

Loan No. 01-253-801535-6

AFTER RECORDING, MAIL TO:

WASHINGTON MUTUAL

Loan Servicing

P.O. Box 91006, SAS0304

Seattle, WA 98111

mtc 40219ms

[Space Above This Line For Recording Date]

LINE OF CREDIT INSTRUMENT

SMART CHOICE MORTGAGE  
SECOND DEED OF TRUST

THIS DEED OF TRUST IS SECOND AND SUBORDINATE TO WASHINGTON MUTUAL BANK  
FIRST DEED OF TRUST DATED January 22nd, 1997 AND RECORDED UNDER AUDITOR'S FILE NUMBER  
RECORDS OF KLAMATH COUNTY, STATE OF OREGON.

THIS DEED OF TRUST is between KURT E. PHILLIPS, an unmarried individual and DALE E. PHILLIPS and BARBARA J. PHILLIPS, husband and wife

whose address is 7813 GEARHART STREET, KLAMATH FALLS, Oregon 97601  
("Grantor"); AMERITITLE

a Oregon corporation, the address of which is

and its successors in trust and assigns ("Trustee"); and WASHINGTON MUTUAL BANK  
the address of which is 1201 THIRD AVENUE, SEATTLE, Washington 98101

("Beneficiary").

1. **Granting Clause.** Grantor hereby grants, bargains, sells and conveys to Trustee in trust, with power of sale, the real property in KLAMATH County, Oregon, described below, and all interest in it Grantor ever gets:

LOT 4 IN BLOCK 4 OF TRACT NO. 1002, LA WANDA HILLS, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

together with: all income, rents and profits from it; all plumbing, lighting, air conditioning and heating apparatus and equipment; and all fencing blinds, drapes, floor coverings, built-in appliances, and other fixtures, at any time installed on or in or used in connection with such real property, all of which at the option of Beneficiary may be considered to be either personal property or to be part of the real estate.

All of the property described above will be called the "Property." To the extent that any of the Property is personal property, Grantor grants Beneficiary, as secured party, a security interest in all such property, and this Deed of Trust shall constitute the Security Agreement between Grantor and Beneficiary.

2. **Obligation Secured.** This Deed of Trust is given to secure the repayment of all amounts owing under a Smart Choice Loan Agreement of even date between Grantor and Beneficiary (the "Loan Agreement") as well as the performance of all other obligations of Grantor contained in the Loan Agreement. THE LOAN AGREEMENT PROVIDES FOR MULTIPLE ADVANCES OVER TIME AND FOR A VARIABLE RATE OF INTEREST. IT ALSO PROVIDES FOR NEGATIVE AMORTIZATION AND FOR A VARIABLE LOAN TERM WHICH IN NO EVENT WILL EXCEED 30 YEARS. TAKING INTO EFFECT THE MAXIMUM POSSIBLE NEGATIVE AMORTIZATION, THE MAXIMUM PRINCIPAL AMOUNT THAT COULD BE OWING UNDER THE LOAN AGREEMENT PRIOR TO A DEFAULT IS \$ 52,524.53



This Deed of Trust is also given to secure performance of each promise of Grantor contained herein, and the payment of certain fees and costs of Beneficiary as provided in Section 9 of this Deed of Trust, and repayment of money advanced by Beneficiary under Section 6 or otherwise to protect the Property or Beneficiary's interest in the Property. All of this money is called the "Debt."

**3. Representations of Grantor.** Grantor represents that:

- (a) Grantor is the owner of the Property, which is unencumbered except by easements, reservations and restrictions of record not inconsistent with the intended use of the Property, and a first lien deed of trust which secures a separate loan from Beneficiary to Grantor; and
- (b) The Property is not used principally for agricultural or farming purposes.

**4. Sale or Transfer of Property.** If the Property or any interest therein is sold or otherwise transferred by Grantor without Grantor's first repaying in full the Debt and all other sums secured hereby, or if Grantor agrees to sell or transfer the Property or any interest therein without first repaying in full the Debt and all other sums secured hereby, the entire Debt shall become immediately due and payable without notice from Beneficiary. In addition, Beneficiary shall have the right to exercise any of the remedies for default permitted by this Deed of Trust.

**5. Promises of Grantor.** Grantor promises:

- (a) To keep the Property in good repair; and not to move, alter or demolish any of the improvements on the Property without Beneficiary's prior written consent;
- (b) To allow representatives of Beneficiary to inspect the Property at any reasonable hour, and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property;
- (c) To pay on time all lawful taxes and assessments on the Property;
- (d) To perform on time all terms, covenants and conditions of any prior mortgage or deed of trust covering the Property or any part of it and pay all amounts due and owing thereunder in a timely manner;
- (e) To keep the Property and the improvements thereon insured by a company satisfactory to Beneficiary against fire and extended coverage perils, and against such other risks as Beneficiary may reasonably require, in an amount equal to the full insurable value of the improvements, and to deliver evidence of such insurance coverage to Beneficiary. Beneficiary shall be named as the loss payee on all such policies pursuant to a standard lender's loss payable clause; and
- (f) To see to it that this Deed of Trust remains a valid lien on the Property superior to all liens except those described in Section 3(a), and to keep the Property free of all encumbrances which may impair Beneficiary's security. It is agreed that if anyone asserts the priority of any encumbrance (other than those described in Section 3(a)) over this Deed of Trust in any pleading filed in any action, the assertion alone shall impair the lien of this Deed of Trust for purposes of this Section 5(f).

**6. Curing of Defaults.** If Grantor fails to comply with any of the covenants in Section 5, including compliance with all the terms of any prior mortgage or deed of trust, Beneficiary may take any action required to comply with any such covenants without waiving any other right or remedy it may have for Grantor's failure to comply. Repayment to Beneficiary of all the money spent by Beneficiary on behalf of Grantor shall be secured by this Deed of Trust. The amount spent shall bear interest at the rate payable from time to time under the Loan Agreement and shall be repayable by Grantor on demand.

**7. Default and Remedies.**

(a) Prompt performance under this Deed of Trust is essential. If Grantor does not pay any installment of the Debt on time, or if there is a breach of any of the promises contained in this Deed of Trust or any other document securing the Debt, Grantor will be in default and the Debt and any other money whose repayment is secured by this Deed of Trust shall immediately become due and payable in full at the option of Beneficiary. If Grantor is in default and Beneficiary exercises its right to demand repayment in full, the total amount owed by Grantor on the day repayment in full is demanded, including unpaid interest, will bear interest at the rate provided in the Loan Agreement from the day repayment in full is demanded until repaid in full, and if Beneficiary so requests in writing, Trustee shall sell the Property under applicable Oregon law.

(b) Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or the interest in the Property which Grantor had the power to convey at the time of execution of this Deed of Trust and any interest which Grantor subsequently acquired. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust. This recital shall be prima facie evidence of such compliance and conclusive evidence of such compliance in favor of bona fide purchasers and encumbrances for value.

(c) The power of sale conferred by this Deed of Trust is not an exclusive remedy. Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage or sue on the Loan Agreement according to law. Beneficiary may also take such other action as it considers appropriate, including the securing of appointment of a receiver and/or exercising the right of a secured party under the Uniform Commercial Code.

(d) By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

**8. Condemnation; Eminent Domain.** In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award, or such portion as may be necessary to fully satisfy the Debt and all other obligations secured by this Deed of Trust, shall be paid to Beneficiary to be applied thereto.

**9. Fees and Costs.** Grantor shall pay Beneficiary's and Trustee's reasonable cost of searching records, other reasonable expenses as allowed by law, and reasonable lawyers' fees in any lawsuit or other proceeding which Beneficiary or Trustee is obliged to prosecute or defend to protect the lien of this Deed of Trust; and in any other action taken by Beneficiary to collect the Debt, including any disposition of the Property under the Uniform Commercial Code.

**10. Reconveyance.** Trustee shall reconvey all or any part of the Property covered by this Deed of Trust to the person entitled thereto, on written request of Grantor and Beneficiary; or upon satisfaction of the Debt and other obligations secured and upon written request for reconveyance by Beneficiary or the person entitled thereto.



11. **Trustee; Successor Trustee.** In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary shall appoint in writing a successor Trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor Trustee shall be vested with all powers of the original Trustee. Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

12. **Miscellaneous.** This Deed of Trust shall benefit and obligate the parties, their heirs, devisees, legatees, administrators, executors, successors and assigns. The term Beneficiary shall mean the holder and owner of the Loan Agreement secured by this Deed of Trust, whether or not that person is named as Beneficiary herein. The words used in this Deed of Trust referring to one person shall be read to refer to more than one person if two or more have signed this Deed of Trust or become responsible for doing the things this Deed of Trust requires. If any provision of this Deed of Trust is determined to be invalid under law, that fact does not invalidate any other provision of this Deed of Trust, but the Deed of Trust shall be construed as if not containing the particular provision or provisions held to be invalid, and all remaining rights and obligations of the parties shall be construed and enforced as though the invalid provision did not exist.

DATED at KLAMATH FALLS, Oregon, this 24th day of January, 1997.

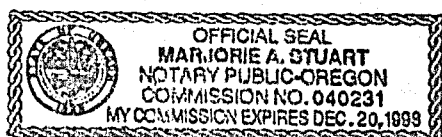
Kurt E. Phillips  
KURT E. PHILLIPS  
Dale E. Phillips  
DALE E. PHILLIPS  
Barbara J. Phillips  
BARBARA J. PHILLIPS

STATE OF OREGON }  
COUNTY OF Klamath } ss.

On this day personally appeared before me KURT E. PHILLIPS

to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal this 24th day of January, 1997



Marjorie A. Stuart  
Print or Type Name

NOTARY PUBLIC in and for the state of Oregon, residing at  
Klamath Falls, OR

My commission expires 12-20-98

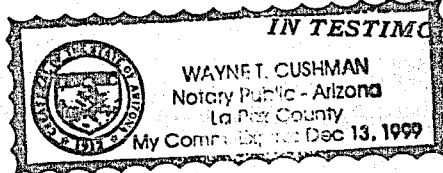
STATE OF ~~OREGON~~, ARIZONA

County of La Paz } ss.

FORM No. 23—ACKNOWLEDGMENT.  
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BE IT REMEMBERED, That on this 29 day of Jan, 1997  
before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within  
named Dale E. Phillips and Barbara J. Phillips

known to me to be the identical individual(s) described in and who executed the within instrument and  
acknowledged to me that they executed the same freely and voluntarily.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed  
my official seal the day and year last above written.

Wayne T. Cushman  
Notary Public for Oregon Arizona  
My commission expires 12-13-99



5155  
1-252103-625-10 1/4 inch

3318

Notar Public, State of Oregon, County of Klamath, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same was presented to me for recording and that the same has been duly recorded in the office of the County Clerk of said County of Klamath, Oregon, in Book 3318, Page 3315.

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle  
of February A.D., 19 97 at 3:43 o'clock P. M., and duly recorded in Vol. M97  
of Mortgages on Page 3315.

FEE \$25.00

Bernetha G. Letsch, County Clerk  
by Kathleen Ross

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