to pay such costs and reasonable attorney's fees of the Lender in connection with the protecting, enforcing or realizing of the rights and remedies above described shall exist whether or not proceedings are instituted or legal appearances made in any court of competent jurisdiction on behalf of the Lender.

remedies above described shall exist whether or not proceedings are instituted or legal appearances made in any court of competent jurisdiction on behalf of the Lender.

At the option of the Lender, the entire principal balance and accrued interest thereon shall at once become due and payable without notice or demand upon the occurrence at any time of any of the following events (each referred to as an "Event of Default"):

1. The failure to pay any installment of principal and interest due hereunder upon maturity or within ten (10) days from the date when such installment is otherwise due and payable.
2. The failure to pay taxes on the Loan Indebtedness or any tax or assessment upon any collateral securing the Loan Indebtedness before the same shall become delinquent.
3. The occurrence of an Event of Default (as defined therein) under any of the Loan Documents beyond any grace periods set forth in said agreements.
4. The filing by or against the Borrower or any of the Parties of any petition, arrangement, reorganization, or the like under any insolvency or bankruptcy law, or the adjudication of the Borrower or any of the Parties as a bankrupt (and if such filing is involuntary, the failure to have same dismissed within sixty (60) days from the date of filing), or the making of an assignment for the benefit of creditors, or the appointment of a receiver for any part of the Borrower's or any Parties' properties or the admission in writing by the Borrower or any of the Parties of the inability to pay debts as they become due.
5. The breach of any warranty or the untruth or inaccuracy of any representation of the Borrower or any of the Parties in the Loan Documents.
6. The occurrence of a default under, or demand for the payment of, any other note, agreement or other obligation of the Borrower or any of the Parties to the Lender.
7. The failure by the Borrower or any of the Parties to make payment on any obligation for borrowed money due to any party other than the Lender, beyond any grace period provided with respect thereto, or upon demand, or the failure to perform any other term, condition, or covenant contained in any agreement under which any such obligation is created, the effect of which default is to cause such obligation to become due and payable prior to its date of maturity.
8. The attempted revocation or termination by any of the Parties of any guaranty of the Loan.

9. The failure of any of the Parties to provide, on request of the Lender, any financial statement or copy of a tax return required under the terms of any guaranty of the Loan.

Failure to exercise this option to accelerate shall not constitute a waiver of the right to exercise the same in the event of any subsequent Event of Default. The Borrower agrees to pay to the Lender a late charge equal to 5% of any payment due to the Lender which is not received within ten (10) days after the same is due. It is agreed that in case of an Event of Default or after maturity, this Note shall bear interest at the interest rate stated herein plus three percent (3%) per annum until paid in full.

The Borrower and all Parties hereby give the Lender a lien and right of setoff for all of the Borrower's liabilities hereunder upon and against all the deposits, credits and property of the Borrower or the Parties now or hereafter in the possession or control of the Lender or in transit to it. The Lender may, at any time, apply the same, or any part thereof, to any liability of the Borrower even though unmaturing.

Except as hereinafter set forth, the Borrower may not prepay this Note. Under no circumstances may there be a partial prepayment of this Note. The Borrower may prepay only the entire unpaid balance of this Note upon payment of such amounts, as determined by the Lender in its sole and absolute discretion, as may be necessary to reimburse the Lender for any losses and expenses incurred by the Lender as a result of prepayment of this Note, including without limitation any losses (including loss of anticipated profits) and expenses incurred by reason of the liquidation or re-employment of deposits or other funds acquired by the Lender to fund or maintain this Note. The Borrower hereby acknowledges that in reliance upon this agreement, the Lender has made a certain commitment of funds upon the terms and conditions of this Note. In the event that this Note shall be accelerated for any reason whatsoever by the Lender, such payment of the Lender's losses and expenses shall be paid by the Borrower.

Any check, draft or money order remitted in settlement of this Note may be handled for collection in accordance with the practice of the collecting bank or banks, and shall not be deemed payment until and unless good funds are actually received by or credited to the Lender.

This Note shall be governed by and construed in accordance with the laws of the State of Oregon.

All references to the "Lender", the "Borrower" or the "Parties" shall apply to their respective heirs, successors and assigns.

Presentment, protest and notice are hereby waived.

Time is of the essence of each and every term, condition and provision of this Note.

40452

Wrayco, Inc.

By [Signature]  
Its President

This Note is secured by a  
trust deed on certain real  
property located at:

2833 Washburn Way  
Klamath Falls, OR

Syndt-16450222164.03

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Wrayco, Inc. the 31st day  
of December A.D., 19 96 at 11:22 o'clock A.M., and duly recorded in Vol. M96  
of Mortgages on Page 40416.

Bernetha G. Letsch, County Clerk

FEE \$190.00

by [Signature] [Signature]