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TRUST DEED

Vol M02 Page 1950

State of Oregon, County of Klamath  
Recorded 01/11/2002 3:25 p.m.  
Vol M02, Pg 1950-60  
Linda Smith, County Clerk  
Fee \$ 7.00 # of Pgs 11

DATE:

~~January~~  
~~December~~ 7, 2002 96

PARTIES:

**SIERRA CASCADE, LLC**  
Box 166  
Chemult, OR 97731

**GRANTOR**

**AMERITITLE**  
222 South Sixth Street  
Klamath Falls, OR 97601

**TRUSTEE**

**MIGNOT TRUST, utd 4/20/92**  
C/O Michael J. Bird  
Brown, Hughes, Bird  
Lane & Rote  
612 NW 5th Street  
Grants Pass, OR 97528

**BENEFICIAR**

RECITALS:

A. Grantor is the owner of real property described on Exhibit "A" hereto, including all appurtenances, buildings and existing or future improvements located thereon and all fixtures and attachments thereto, all of which real property is hereinafter referred to as "the Trust Property." The three existing pumice stockpiles described in Paragraph 5 of a certain Settlement Agreement previously executed by the parties shall remain the property of Beneficiary and shall be disposed of as set forth in said Settlement Agreement. Said stockpiles shall continue to be stored on Grantor's site at no cost to Beneficiary pending sale thereof.

B. Beneficiary has agreed to finance Grantor's purchase of said property and Grantor has agreed to pay Beneficiary, the sum of One Hundred Thousand Dollars (\$99,066.71) upon the terms and conditions set out herein and in a promissory note (the Note) dated concurrently with this Trust Deed with the final payment due on or before December 17, 2006, which is the maturity date of this Trust Deed. Grantor has agreed to deed to Trustee the Trust Property to secure punctual payment of the Note to secure performance of all of Grantor's obligations under the Note, under this Trust Deed.

THEREFORE, to secure payment by Grantor of the indebtedness to be evidenced by the Note, Grantor hereby grants, bargains, sells and conveys to the Trustee, in

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71.00 M

trust, with power of sale, the Trust Property upon the terms set forth herein.

PROVIDED, HOWEVER, that until the occurrence of an event of default, Grantor may remain in control of and operate and manage the Trust Property and collect and enjoy the rents, revenues, income, issues and profits therefrom; and

PROVIDED, FURTHER, that if Grantor shall make all payments for which provision is made in the Note, then Trustee shall execute and deliver to Grantor, without warranty, a reconveyance of the Trust Property.

The parties covenant and agree as follows:

#### SECTION 1. GRANTOR'S COVENANTS AND WARRANTIES

1.1 Payment of the Note. Grantor will make all payments of the interest and principal for which provision is made in the Note, and in any note or notes given in renewal or replacement thereof, promptly as such payments become due and payable and will pay the unpaid balance of the Note upon maturity.

1.2 Warranty of Title. Grantor warrants that it holds good and merchantable title to the Trust Property subject to no liens or encumbrances. Grantor covenants with Beneficiary that it will defend Beneficiary's and Trustee's rights hereunder against the claims and demands of all persons.

1.3 Use of Trust Property. Grantor covenants and warrants that the Trust Property is not currently used for agricultural, timber or grazing purposes. Grantor further covenants and warrants that the current use of the Trust Property is in compliance with all laws, ordinances and regulations of all governmental authorities.

1.2.1 Removal of Improvements. Grantor shall not demolish or remove any improvements on the Trust Property without prior written consent of Beneficiary but Grantor may make alterations, which it deems necessary for the purpose of renting the Trust Property.

1.2.2 Beneficiary's Right to Enter and Inspect. Grantor will permit Beneficiary and its agents to enter upon the Trust Property at all reasonable times to inspect the Trust Property.

#### 2. TRUST DEED

1.2.3 Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Trust Property. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Beneficiary's and Trustee's interests in the Trust Property are not jeopardized.

1.3 Eminent Domain.

1.3.1 Notice of Taking or Condemnation Proceeding. If the Trust Property, or any part thereof or interest therein, should be taken or damaged by reasons of any public improvement or condemnation proceeding, or if Grantor should receive any notice or other information regarding a condemnation proceeding or similar type of proceeding, Grantor shall immediately notify Beneficiary.

1.3.2 Condemnation Proceeds. Beneficiary shall be entitled to all compensation, awards and other payment or relief related to condemnation, and shall be entitled at its sole option to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, right of action and proceeds awarded to Grantor (Condemnation Proceeds) are hereby assigned to Beneficiary and Grantor agrees to execute such further assignments of the condemnation Proceeds as Beneficiary may require. Beneficiary shall have the option, in its sole and absolute discretion, to either:

(a) apply such Condemnation Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney fees incurred by Beneficiary in connection with such Condemnation Proceeds, upon all or part of the indebtedness secured by this Trust Deed in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired, or

(b) apply all of such Condemnation Proceeds, after deducting all of Beneficiary's costs and expenses, to the restoration of the Trust Property upon such conditions as Beneficiary may determine.

#### 1.4 Reports.

1.4.1 Default. Grantor shall furnish to Beneficiary notice of any default on its part under any lease affecting the Trust Property.

1.4.2 Certificates of Lessee(s). Upon request of Beneficiary, and not more often than annually, Grantor will furnish to Beneficiary a certificate from each lessee of any portion of the Trust Property stating, if true, that the landlord (Grantor) is not in default under such lease, and that rental is current and has not been paid more than 60 days in advance.

1.4.3 Leases. Grantor will furnish to Beneficiary, upon request, copies of leases covering any portion of the Trust Property entered into after the date hereof.

### SECTION 2. EVENTS OF DEFAULT

The following shall constitute events of default:

2.1 Nonpayment. Failure of grantor to make any payment required by the Note or to make any payment for taxes or any other payment necessary to prevent filing of or discharge of any lien within 10 days after written notice by Beneficiary (or Beneficiary's agents) of any such nonpayment. No notice by Beneficiary shall be required for nonpayment if during the preceding 12 calendar months Beneficiary has sent notice to Grantor concerning any nonpayment hereunder.

2.2 Sale or Transfer of Property. The sale of the Trust Property or transfer of possession thereof in any manner by Grantor, whether by deed, contract of sale, lease or similar agreement, without the prior written consent of Beneficiary; provided, however, that Beneficiary would not unreasonably withhold such consent.

### SECTION 3. REMEDIES IN CASE OF DEFAULT

If an event of default shall occur, Beneficiary or Trustee, as the case may be, may exercise any of the following rights and remedies, in additions to any other remedies which may be available at law, in equity, or otherwise:

## 4. TRUST DEED

3.1 Acceleration. Beneficiary may declare all sums secured by this Trust Deed, including all interest and prepayment penalties, to be immediately due and payable.

3.2 Receiver. Beneficiary may have a receiver of the Trust Property appointed. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or Beneficiary shall not disqualify a person from serving as receiver. Grantor waives all defenses and consents to the appointment of a receiver at Beneficiary's option.

3.3 Possession. Beneficiary may, either through a receiver or as a lender-in-possession, take possession of all or any part of the Trust Property, and Grantor shall peaceably surrender the same.

3.4 Rents and Revenues. Beneficiary may revoke Grantor's right to collect the rents and revenues from the Trust Property, and may, either itself or through a receiver, collect the same. To facilitate collection, Beneficiary may notify Grantor's tenants to pay rents directly to it. Beneficiary shall not be deemed to be in possession of the Trust Property solely by reason of exercise of the rights contained in this paragraph 3.5. If rents are collected by Beneficiary under this paragraph 3.5, Grantor hereby irrevocably designates Beneficiary as Grantor's attorney-in-fact to endorse instruments received in payment of rent, in respect of any part of the Trust Property, in the name of Grantor and to negotiate such instruments and collect the proceeds thereof.

3.5 Foreclosure. Beneficiary may obtain a decree foreclosing Grantor's interest in all or any part of the Trust Property.

3.6 Abandon Security. Beneficiary may abandon any security afforded by this Trust Deed or any other security instrument by notifying Grantor of Beneficiary's election to do so.

3.7 Power of Sale. Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Property by advertisement and exercise of the power of sale under applicable law.

3.8 Sale of collateral; Bid at Public Sale. In exercising its rights to remedies, Beneficiary shall be free

to sell all or any part of the collateral together or separately, or to sell certain portions of its collateral and refrain from selling other portions. Beneficiary shall be entitled to bid at any public sale of all or any portion of its collateral.

3.9 Cumulative Remedies. Election to pursue one remedy shall not exclude resort to any other remedy, and, unless the context otherwise requires, all remedies under this Trust Deed are cumulative and not exclusive. An election to cure under paragraph 6.7 shall neither prejudice the right to declare a default nor constitute a waiver of the breached term or of any of the remedies provided herein. No delay or omission in exercising any right or remedy shall impair that or any other right to remedy or shall be construed to be a waiver of the default.

#### SECTION 4. RECEIVER OR TRUSTEE-IN-POSSESSION

Upon taking possession of all or any part of the Trust Property, a receiver or Trustee or Beneficiary or Beneficiary's representative may:

4.1 Management. Use, operate, manage, control and conduct business on the Trust Property and make expenditures for such purposes and for maintenance and improvements as in its judgment are necessary.

4.2 Rents and Revenues. Collect all rents, revenues, income, issues and profits from the Trust Property and apply such sums to the expenses of use, operation, management, maintenance and improvements.

4.3 Construction. At its option, complete any construction in progress on the Trust Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans and specifications as it deems appropriate.

#### SECTION 5. APPLICATION OF PROCEEDS

All proceeds realized from the exercise of the rights and remedies under Sections 3 and 4 shall be applied as follows:

5.1 Costs and Expenses. To pay the costs of exercising such rights and remedies, including the costs of any sale, the costs and expenses provided for in paragraph 6.6.

#### 6. TRUST DEED

5.2 Indebtedness. To pay all other amounts owed by Grantor, payment of which is secured by this Trust Deed.

5.3 Surplus. The surplus, if any, shall be paid to the clerk of the court in the case of a foreclosure by judicial proceeding, otherwise to the person or persons legally entitled thereto.

## SECTION 6. GENERAL PROVISIONS

6.1 Reconveyance Upon Payment. Upon written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Trust Deed and the Note to Trustee for cancellation and retention and payment of its fees, Trustee shall reconvey, without warranty, the Trust Property then held hereunder. The recitals in any reconveyance executed under this Trust Deed of any matters of facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.2 Substitute Trustee. In the event of dissolution or resignation of the Trustee, Beneficiary may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all of the powers and duties of prior trustees.

6.3 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding on and insure to the benefit of the successors and assigns of Grantor, Trustee and Beneficiary.

6.4 Indemnity. Grantor shall hold beneficiary and Trustee harmless from any and all loss and expense, including but not limited to attorney fees and court costs, in any suit, action or proceeding or any appeal therefrom brought against Trustee or Beneficiary by a third party resulting from or attributable to Beneficiary ownership of the Note or Trustee's interest under this Trust Deed, except suits, actions and proceedings based upon a claim that Beneficiary or Trustee improperly entered into this Trust Deed or Note or loaned money thereunder.

6.5 Notice. Any notice under this Trust Deed shall be in writing. Any notice to be given or document to be delivered under this Trust Deed shall be effective when either delivered in person or deposited as registered or certified mail, postage prepaid, addressed to the party at the address first stated in this Trust Deed; provided that any notice pursuant to exercise of the Trustee's power of sale in the event of default shall be sufficient if such

notice complies with all provisions of Oregon law applicable to exercise of such powers of sale. Any party may, by notice to the others, designate a different address.

6.6 Expenses and Attorney Fees. In the event that Beneficiary or Trustee shall take any action, judicial or otherwise, including matters in bankruptcy courts, to enforce the Note or any provision of this Trust Deed or if Beneficiary or Trustee shall be required to appear in any proceeding to protect and maintain the priority of Trustee's title to the Trust Property, Trustee or Beneficiary (or both) shall be entitled to recover from Grantor all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports and surveyors' reports, and its attorney fees, whether incurred in a suit or action or any appeals from a judgment or decree therein or petition for review, or in connection with nonjudicial action.

6.7 Beneficiary's Right to Cure. If Grantor fails to perform any obligation required of it under this Trust Deed, Beneficiary may, without notice, take any steps necessary to remedy such failure. Grantor shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at a rate equal to the rate permitted by applicable law from the date of expenditure until repaid. Such action by Beneficiary shall not constitute a waiver of the default or any other right or remedy which Beneficiary may have on account of Grantor's default.

6.8 Applicable Law. This Trust Deed shall be governed by the laws of the State of Oregon. The forum for any suits pertaining to this transaction shall be the circuit court in Klamath County.

6.9 Time of Essence. Time is of the essence of this Trust Deed.

6.10 Headings. The headings to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

6.11 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Trust Deed, but this Trust Deed



shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.12 Entire Agreement. This Trust Deed and the Note contain the entire agreement of the parties with respect to the matters covered, and no other previous agreement, statement or promise made by any party to this Trust Deed which is not contained in its terms or in the terms of the Note shall be binding or valid.

IN WITNESS WHEREOF, Grantor has caused this Trust Deed to be executed as of the day and year first above written.

SIERRA CASCADE, LLC

By: Janie Erkiaga  
Janie Erkiaga  
Member

**Disclosure:** Janie Erkiaga is a licensed real property broker in the states of California and Nevada.

STATE OF OREGON            )  
                                  ) ss. January 7, 2002 *JE*  
County of Klamath        )

Personally appeared Janie Erkiaga who, being duly sworn, stated she is President of Sierra Cascade, LLC. and that said instrument was signed on behalf of said company by authority of its Directors; and she acknowledged said instrument to be its voluntary act and deed. Before me:

See attached  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

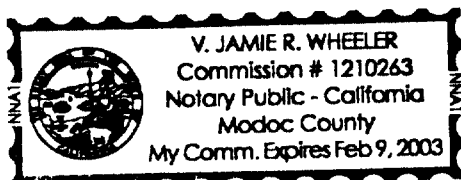
State of California

County of Modoc

} ss.

On 1/7/02, before me, V. Jamie R. Wheeler,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared Janie Erkiaga,  
Name(s) of Signer(s)

- ☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*V. Jamie R. Wheeler*  
 Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Deed of TrustDocument Date: 1/7/02 Number of Pages: 9Signer(s) Other Than Named Above: none

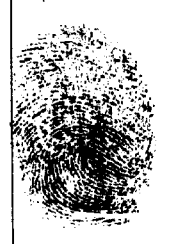
### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☒ Other: Member

Signer Is Representing: Sierra Cascade, LLC

RIGHT THUMBPRINT  
 OF SIGNER  
 Top of thumb here



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

A parcel of land situate in the SW1/4 of the SW1/4 of Section 21, Township 27 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Southwest corner of Section 21, Township 27 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon; thence North 800 feet along the Section line; thence East 435 feet; thence South 800 feet to the Section line; thence West 435 feet along the Section line to the point of beginning.

**PARCEL 2:**

The W1/2 NW1/4 of Section 28, Township 27 South, Range 8 East, Willamette Meridian, Klamath County, Oregon, EXCEPTING THEREFROM all that portion that lies within State Highway 97.