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**RECORDING REQUESTED BY  
 AND WHEN RECORDED MAIL TO:**

Heller Ehrman White & McAuliffe LLP  
 333 Bush Street  
 San Francisco, CA 94611  
 Attention: Peter J. Crosby

**Until further notice all tax statements to be sent to:**  
 Oliver & Dianne Spires  
 224 Mountain View Boulevard  
 Klamath Falls, OR 97601

C03-38

**DEED OF TRUST  
 (Oregon)**

THIS DEED OF TRUST ("Deed of Trust") is made as of **January 31, 2003**, by OLIVER SPIRES and DIANNE SPIRES, as Grantor ("Grantor"), to FIRST AMERICAN TITLE COMPANY OF OREGON, a corporation, as Trustee ("Trustee"), for the benefit of FORD MOTOR CREDIT COMPANY a Delaware Corporation, as Beneficiary ("Beneficiary").

**ARTICLE 1. GRANT IN TRUST**

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Grantor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the County of Klamath, State of Oregon, described on Exhibit A attached hereto, together with all right, title, interest and privileges of Grantor in and to all streets, ways, roads and alleys used in connection with or pertaining to such real property, and together with all development rights or credits, air rights, water, water rights and water stock related to such real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and to the extent of Grantor's interest therein, all fixtures, now or at any time hereafter located, attached to or used in any way in connection with the operation, use or occupation of the real property, including, without limitation (a) all machinery, equipment, furniture and furnishings to the extent such items constitute fixtures as defined in ORS 79.0102(oo), and (b) all screens, awnings, storm windows and doors, window shades, floor coverings, shrubbery, landscaping, plants, boilers, tanks, furnaces, radiators, fire prevention and extinguishing apparatus, security and access control apparatus, communications apparatus, all heating, lighting, plumbing, gas, electric, ventilation, and air conditioning equipment of whatever kind and nature, all of which are hereby declared and shall be deemed to be fixtures and accessory to the fee and part of the real property as between the parties hereto, their heirs, legal representatives, successors and assigns and all persons claiming by, through or under them (the "Improvements"); all interest or estate which Grantor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

**ARTICLE 2. OBLIGATIONS SECURED**

- 2.1 **OBLIGATIONS SECURED.** Grantor makes this Deed of Trust for the purpose of securing the following obligations ("Secured Obligations"):
- (a) Payment to Beneficiary of all sums at any time owing under that certain Stipulation For Entry of Judgment made and entered effective as of November 1, 2002, executed by Grantor (the "Stipulation"), including, without limitation, the principal amount of \$559,397.66, together with interest thereon and other sums payable according to the terms of the Stipulation; and

- (b) Performance of all covenants and obligations on the part of Grantor under (i) the Stipulation; and (ii) each other agreements referred to therein, including the Collateral Agreements (as defined in the Stipulation) to which Grantor is a party; and
- (c) Payment and performance of all covenants and obligations of Grantor under this Deed of Trust; and
- (d) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
- (e) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new agreement, stipulation, and/or promissory note or notes.

- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges, expenses and fees, including attorneys' fees, at any time accruing or assessed on any of the Secured Obligations.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Stipulation may permit borrowing, repayment and reborrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

### ARTICLE 3. RIGHTS AND DUTIES OF THE PARTIES

- 3.1 **TITLE.** Grantor represents and warrants that, except as provided in the Stipulation or disclosed to Beneficiary in a writing which refers to this warranty, Grantor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and this Deed of Trust is lien on the Subject Property with priority over all other liens except as provided in the Stipulation.
- 3.2 **TAXES AND ASSESSMENTS.** Grantor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Grantor shall have the right to contest such taxes, assessments, levies and charges reasonably and in good faith, provided that if Beneficiary shall reasonably determine that any portion of the Subject Property is in danger of being sold for nonpayment of such taxes, assessments, levies or charges, Grantor shall cause the same to be promptly paid. In any event, Grantor shall promptly cause any taxes, assessments, levies and charges determined to be owing following such contest, together with all penalties, interest and charges thereon, to be promptly paid. Grantor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Grantor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 3.3 **TAX AND INSURANCE IMPOUNDS.** At Beneficiary's option and upon its demand following the occurrence of an Event of Default, Grantor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines

that any amounts paid by Grantor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Grantor of the increased amounts required to pay all amounts due, whereupon Grantor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Grantor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Grantor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Grantor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Grantor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto.

3.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Grantor shall promptly pay and perform each Secured Obligation when due.

3.5 **LIENS, ENCUMBRANCES AND CHARGES.** Except for the prior liens disclosed in the Stipulation, Grantor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Grantor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or any interest therein, whether senior or subordinate hereto.

3.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- (a) Grantor shall obtain and continuously maintain throughout the term of this Deed of Trust insurance upon the Subject Property against loss by fire and other casualties as are normally and usually covered by special extended coverage or "all-risk" policies in an amount not less than the replacement value of the Subject Property. Such policy or policies of insurance shall name Beneficiary as additional insured and shall require at least 30 days' notice to Beneficiary before cancellation, expiration or material change. Grantor shall provide Beneficiary with a copy of all insurance policies required by these provisions, or certificates thereof, satisfactory to Beneficiary and shall, from time to time, upon request of Beneficiary, furnish a statement of Grantor of the amounts of insurance maintained in compliance with these provisions, the risks covered by such insurance, the insurance company or companies which carry such insurance and evidence that the premiums thereon have been paid.
- (b) In the event of any casualty resulting in damage to or loss or destruction of the Subject Property, Grantor shall give prompt notice thereof to Beneficiary, and Grantor shall promptly restore, repair or replace the damaged, lost or destroyed property to a value and condition that is equal to or better than the value and condition existing immediately prior to such damage, loss or destruction.
- (c) Insurance proceeds may be used by Grantor for repair, replacement or restoration of damaged, lost or destroyed Improvements to the Subject Property for which the proceeds have been paid or are payable. Beneficiary may require the proceeds to be deposited or held in such a manner as to reasonably insure their application by Grantor for restoration, repair or replacement.
- (d) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Grantor to Beneficiary and, at the request of Beneficiary, subject to the provisions of Section 3.6(b) and (c), shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Subject Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 3.7(c), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Grantor upon any conditions

Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.

- 3.7 **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.** Grantor covenants: (a) to keep the Subject Property in good condition and repair; (b) not to remove or demolish the Subject Property or any part thereof, not to alter, restore or add to the Subject Property, and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent or as provided in the Stipulation; (c) to complete or restore promptly and in good and workmanlike manner the Subject Property, or any part thereof which may be damaged or destroyed, without regard to the adequacy of insurance proceeds; (d) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (e) not to commit or permit waste of the Subject Property; and (f) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.
- 3.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Grantor's sole expense, Grantor shall protect, preserve and defend the Subject Property and title to and right of possession of the Subject Property, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Grantor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property and of any condemnation offer or action.
- 3.9 **ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.**
- (a) Trustee accepts this trust when this Deed of Trust is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.
  - (b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Stipulation or the Collateral Agreements, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.
  - (c) With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Stipulation, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers

herein granted to Trustee, upon the Subject Property for debts contracted for or liability or damages incurred in the management or operation of the Subject Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. GRANTOR WILL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES.

- (d) All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.
- (e) Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.
- (f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Stipulation, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

### 3.10 **COMPENSATION; EXCULPATION; INDEMNIFICATION.**

- (a) Grantor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including reasonable attorneys' fees. Grantor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including, without limitation, any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Grantor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Grantor under any agreement related to the Subject Property or under this Deed of Trust; or (iii) any loss sustained by Grantor or any third party resulting from Beneficiary's failure to lease the Subject Property after a Default or from any other act or omission of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Grantor.
- (b) Grantor indemnifies Trustee and Beneficiary against, and holds Trustee and Beneficiary harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Grantor to perform Grantor's obligations; or (iv) by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, excluding, however, any claims or losses arising out of the gross negligence or willful misconduct of Beneficiary or its directors, officers, agents or employees. The above obligation of Grantor to indemnify and hold harmless Trustee and Beneficiary shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust.

- (c) Grantor shall pay all amounts and indebtedness arising under this Section 3.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date of such demand at the rate of interest then applicable to the principal balance of the Stipulation as specified therein.

- 3.11 **SUBSTITUTION OF TRUSTEES**. From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 3.11 shall be conclusive proof of the proper substitution of such new Trustee.
- 3.12 **DUE ON SALE OR ENCUMBRANCE**. If the Subject Property or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests in Grantor (except as otherwise permitted in the Stipulation), shall be sold, transferred, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 3.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY**. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Subject Property.
- 3.14 **RECONVEYANCE**. Upon Beneficiary's written request, pursuant to paragraphs 6(D)(1)- (3) of the Stipulation or otherwise, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.
- 3.15 **SUBROGATION**. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust.
- 3.16 **RIGHT OF INSPECTION**. Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time, after reasonable notice to Grantor, for the purpose of inspecting the Subject Property and ascertaining Grantor's compliance with the terms hereof.

#### ARTICLE 4. DEFAULT PROVISIONS

- 4.1 **DEFAULT**. For all purposes hereof, the term "Default" shall mean (a) at Beneficiary's option, the failure of Grantor to pay any amount due hereunder or under the Stipulation when the same is due and payable, whether at maturity, by acceleration or otherwise, subject to the grace period, if any, allowed in the Stipulation for such failure; (b) the failure of Grantor to perform any non-monetary obligation hereunder, or the failure to be true of any representation or warranty of Grantor contained herein and the continuance of such failure for thirty (30) days after notice, or within any longer grace period, if any, allowed in the Stipulation for such failure; or (c) the existence of any Event of Default as defined in the Stipulation.

4.2 **RIGHTS AND REMEDIES.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
- (b) With or without notice, and without releasing Grantor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Grantor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.
- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Grantor hereunder, and Grantor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Grantor waives the defense of laches and any applicable statute of limitations;
- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Grantor hereby consents to such appointment;
- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Grantor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;
- (f) To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Grantor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Grantor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Grantor or Beneficiary may purchase at the sale;
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion.
- (h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the

following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Grantor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios previously discussed between Grantor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

- 4.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all reasonable costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Stipulation to be applicable on or after maturity or acceleration of the Stipulation; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 4.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under Section 4.2, less all reasonable costs and expenses incurred by Beneficiary or any receiver under Section 4.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 4.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Grantor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.
- 4.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Grantor agrees to pay to Beneficiary, within ten (10) days after demand, all reasonable costs and expenses incurred by Trustee and Beneficiary pursuant to Section 4.2 (including, without limitation, court costs and attorneys' and paralegals' fees, whether incurred in litigation or not) with interest from the date of notice of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Stipulation as specified therein. In addition, Grantor shall pay to Trustee all reasonable Trustee's fees hereunder and shall reimburse Trustee for all reasonable expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.
- 4.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with

respect to the Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, and (c) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Grantor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to act under this Section.

## **ARTICLE 5. MISCELLANEOUS PROVISIONS**

- 5.1 **ADDITIONAL PROVISIONS.** The Stipulation and the Collateral Agreements referred to therein, contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Stipulation grants further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Grantor which apply to this Deed of Trust and to the Subject Property and such further rights and agreements are incorporated herein by this reference.
- 5.2 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing.
- 5.3 **OBLIGATIONS OF GRANTOR, JOINT AND SEVERAL.** If more than one person has executed this Deed of Trust as "Grantor", the obligations of all such persons hereunder shall be joint and several.
- 5.4 **RECOURSE TO SEPARATE PROPERTY.** Any married person who executes this Deed of Trust as a Grantor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person's separate property, and any community property of which that person is a manager.
- 5.5 **WAIVER OF MARSHALING RIGHTS.** Grantor, for itself and for all parties claiming through or under Grantor, and for all parties who may acquire a lien on or interest in the Subject Property, hereby waives all rights to have the Subject Property and/or any other property which is now or later may be security for any Secured Obligation ("Other Property") marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 5.6 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" means all and any part of the Subject Property and any interest in the Subject Property.
- 5.7 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 5.7 does not waive or modify the provisions of Section 3.12.
- 5.8 **EXECUTION IN COUNTERPARTS.** This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered to Beneficiary, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.
- 5.9 **GOVERNING LAW.** This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, except to the extent that Federal laws preempt the laws of the State of Oregon.
- 5.10 **INCORPORATION.** Exhibit A, as attached, is incorporated into this Deed of Trust by this reference.
- 5.11 **NOTICES.** All notices or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below; provided, however, that non-receipt of any communication as a result of any change of

address of which the sending party was not notified or as a result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the addresses of the parties shall be:

Grantor: Oliver R Spires and Dianne E. Spires  
224 Mountain View Boulevard  
Klamath Falls, Oregon 97601

Trustee: First American Title Company of Oregon  
c/o Northwest Title Company  
445 Third Street  
McMinnville, Oregon 97128

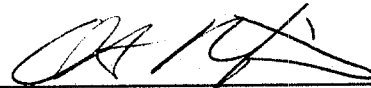
Beneficiary: Ford Motor Credit Company  
c/o Primus Financial Services  
401 Parkplace, Suite 98033  
Kirkland, WA 94111  
Attn: Richard Chase

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Grantor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Subject Property or to Grantor naming Beneficiary, "Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Grantor to perform its obligations to Beneficiary under the Stipulation.

5.12 **STATUTORY NOTICES.** UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY BANKS AFTER OCTOBER 3, 1989 CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE DEBTOR'S RESIDENCE, MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY BANKS TO BE ENFORCEABLE.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the day and year set forth above.

"GRANTOR"



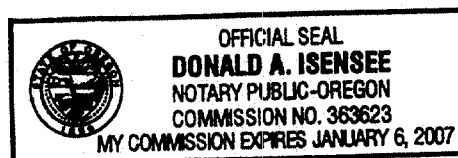
OLIVER R. SPIRES



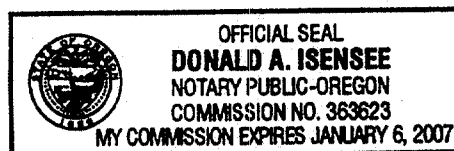
DIANNE E. SPIRES

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

State of OREGON

County of KLAMATHThis instrument was acknowledged before me on FEB 21, 20 03 byOLIVER R SPIRES.Donald A. Isensee  
Notary Public – State of OregonMy commission expires: 1-6-07

State of OREGON

County of KLAMATHThis instrument was acknowledged before me on FEB 21, 20 03 byDIANNE E SPIRES.Donald A. Isensee  
Notary Public – State of OregonMy commission expires: 1-6-07

**EXHIBIT A**  
**DESCRIPTION OF SUBJECT PROPERTY**

All the certain real property situated in the County of Klamath, State of Oregon and more particularly described as follows:

**1. Rocky Point Cabin:**

The interest of Oliver R. Spires and Dianne E. Spires in that Term Special Use Permit for Recreation Residences pursuant to the Act of March 4, 1915, as Amended, authorizing the use of National Forest Lands for a recreation residence for personal recreational use on the Winema National Forest, subject to the provisions of the permit, including items I. through Xi. on page 2 through 8, covering .05 acres described as (1) Lot 9 Block A of the Recreational tract (A plat of which is on file in the office of the Supervisor), including the on-lot storage building and a carport, Holder No. 5755/01; Type Site: 123; Authority: 712; Auth. Type: 18; Issue Date: 07/01/89; Exp. Date: 12/31/08; Location Sequence No.: 0620034103501.

**2. Body Shop Property:**

Lots 21, 22, 23, 24 and 25 in Block 17, Industrial Addition, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon:

**Street Address:**

217 E. Main Street, Klamath Falls, Oregon [Lots 21-23]  
215 E. Main Street, Klamath Falls, Oregon [Lot 24]  
213 E. Main Street, Klamath Falls, Oregon. [Lot 25]

**3. Keno Rental House:**

Lot 23, Block 38 of Sixth Addition to Klamath River Acres, according to the official plat thereof on file in the office of the County Clerk in Klamath County, Oregon.

**Street Address:** 15993 Homestead Lane, Klamath Falls, Or. 97601

**4. Keno Property - Vacant Lot:**

Lot 24 Block 38 of Sixth Addition to Klamath River Acres, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

**Street Address:** 7913 Big Buck Lane, Klamath Falls, Oregon 97602

**5. The Residence:**

Lot 28 in Block 2 of TRACT 1145-NOB HILL, a resubdivision of portions of NOB HILL, IRVINGTON HEIGHTS, MOUNTAIN VIEW ADDITION AND ELDORADO HEIGHTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

EXCEPTING a portion of Lot 28 more particularly described as follows:

Beginning at a 1/2" iron pin at the Westerly right-of-way of Mountain View Blvd., marking the property corner of Lots 28 and 29; thence, South 25 degrees 33' 01" West, 58.90 feet along said right-of-way to a 5/8" iron pin marking a point of curve; thence, along said right-of-way on a curve to the right having a Delta - 02 degrees 58' 15" Cord - 16.10 feet to a 1/2" iron pin marking the property corner of Lots 27 and 28; thence leaving said right-of-way North 57 degrees 34' 29"

West 101.31 feet to a 1/2" iron pin marking a property corner of Lots 21, 27 and 28; thence North 57 degrees 34'29" West, 9.29 feet to a point; thence North 40 degrees 28' 39" East, 63.92 feet to a point on the property line common to Lots 28 and 29; thence South 64 degrees 26'59" East 93.34 feet along the property line common to Lots 28 and 29 to the point of beginning.

ALSO TOGETHER WITH a parcel of land located in a portion of Lot 29, Block 2 in TRACT 1145-NOB HILL REPLAT, Klamath County, Oregon, being more particularly described as follows:

Beginning at the lot corner common to Lots 29 and 30 on the Westerly right-of-way line of Mountain View Blvd.; thence along said right-of-way line South 25 degrees 33'01" West 75.00 feet to the lot corner common to Lots 28 and 29; thence along the lot line common to Lots 28 and 29 North 64 degrees 26'59" West 92.21 feet to the center of an 8" retaining wall; thence along the center of said retaining wall North 67 degrees 50'20" East 46.24 feet; thence continuing along said retaining wall and the extension thereof North 26 degrees 16' 05" East 40.80 feet to a point on the lot line common to Lots 29 and 30; thence along said lot line South 64 degrees 26' 59" East 60.59 feet to the point of beginning.