

✓ AFTER RECORDING RETURN TO:  
 OREGON ECONOMIC DEVELOPMENT DEPARTMENT  
 775 Summer St. NE  
 Salem, OR 97310

OEDF Loan No. 320

# AGREEMENT GRANTING EQUAL PRIORITY RIGHTS

THIS AGREEMENT GRANTING EQUAL PRIORITY RIGHTS (hereinafter "Agreement") is made as of the 25 day of June, 1999 between the STATE OF OREGON, acting by and through its Economic Development Commission, herein called "Commission," and the CENTRAL OREGON INTERGOVERNMENTAL COUNCIL, herein called "COIC".

WHEREAS, the Commission has loaned to Fred Ronald Barnes and Dawn Catherine Barnes, dba Gone Fishing, 4020 Lower Klamath Lake Road, Klamath Falls, Oregon 97603 ("Borrower") the sum of THIRTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (U.S. \$38,500.00) for acquisition of real property and personal property and working capital through the Oregon Business Development Fund ("Commission's Loan"), which is evidenced by a promissory note dated June 25, 1999 (as amended, renewed, or extended the "Commission's Note"), and the repayment of which is secured by the collateral described in a security agreement dated June 25, 1999 (as amended from time to time the "Commission's Security Agreement"), and a trust deed executed by Fred R. Barnes III ("Guarantor") dated June 25, 1999 and recorded on Book M99, Page 25837, as document number MTC 48592 in the records of Klamath County, Oregon (as amended from time to time the "Commission's Trust Deed") (the Commission's Security Agreement and Trust Deed collectively referred to as "Commission's Collateral Documents"); and

WHEREAS, COIC has loaned to Borrower the sum of THIRTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (U.S. \$38,500.00) for purposes including acquisition of real property and personal property and working capital ("COIC's Loan"), which loan is evidenced by a promissory note dated June 4, 1999 (as amended, renewed, or extended the "COIC's Note"), and the repayment of which is secured by the collateral described in a security agreement dated June 4, 1999 (as amended from time to time the "COIC's Security Agreement"), and a trust deed executed by the Guarantor dated June 4, 1999 and recorded in Book M99, Page 2213, as document number MTC 48340 in the records of Klamath County, Oregon (as amended from time to time the "COIC's Trust Deed") (the COIC's Security Agreement and Trust Deed collectively referred to as "COIC's Collateral Documents"); and

WHEREAS, the Commission's Collateral Documents and the COIC's Collateral Documents encumber the following described property:

see Attachment A which is by this reference incorporated herein; and

WHEREAS, Commission and COIC wish to establish equal priorities as to the liens and/or security interests of the Commission's Collateral Documents securing Commission's Loan and the COIC's Collateral Documents securing the COIC's Loan on the following terms and conditions:

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, Commission and COIC agree as follows:

1. Equal Priority Rights. The liens and/or security interests of the Commission and COIC in the property secured by the Commission's Collateral Documents and the COIC's Collateral Documents are equal, as though the Commission's Collateral Documents and the COIC's Collateral Documents were recorded simultaneously. It is the intent of this paragraph that any foreclosure sale will be conducted, and bids

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submitted, as though Commission and COIC were a single entity having a lien interest equivalent to their combined outstanding balance of the Commission's Loan and the COIC's Loan. Unless otherwise agreed, any bid made by Commission at any foreclosure sale shall equal such combined lien interest. It is also the intent of this paragraph that any remedy the Commission or COIC has under ORS chapter 79 shall be pursued as though Commission and COIC were a single entity having a secured interest equal to their combined outstanding balance of the Commission's Loan and the COIC's Loan.

2. Proportionate Share. The parties shall share in any proceeds of any sale or disposition (other than in the ordinary course of business) of the collateral under the Commission's Security Agreement and the COIC's Security Agreement or any proceeds of said collateral arising out of a foreclosure of any nature under ORS chapter 79 proportionately. The parties shall share in any proceeds of any sale or disposition of the collateral under the Commission's Trust Deed and the COIC's Trust Deed or any proceeds of said collateral arising out of a foreclosure of any nature proportionately. Each party's share shall constitute a percentage represented by that fraction the numerator of which is the unpaid principal balances plus accrued interest of Commission's Loan or COIC's Loan, as the case may be, and the denominator of which is the combined unpaid principal balances plus accrued interest of both Commission's Loan and the COIC's Loan, which principal balances and accrued interest shall be determined as of the date any foreclosure or action under ORS chapter 79 is commenced.

3. Limitations on Power of COIC and Commission. COIC and Commission agree that they will not, without the written consent of the other party:

- (a) make or consent to any material adverse alteration or amendment (including but not limited to any amendment to increase the principal amount or interest rate of a Loan) of the COIC's or Commission's Note, Security Agreement, Trust Deed or any other document or instrument evidencing, securing or guaranteeing the COIC's Loan or Commission's Loan in whole or in part, which document or instrument was otherwise executed and/or delivered in connection with the COIC Loan or the Commission's Loan (all such documents being herein collectively called the "Loan Documents");
- (b) make or consent to any release, substitution, or exchange of any security for the COIC's Loan or the Commission's Loan, except for release, if any, to be made pursuant to the provisions of the applicable Collateral Documents;
- (c) waive any covenant or condition which is required to be kept and performed by Borrower under the Loan Documents, except that either party may extend for reasonable periods of time the performance of any covenant or condition under that party's own Loan Documents;
- (d) waive or release, in whole or in part, any obligation of any guarantor in respect of any of the Loan Documents;
- (e) consent to the sale or transfer of Borrower's interest in the property encumbered by the COIC's or Commission's Collateral Documents, without accelerating the entire unpaid balance of the COIC's or Commission's Note and all other charges and accrued interest.

4. Default by Borrower. Each party retains all rights with respect to the enforcement, collection and administration of its own Loan and the security therefore; provided, however, that each party shall promptly after having knowledge of the occurrence thereof, and in no event later than 30 days, inform the other party of any default by Borrower under any of its Loan Documents and of any material fact relating to any other aspect of its Loan which might have an adverse effect on the value of its lien and/or security interest. As used in this paragraph, default as to a party means a default under that party's Loan Documents.

5. Commencement of Foreclosure or Remedies Under Chapter 79. Upon any default by Borrower, Commission and COIC shall promptly consult and attempt to agree upon a mutually acceptable

course of action to take with respect to such default, and then to pursue such course of action without delay and with due diligence. The parties (and the Borrower by signing below) agree that a default under the Commission's Loan Documents or COIC's Loan Documents shall be deemed to be a default under COIC's Loan Documents and the Commission's Loan Documents. Commission shall have the authority to pursue such course of action on behalf of both parties if agreement is reached. If Commission and COIC cannot agree upon a mutually acceptable course of action within fifteen (15) days after the notification referred to above, then either party may purchase the other's proportionate share which, for purposes only of this paragraph, shall be defined as the unpaid principal balance of the Commission's Loan or COIC's Loan, as the case may be, plus all unpaid and accrued interest thereon.

In the event the Commission commences judicial or non-judicial foreclosure proceedings or other proceedings permitted by ORS chapter 79 in accordance with this Agreement and on behalf of both parties, the Commission shall indicate by appropriate recordation, pleading, affidavit, or admission that COIC has an equal priority right in any proceeds from foreclosure or other proceedings permitted by ORS chapter 79. Both parties further agree that in the event of judicial foreclosure they will ensure that any decree of foreclosure specifies the equality of priority and interest of each for the purpose of any foreclosure sale.

6. Effect of Remedial Actions Under Paragraph 5. After payment of all reasonable costs and expenses in pursuing the remedies under paragraph 5, Commission shall promptly remit to COIC its proportionate share of all remaining net proceeds. If either Commission or COIC acquires title or certificate of sale to the property through foreclosure or by a deed in lieu of foreclosure, the other party shall have an undivided ownership interest in the property equal to its proportionate share.

7. Assignments. Without the prior written consent of the other, neither party shall assign or otherwise dispose of all or any part of its interest in this Agreement or any of the Loan Documents.

8. Applicable Law; Entire Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon without regard to the principles of conflicts of law. This Agreement constitutes the entire understanding between the parties on the subject matter hereof and may be amended, modified, or terminated only by an instrument signed by the parties.

9. Notices. Any notices which may be required herein shall be in writing and shall be considered to have been given as of the date and time when the same is deposited in the United States Mail with postage prepaid and mailed by registered or certified mail, return receipt requested, to the following addresses:

Oregon Economic Development Commission  
c/o Oregon Economic Development Department  
775 Summer Street N.E.  
Salem, Oregon 97310  
Attn: Manager, Business Finance

Central Oregon Intergovernmental Council  
P.O. Box 575  
Redmond, Oregon 97756  
Manager, Business Finance

Each party may designate a change of address by notice to the other party.

10. Granting of Equal Priority Not a Security; No Pledge or Joint Venture. The granting of priority rights represented by this Agreement shall not be deemed to be a security within the meaning of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Oregon Securities Law (ORS chapter 59). This Agreement shall not be deemed to represent a pledge of any interest in Commission's Loan to COIC, or by COIC's to Commission. In addition, this Agreement shall not be construed to create a joint venture or partnership between Commission or COIC.

11. Successors. All rights, benefits, burdens, and obligations set forth in this Agreement shall bind and inure to all successors in interest of each of the parties.

IN WITNESS WHEREOF, Commission and COIC have duly executed this Agreement as of the day and year first above written.

STATE OF OREGON, acting by and through its Oregon Economic Development Commission

By: 

Mark D. Huston, Manager, Business Finance

CENTRAL OREGON INTERGOVERNMENTAL COUNCIL

By: 


Signature

Richard G. Mackay, Executive Director

Typed Name

Title

AGREED:



Fred Ronald Barnes



Dawn Catherine Barnes

Date: 6/21/99

AGREED:



Fred R. Barnes III



Bebe P. Barnes

Date: 6/23/99

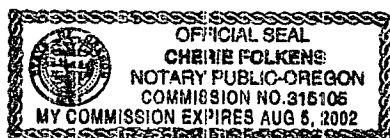
STATE OF OREGON

County of Marion

This instrument was acknowledged before me on June 15  
1999 by Mark D. Huston  
 as Manager, Business Finance, Oregon Economic  
Development Department.

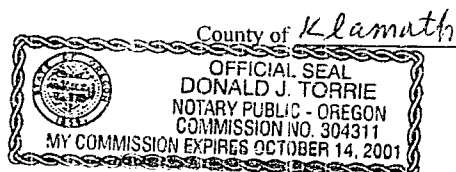
Erica Price  
 Notary Public for Oregon  
 My commission expires: Nov. 5, 2001

STATE OF OREGON

County of Deschutes

This instrument was acknowledged before me on July 6  
1999 by Richard G. Mackay  
 as Executive Director  
 of Central Oregon Intergovernmental Council

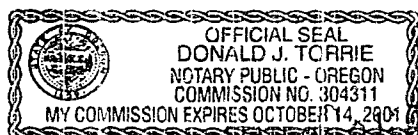
Cherie Folkens  
 Notary Public for Oregon  
 My commission expires: 8-5-2002

County of Klamath

The foregoing instrument was acknowledged before me this  
 ss. 24 day of JUNE, 99, by Fred Ronald Barnes.

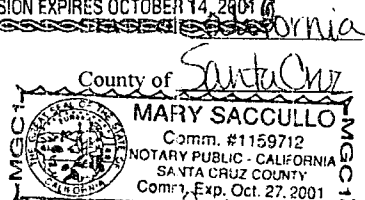
Ronald J. Barnes  
 Notary Public for Oregon  
 My commission expires: 10-14-2001

STATE OF OREGON

County of Klamath

The foregoing instrument was acknowledged before me this  
 ss. 24 day of JUNE, 99, by Dawn Catherine Barnes.

Ronald J. Barnes  
 Notary Public for Oregon  
 My commission expires: 10-14-2001

County of Santa Cruz

The foregoing instrument was acknowledged before me this  
 ss. 21st day of June, 1999 by Fred R. Barnes III.

Mary Saccullo  
 Notary Public for California  
 My commission expires: 10/27/01

STATE OF CaliforniaCounty of Santa Cruz

The foregoing instrument was acknowledged before me this  
 ss. 21st day of June, 1999 by Beb: P. Barnes.

Mary Saccullo  
 Notary Public for California  
 My commission expires: 10/27/01



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Attachment A  
Collateral

OBDL Loan No. 320

Security Agreement

All accounts of Borrower, now existing or hereafter arising; all general intangibles of Borrower, now existing or hereafter arising; all inventory of Borrower, now existing or hereafter arising; all equipment of Borrower (including but not limited to fixtures), now or hereafter held; all of Borrower's instruments, documents, securities, chattel paper, deposit accounts, cash or other property, now existing or hereafter arising; and proceeds and products of all of the foregoing.

Trust Deed

Real property located in Klamath County, State of Oregon, more particularly described as:

Parcel 2 of Partition 16-97 filed February 13, 1998 in the office of the County Clerk, in Sections 25, 26, 27, 34, 35 and 36, Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon,

together with all improvements, appurtenances, rents, issues and profits, proceeds and other property included as collateral in the Commission's Trust Deed

State of Oregon, County of Klamath  
Recorded 7/14/99, at 2:37 p. m.  
In Vol. M99 Page 28174  
Linda Smith  
County Clerk Fee \$ 35 K12