

**Document:** Trust Deed  
**Grantor:** Nyback's Flowers Inc.  
**Beneficiary:** John E. Ockert  
**Trustee:** Robert A. Smejkal, Attorney At Law

State of Oregon, County of Klamath  
Recorded 12/26/2002 10:59 a m.  
Vol M02, Pg 75425-28  
Linda Smith, County Clerk  
Fee \$ 36.00 # of Pgs 4

'02 DEC 26 AM 10:59 After recording, please return to John E. Ockert  
in care of AIC at 321 Goodpasture Island Road, Eugene, OR 97401.

### TRUST DEED

This trust deed is made on December 19, 2002, between Nyback's Flowers Inc., an Oregon corporation, as Grantor, Robert A. Smejkal, Attorney At Law, as Trustee, and John E. Ockert, as Beneficiary;

### Witnesseth:

Grantor irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, the property in Klamath County, Oregon, described as shown in Exhibit "A," attached hereto and by this reference made a part hereof, together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with said real estate. For the purpose of securing performance of each agreement of Grantor herein contained and payment of the sum of seventy-five thousand and no/100ths dollars (\$75,000.00), with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order and made by Grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable January 26, 2008. The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of said note becomes due and payable. In the event the within-described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the Grantor without first having obtained the written consent or approval of the Beneficiary, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

### To protect the security of this trust deed, Grantor agrees:

(1) To protect, preserve and maintain said property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of said property; (2) To complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor; (3) To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property; if the Beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the Beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the Beneficiary; (4) To provide and continuously maintain insurance on the buildings now or hereafter erected on the said premises against loss or damage by fire and such other hazards as the Beneficiary may from time to time require, in an amount not less than the full insurable replacement value of said improvements written in companies acceptable to the Beneficiary, with loss payable to the beneficiary; all policies of insurance shall be delivered to the Beneficiary as soon as insured; if the Grantor shall fail for any reason to procure any such insurance and to deliver said policies to the Beneficiary at least fifteen days prior to expiration of any policy of insurance now or hereafter placed on said improvements, the Beneficiary may procure the same at Grantor's expense. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of the Beneficiary, the entire amount so collected, or any part thereof, may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice; during the term until the promissory note has been paid in full, Grantor shall maintain public liability and property damage insurance with limits of not less than \$150,000.00 for injury to one person and \$250,000.00 to two or more persons in one occurrence, and in no case less than \$50,000.00 for damage to property; such insurance shall cover all risks arising directly or indirectly out of Grantor's activities on or any condition of the property, whether or not related to an occurrence caused or contributed to by Beneficiary's alleged negligence; and shall protect Beneficiary and Grantor against claims of third persons; such policy shall be written in such form, with such other terms and by such insurance companies reasonably acceptable to Beneficiary; Grantor shall deliver to Beneficiary certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of thirty days' written notice to Beneficiary; (5) To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges becomes past due or delinquent or in any manner cause interest or penalties to be charged thereon and promptly deliver receipts therefor to Beneficiary; failure in performance of the foregoing shall constitute a default hereunder and under the promissory note secured hereby; should the Grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantor, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs six and seven of this trust deed, without waiver or any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the Grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and

the nonpayment thereof shall, at the option of the Beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed; (6) To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the Trustee incurred in connection with or in enforcing this obligation and the Trustee's and attorney's fees actually incurred; (6a) To pay and perform any encumbrance superior in priority to this Trust Deed according to the terms of said superior encumbrance; the Beneficiary hereunder shall have the right to at its option advance funds to perform any act necessary to remedy any default with respect to a superior encumbrance, adding any funds so advanced, together with reasonable costs incurred as a result of any such default, to the balance due Beneficiary under the Promissory Note and Trust Deed secured hereby; (7) To appear in and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee; and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including any suit for the foreclosure of this trust deed, to pay all costs and expenses, including evidence of title and the Beneficiary's or Trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph seven in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, Grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's attorney's fees on such appeal. IT IS MUTUALLY AGREED THAT: (8) In the event that any portion or all of said property shall be taken under the right of eminent domain or condemnation, Beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by Grantor in such proceedings, shall be paid to Beneficiary and applied first upon any reasonable costs and expenses and attorneys fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and Grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon Beneficiary's request; (9) At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in the case of reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than five dollars; (10) Upon any default by Grantor hereunder, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine; (11) The entering upon and taking possession of said property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default thereunder or invalidate any act done pursuant to such notice; (12) Upon default by Grantor in payment of any indebtedness secured hereby or in his performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the Beneficiary may declare all sums secured hereby immediately due and payable. In such an event the Beneficiary at his election may proceed to foreclose this trust deed in equity as a mortgage or direct the Trustee to foreclose this trust deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded his written notice of default and his election to sell the said described real property to satisfy the obligation secured hereby whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795; (13) After the Trustee has commenced foreclosure by advertisement and sale, and at any time prior to five days before the date the Trustee conducts the sale, the Grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had the default not occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the Beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with Trustee's and attorney's fees not exceeding the amounts provided by law; (14) Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which said sale may be postponed as provided by law. The Trustee may sell said property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in the form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the Trustee, but including the Grantor and Beneficiary, may purchase at the sale; (15) When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the Trustee in the trust deed as their interest may appear in the order of their priority and (4) the surplus, if any, to the Grantor or to his successor in interest entitled to such surplus; (16) Beneficiary may from time to time appoint a successor or successors to any Trustee name herein or to any successor Trustee appointed hereunder. Upon such appointment, and without conveyance to the successor Trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor Trustee; (17) Trustee accepts this trust deed when this deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless such action or proceeding is brought by Trustee;

#### WARNING

Unless you provide us with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere. You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage. The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property

damage coverage or any mandatory liability insurance requirements imposed by applicable law. The Grantor covenants and agrees to and with the Beneficiary and those claiming under him, that he is lawfully seized in fee simple of said described real property and has a valid, unencumbered title thereto and that he will warrant and forever defend the same against all persons whomsoever; any default in any encumbrance superior in priority to this trust deed shall constitute a default hereunder. **Also, this trust deed is intended to secure all future loans or advances that may be made during the time this obligation is outstanding, up to an additional twenty percent of the original face amount stated herein and also any advances made in accordance with the covenants of this agreement to protect collateral. Any such advances shall bear interest from the date made and at the rates set forth in the promissory note hereinabove referred to.**

The Grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are for an organization or, even if Grantor is a natural person, are for business or commercial purposes. This trust deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term Beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a Beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

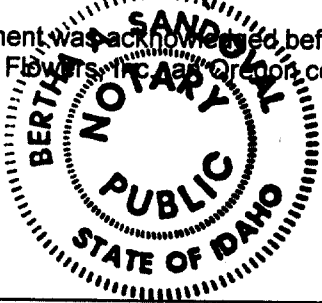
In witness whereof, said Grantor has hereunto set his hand the day and year first hereinabove written.

Nyback's Flower Inc., an Oregon corporation

*Sandra L. Nyback Smith*  
By Sandra L. Nyback Smith, President

State of ~~Oregon~~ Idaho )  
County of ~~Klamath~~ Canyon ) ss:

This instrument was acknowledged before me on Dec 19, 2002, by Sandra L. Nyback Smith, who is president of Nyback's Flower Inc., an Oregon corporation.



*Bertie Nyback*  
Notary Public for ~~Oregon~~ Idaho  
My Commission expires: 5-12-05

### REQUEST FOR FULL RECONVEYANCE

To Robert A. Smejkal, Trustee:

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by said trust deed have been fully paid and satisfied. You are hereby directed, on payment to you of any sums owing to you under the terms of said trust deed pursuant to statute, to cancel all evidences of indebtedness secured by said trust deed, which are delivered to you herewith together with said trust deed, and to reconvey, without warranty, to the parties designated by the terms of said trust deed the estate now held by you under the same. Mail reconveyance documents to Grantor at 3614 South 6th, Klamath Falls, OR 97601.

Dated \_\_\_\_\_

Beneficiary \_\_\_\_\_

Beneficiary \_\_\_\_\_

**EXHIBIT "A"****75428**

The Easterly one-half of the following described real property: Lot 7 in Block 36, Original Town of Linkville, SAVING AND EXCEPTING that portion of Lot 7 conveyed by L.F. Willits and Laura A. Willits to Charles E. Worden by Deed dated October 10, 1905, recorded October 10, 1905, in Volume 18 page 499, Deed Records of Klamath County, Oregon, and that portion of said Lot 7 deeded by L. F. Willits and Laura A. Willits to Odd Fellows Hall Association by Deed dated May 14, 1910, and recorded May 14, 1910, in Volume 29 page 183, Deed Records of Klamath County, Oregon, ALSO SAVING AND EXCEPTING the Southeasterly 8 feet of said Lot 7 for alleyway.