

After Recording Return To:  
 Schwabe, Williamson & Wyatt, P.C.  
 PacWest Center, Suites 1600-1800  
 1211 SW Fifth Avenue  
 Portland, OR 97204-3795  
 Attn.: Carson Bowler

State of Oregon, County of Klamath  
 Recorded 04/16/2003 9:24 A.m.  
 Vol M03 Pg 23992-96  
 Linda Smith, County Clerk  
 Fee \$ 41.00 # of Pgs 5

### DEED OF TRUST

THIS DEED OF TRUST ("Trust Deed") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between Stephen and Jo Anna Schwarz, whose address is 15561 Viewpoint, Keno, OR 97627 (PO Box 563, Keno, OR 97627) ("Grantor"), Aspen Title & Escrow, Inc., 525 Main Street, Klamath Falls, Oregon, 97601 ("Trustee") and SCHWABE, WILLIAMSON & WYATT P.C., an Oregon professional corporation, whose address is 1211 SW 5th Avenue, Suites 1600-1800, Portland OR, 97204-3795 ("Beneficiary").

WHEREAS, Beneficiary is owed legal fees by Grantor in the sum of \$23,110.00, which are evidenced by a signed modification to the engagement agreement between the Schwarzes and SCHWABE, WILLIAMSON & WYATT P.C dated June 28, 2002 (which as modified, supplemented, extended, renewed, or replaced from time to time, is referred to herein as the "Note").

NOW THEREFORE, for the purpose of securing the Obligations (as defined in Section 1.1 below), Grantor irrevocably grants, bargains, sells, conveys, assigns, and transfers to Trustee in trust for the benefit and security of the Beneficiary, with power of sale and right of entry and possession, all of Grantor's right, title, and interest in and to the real property legally described as:

See Exhibit A attached hereto

(the "Property");

TOGETHER WITH all interests, estates, and rights that Grantor now has or may acquire in (1) the Property; (2) any and all options, agreements, and contracts for the purchase or sale of all or any part or parts of the Property or interests in the Property; (3) all easements, rights-of-way, and rights used in connection with the Property or as a means of access to the Property; and (4) all tenements, hereditaments, and appurtenances in any manner belonging, relating, or appertaining to the Property; and

TOGETHER WITH all interests, estates, and rights of Grantor, now owned or hereafter acquired, in and to any land lying within any streets, sidewalks, alleys, strips, and gores adjacent to or used in connection therewith; and

TOGETHER WITH all rights, titles, and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and other improvements, and all appurtenances and additions to and substitutions and replacements of the Property (all of the foregoing being collectively referred to below as the "Improvements"); and

TOGETHER WITH any and all mineral, oil and gas rights, air rights, development rights, water rights, water stock, and water service contracts, drainage rights, zoning rights, and other similar rights or interests that benefit or are appurtenant to the Property or the Improvements or both, and any of their proceeds; and

TOGETHER WITH all rights, interests, and claims that Grantor now has or may acquire with respect to any damage to or taking of all or any part of the Property or the Improvements, including without limitation any and all proceeds of insurance in effect with respect to the Improvements, any and all awards made for taking by eminent

domain or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property or the Improvements, and any and all awards resulting from any other damage to the Property or the Improvements, all of which are assigned to Beneficiary, and, subject to the terms of this Trust Deed, Beneficiary is authorized to collect and receive such proceeds, to give proper receipts and acquittances for the proceeds, and to apply them to the Obligations secured by this Trust Deed.

All of the above is sometimes referred to herein as the "Trust Property."

TO HAVE AND TO HOLD the Trust Property to Trustee and its successors and assigns for the benefit of Beneficiary and its successors and assigns, forever.

PROVIDED ALWAYS, that if all the Obligations shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be reconveyed.

TO PROTECT THE SECURITY OF THIS TRUST DEED, GRANTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

## 1. COVENANTS AND WARRANTIES OF GRANTOR

1.1 **Obligations Secured.** This Trust Deed secures the payment of all principal on the Note and the performance of all covenants and obligations of Grantor under this Trust Deed (the "Obligations").

1.2 **Compliance with Laws.** Grantor will comply with all legal requirements affecting the Trust Property.

1.3 **Maintenance and Improvements.** Grantor shall maintain every portion of the Trust Property and Improvements in good repair, working order, and condition, except for reasonable wear and tear.

1.4 **Liens.** Grantor shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Grantor shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on parity with, or subordinate to, the lien of this Trust Deed.

1.5 **Impositions.** Grantor shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges of every nature now or hereafter assessed or levied against any part of the Property (the "Impositions"). Grantor shall furnish to Beneficiary, promptly upon request, satisfactory evidence of the payment of all Impositions. Beneficiary is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

1.6 **Insurance.** Grantor shall obtain and maintain in full force and effect during the term of this Trust Deed property and liability insurance on the Trust Property reasonably satisfactory to the Beneficiary.

1.7 **Environmental Conditions.** The Trust Property is encumbered by petroleum contamination. Grantor agrees that Trustee and Beneficiary are not liable or responsible for any costs, expenses or claims associated with any contamination, either known or unknown, on the Trust Property or emanating from the Trust Property, and Grantor further agrees to hold Trustee and Beneficiary harmless from any claims arising out of any condition of the property, including but not limited to, environmental conditions caused by the petroleum contamination.

## 2. EVENTS OF DEFAULT; REMEDIES

Any breach of the Obligations, any breach of any warranty or representation given by Grantor to Beneficiary, the institution of foreclosure or other proceedings to enforce any lien or encumbrance upon the Property, or the filing of any bankruptcy proceeding with respect to Grantor shall constitute an "Event of Default" hereunder. If an Event of

Default shall occur, Beneficiary or Trustee may exercise any one or more of the rights and remedies available by law, in equity, or otherwise. Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Property by advertisement and sale under applicable law. Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Property. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by Beneficiary to cure any breach by Grantor of the Obligations shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

### 3. GENERAL PROVISIONS

3.1 **Time is of the Essence.** Time is of the essence with respect to all covenants and obligations of Grantor under this Trust Deed.

3.2 **Reconveyance by Trustee.** At any time upon the request of Beneficiary, payment of Trustee's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Trustee may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

3.3 **Notice.** Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the beginning of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received.

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

3.5 **Trust Deed Binding on Successors and Assigns.** This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Grantor, Trustee, and Beneficiary. If the Trust Property or any portion thereof shall at any time be vested in any person other than Grantor, Beneficiary shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as Beneficiary deems appropriate in its sole discretion, without notice to or approval by Grantor and without impairing Grantor's liability for the Obligations.

3.6 **Expenses and Attorney Fees.** Beneficiary shall be entitled to recover its reasonable costs and attorneys' fees incurred in any legal action related to this Trust Deed in which it is the prevailing party.

3.7 **Applicable Law.** This Trust Deed and the validity, interpretation, performance, and enforcement of this Trust Deed shall be governed by the laws of the State of Oregon.

3.8 **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, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Trust Deed.

3.9 **Entire Agreement.** This Trust Deed contains the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained herein shall be binding or valid.

3.10 **Land Use Disclosure.** THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

3.11 **Statutory Notice.** UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US (BENEFICIARY) AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY US (BENEFICIARY) TO BE ENFORCEABLE.

3.12 **Mutual Negotiation.** Beneficiary and Grantor confirm that they have mutually negotiated this Trust Deed and that none of the terms or provisions of this Trust Deed shall be presumptively construed against either party. GRANTOR ACKNOWLEDGES THAT BENEFICIARY DOES NOT REPRESENT GRANTOR IN CONNECTION WITH THIS TRUST DEED. BENEFICIARY RECOMMENDS THAT GRANTOR CONSULT WITH AN ATTORNEY NOT AFFILIATED WITH GRANTOR BEFORE EXECUTING THIS TRUST DEED.

**GRANTOR:**

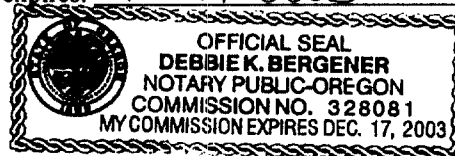
Stephen Schwarz  
Stephen Schwarz

Jo Anna Schwarz  
Jo Anna Schwarz

STATE OF OREGON )  
County of Klamath ) ss.

On this 3rd day of April, 2002 before me personally appeared Stephen Schwarz, who being duly sworn acknowledged the foregoing instrument to be his voluntary act and deed.

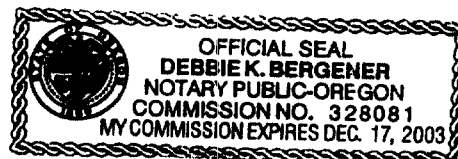
Debbie K. Bergener  
Notary Public for Oregon  
My commission expires: 12-17-2003



STATE OF OREGON )  
County of Klamath ) ss.

On this 3rd day of April, 2002 before me personally appeared Jo Anna Schwarz, who being duly sworn acknowledged the foregoing instrument to be her voluntary act and deed.

Debbie K. Bergener  
Notary Public for Oregon  
My commission expires: 12-17-2003



**EXHIBIT A**

## Legal Description

A portion of the SE 1/4 NE 1/4 of Section 10, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at a point on the West line of Summers Lane, a county road in Klamath County, Oregon, which is North 1 degree 12' East 346.7 feet and thence South 88 degrees 44' West 30 feet from the one quarter corner common to Sections 10 and 11, Township 39 South, Range 9 East of the Willamette Meridian; thence North 1 degree 12' East along the West line of said Summers Lane, a distance of 120.0 feet; thence South 88 degrees 44' West, 60.0 feet; thence South 1 degree 12' West 120.0 feet; thence North 88 degrees 44' East 60.0 feet to the point of beginning, being a parcel of land in the SE 1/4 NE 1/4 of Section 10, Township 39 South, Range 9 East of the Willamette Meridian.