

When Recorded Mail To:  
 FHB Funding Corp.  
 Attn: recording dept.  
 250 Old County Road, Suite 201  
 Mincola, New York 11501

ATE 45250

## DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is given on May 27, 1997. The Borrower is Maynard Herting and Luana Herting whose address is #30 Manzanita, Gilchrist, OR 97737 ("Borrower"). The trustee is Aspen Title & Escrow, Inc.

whose address is 525 Main Street, Klamath Falls, Oregon 97601 ("Trustee")

The Lender is FHB Funding Corp. (WA) which is organized and existing under the laws of New York, and whose address is 12737 Bel-Red Road, Bellevue, WA its successors and/or its assigns ("Lender"). Borrower owes Lender the principal sum of twenty-four thousand six hundred fifty and 00/100 dollars Dollars (U.S. \$ 24650.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments with the full debt, if not paid earlier, due and payable on May 27, 2027. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest at the rate set forth in the Note; and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 6 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For these purposes Borrower does hereby irrevocably grant, bargain, sell and convey to the Trustee, in trust, with power of sale, the following described property located in OREGON:

// If this box is checked see Schedule A annexed hereto and made a part hereof.

which has the address of #30 Manzanita, Gilchrist, OR 97737 ("Property Address"):

**TOGETHER WITH** all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant, bargain, sell and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands subject to any encumbrances of record.

Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest and Other Charges.** Subject to paragraph 10 below, Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any late charges, collection costs and expenses, dishonored check charges, prepayment privilege penalties as provided in the Note.

**2. Application of Payments.** Unless applicable law provides otherwise, Lender will apply each of Borrower's payments under the Note first to accrued and unpaid interest under the Note to the date of payment and the remainder, if any, to the unpaid principal balance under the Note. Any late charges, collection costs and expenses, dishonored check charges, prepayment privilege penalties, and payments made by Lender to enforce the Note and/or to protect Lender's interests under this Security Instrument will be assessed separately.

**3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph, and receipts evidencing such payments.

Borrower shall perform all of Borrower's obligations under any security deed, mortgage, deed of trust or other security instrument with, creating or having a priority over this Security Instrument, including but not limited to, Borrower's covenant to make payments when due. Borrower shall promptly discharge any lien which has priority over this Security Instrument (other than a senior security deed, mortgage, deed of trust or other security instrument approved by Lender at the time of origination of this Security Instrument and with respect to which Borrower complies with the provisions of the immediately preceding sentence) unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**4. Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property

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insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires, not to exceed the full replacement cost of the building and improvements on the Property. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 6.

All insurance policies and renewals must be acceptable to Lender and must include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of the payments. If under paragraph 17 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

**5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds; Condominiums; Planned Unit Developments.** Unless Borrower's loan application and Lender's loan approval provided that the Property was not required to be occupied as Borrower's principal residence, Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least 1 year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing. If this Security Instrument is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development and constituent documents.

**6. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, paying insurance premiums, appearing in court, paying reasonable attorneys' fees and court costs in both trial and appellate courts and entering on the Property to make repairs. Although Lender may take action under this paragraph 6, Lender does not have to do so. Any amounts disbursed by Lender under this paragraph 6 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the rate set forth in the Note if permitted by law or, if not, at the highest lawful rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

**7. Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

**8. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender and applied to the amount secured by this Security Instrument, subject to the terms of any senior mortgage or deed of trust. Any excess will be paid to the persons legally entitled to it. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of such payments.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the

**10. Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower subject to the provisions of paragraph 17 (B). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to grant, bargain, sell and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent and without thereby impairing that Borrower's obligations and liability hereunder.

**11. Loan Charges.** If the loan secured by this Security Instrument is subject to a law or regulation which sets maximum loan charges, and that law or regulation is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such interest and/or other loan charges shall be reduced by the amount necessary to reduce the interest and/or other loan charges to the permitted limit; and (b) any sums already collected from

Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**12. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender.

Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph 12.

**13. Governing Law; Severability.** This Security Instrument shall be governed by federal law, OREGON law and any local law that applies in the place in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**14. Borrower's Copy.** Borrower acknowledges receipt of photocopy or a conformed copy of the Note and of this Security Instrument.

**15. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 12 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

**16. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**17. Lender's Rights if Borrower Fails to Keep Promises and Agreements.** If any of the events or conditions described in subparagraphs (A), (B), (C), (D), (E) or (F) of this paragraph 17 shall occur, Lender may require that Borrower pay immediately the entire amount remaining unpaid under the Note and this Security Instrument. This requirement will be called "Immediate Payment in Full." If Lender requires Immediate Payment in Full, Lender may do so and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorneys' fees and court costs in both trial and appellate courts and costs of title evidence, and reasonable attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction).

If Lender invokes the power of sale, Lender shall execute or cause the Trustee to execute a written notice of the occurrence of any event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender or the Trustee shall give notice of sale in the manner prescribed by applicable law to Borrower and to other persons prescribed by applicable law. After the time required by applicable law and after publication of the notice of sale, the Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order the Trustee determines. The Trustee may postpone the sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any

sale.

The Trustee shall deliver to the purchaser the Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. The Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees in the maximum amount permitted by law and reasonable attorneys' fees of an attorney who is not a salaried employee of Lender; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

Lender may require Immediate Payment In Full under this paragraph 17, if:

- (A) Borrower fails to make any payment required by the Note or this Security Instrument when it is due; or
- (B) Except in those circumstances in which federal law otherwise provides, all or any part of the Property, or any right in the Property, is sold or transferred without Lender's prior written consent (or, if Borrower is not a natural person, if a beneficial interest in Borrower is sold or transferred); or
- (C) On application of Lender, two or more insurance companies licensed to do business in the State in which the Property is located refuse to issue policies insuring the buildings and improvements on the Property; or
- (D) Borrower fails to make any payment required by any senior deed to secure debt, security deed, deed of trust or mortgage encumbering or affecting the Property or Borrower fails to keep any other promise or agreement in any senior deed to secure debt, security deed, deed of trust or mortgage encumbering or affecting the Property; or
- (E) Borrower fails to keep any other promise or agreement in this Security Instrument within the time set forth, or if no time is set forth in this Security Instrument, then within the time set forth in the notice sent to Borrower by Lender; or
- (F) Any representation made or information given to Lender by Borrower in connection with Borrower's application for the loan evidenced by the Note is false or misleading in any material respect.

**18. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to the Trustee for the benefit of Lender, the rents of the Property to the extent that rents are not being collected by the holder of an assignment of rents which has priority over this Security Instrument, provided that prior to acceleration under paragraph 17 hereof or abandonment of the Property, Borrower shall have the right to collect and retain such rents. Upon acceleration under paragraph 17 or abandonment of the Property, Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, to the sums secured by this Security Instrument, provided that neither Lender nor the receiver shall be entitled to collect such rents and revenues if and to the extent such rents and revenues are being collected by the holder of an assignment of rents which has priority over this Security Instrument. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the sums secured by this Security Instrument by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. At Lender's option, instead of a receiver, the Trustee may perform such acts.

**19. Reconveyance.** When all sums secured by this Deed of Trust are paid, Lender shall request the Trustee to reconvey the Property. The Trustee shall, without warranty, reconvey the Property to the person legally entitled to it. That person shall pay all fees for filing the reconveyance and shall pay the Trustee a reasonable fee for preparation and execution of the reconveyance instrument.

**20. Trustee; Substitute Trustee.** Lender, at its option, may from time to time remove the Trustee, or any one of them, and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the city or county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law. If more than one person is named as Trustee, each can act alone in carrying out the Trustee's title, power and duties conferred upon the Trustee herein and by applicable law.

**21. Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

☐ Adjustable Rate Rider

☐ Condominium Rider

☐ 14 Family Rider

☐ Graduated Payment Rider

☐ Planned Unit

☐ Biweekly Development Rider Payment Rider

☐ Other(s) [(specify)]

☐ Rate Improvement

☐ Second Rider Home Rider

#### REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR DEEDS TO SECURE DEBT, MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any deed to secure debt, mortgage, deed of trust or other encumbrance which has priority over this Security Instrument to give notice to Lender, at Lender's address set forth on page one of this Security Instrument, or at any other address for notice provided by Lender to such holder, of any default under any such superior instrument or encumbrance and of any sale or other action to enforce such superior instrument or encumbrance.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Maynard Herting (Seal)  
Maynard Herting - Borrower

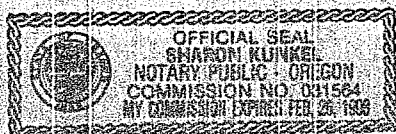
Luana Herting (Seal)  
Luana Herting - Borrower

STATE OF OREGON )

County of DESCHUTES )

On this day personally appeared before me Maynard Herting and Luana Herting, to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that (he)(she)(they) signed the same the same as (his)(her)(their) free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal May 27, 1997.



Sharon Kunkel  
Notary Public for Oregon

My Commission expires: 2/28/99  
My Commission Expires: \_\_\_\_\_

self OR dot

# SCHEDULE A - PROPERTY DESCRIPTION

16610

Lot 37, Tract 1318, GILCHRIST TOWNSITE, in the County of Klamath,  
State of Oregon.

*Maynard Hering*  
Maynard Hering

*Luana Hering*  
Luana Hering

Said premises also known as street number #30 Manzanita, Gilchrist, OR 97737.

Said premises being and intended to be the same premises conveyed to the Mortgagor by deed dated  
recorded in Libre Page in the Klamath County Clerk's Office.

Said premises further known as Assessor's Parcel No. 24-12- 19&20

Said premises are improved by a one or two family dwelling only.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 30th day  
of May A.D. 19 97 at 3:15 o'clock P. M., and duly recorded in Vol. M97  
of Mortgages on Page 16605.

FEE \$35.00

By *Bernetha G. Letsch*  
Bernetha G. Letsch, County Clerk