

**RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:**

Joseph W. West, Esq.
Bullivant Houser Bailey PC
888 SW Fifth Avenue, #300
Portland, OR 97204

State of Oregon, County of Klamath
Recorded 06/30/2003 3:49 p. m
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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST, ASSIGNMENT OF RENTS AND FIXTURE FILING
(Klamath County, Oregon)**

This DEED OF TRUST, ASSIGNMENT OF RENTS AND FIXTURE FILING (this "**Deed of Trust**") is made as of June 30, 2003, by PETERSON MACHINERY CO., an Oregon corporation ("**Grantor**"), whose address is 955 Marina Blvd., San Leandro, CA 94577, to CHICAGO TITLE INSURANCE COMPANY OF OREGON ("**Trustee**"), whose address is 111 SW Fifth Ave., Ste. 930, Portland, OR 97204, for the benefit of CATERPILLAR FINANCIAL SERVICES CORPORATION, a Delaware corporation ("**Beneficiary**"), whose address is 2120 West End Avenue, PO Box 340001, Nashville, TN 37203.

RECITALS

A. Pursuant to that certain Loan Agreement dated as of June 30, 2003 (the "**Loan Agreement**"), by and among Grantor, the guarantors identified therein as guarantors (the "**Guarantors**"), and the Beneficiary, Grantor is indebted to Beneficiary in the principal sum of THIRTEEN MILLION FIVE HUNDRED TWENTY-SEVEN THOUSAND EIGHT AND 95/100 DOLLARS (\$13,527,008.95), as evidenced by that certain promissory note of even date herewith (the "**Note**").

B. This Deed of Trust is executed, acknowledged, and delivered by Grantor to secure and enforce the following obligations of Grantor: (i) the payment of the Note, together with all interest thereon and other amounts, if any, due in accordance with the terms the Note, this Deed of Trust, and any other documents evidencing or securing the Note or executed in connection therewith, together with any modifications, renewals, extensions or replacements of any of the foregoing, as well as the payment of any additional indebtedness accruing to Beneficiary on account of any future payments, advances or expenditures made by Beneficiary pursuant to any of the foregoing, (ii) the payment and performance of each and every other covenant, condition, and agreement contained in the Loan Agreement, the Note, this Deed of Trust, and any other documents executed in connection therewith, together with any modifications, renewals, extensions or replacements of any of the foregoing (all of such documents collectively referred to herein as the "**Loan Documents**"). All payment obligations of Grantor or the Guarantors to Beneficiary under any of the Loan Documents are hereinafter sometimes collectively referred to as the "**Indebtedness**," and all other obligations of Grantor or the Guarantors to Beneficiary under any of the Loan Documents are hereinafter sometimes collectively referred to as the "**Obligations**."

NOW, THEREFORE, TO SECURE the repayment of the Indebtedness and the performance of the Obligations, Grantor has executed this Deed of Trust and does hereby mortgage, convey, assign, warrant, transfer, pledge and grant a security interest in, with the power of sale, to Beneficiary, its successors and permitted assigns, pursuant to the Loan Agreement, the following described property and all proceeds thereof, (which property is hereinafter sometimes collectively referred to as the "**Property**");

- A. The real estate described on Exhibit A attached hereto (the "**Land**");
- B. All of the following (collectively, the "**Improvements**"): all buildings, improvements and fixtures now or in the future located or to be constructed on the Land; to the extent not owned by tenants of the Property, all machinery, appliances, equipment, furniture, fixtures and all other personal property of every kind or nature attached to the Land, buildings, improvements or fixtures; all building materials and goods procured for use or in connection with the foregoing; and all additions, substitutions and replacements to any of the foregoing;
- C. To the extent assignable, all plans, specifications, architectural renderings, drawings, soil test reports, other reports of examination or analysis of the Land or the Improvements;
- D. All easements, rights-of-way, water courses, mineral rights, water rights, air rights and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto ("**Appurtenances**");
- E. All leases, licenses and other agreements with regard to the occupancy of the Land and/or Improvements, including without limitation, patient and resident care agreements and service agreements which include an occupancy agreement, now or hereafter entered into (the "**Leases**") and all rents, prepayments, security deposits, termination payments, royalties, profits, issues and revenues from the Land and/or Improvements from time to time accruing under the Leases (the "**Rents**"), reserving to Grantor, however, so long as no Event of Default (hereinafter defined) has occurred hereunder, the right to receive and apply the Rents in accordance with the terms and conditions of Section 8 of this Deed of Trust;
- F. All claims, demands, judgments, insurance proceeds, refunds, reserves, deposits, rights of action, awards of damages, compensation, settlements and other rights to the payment of money hereafter made resulting from or relating to (i) the taking of the Land or the Improvements or any part thereof under the power of eminent domain, (ii) any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or Appurtenances or any part thereof, or (iii) the ownership or operation of the Property;
- G. To the extent assignable, all management contracts, permits, certificates, licenses, approvals, contracts, purchase and sale agreements, purchase options, entitlements, development rights and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Land, Improvements and/or Leases, including building permits, environmental certificates, licenses, certificates of operation, warranties and guaranties;

H. All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or any other property of the types described in the preceding granting clauses; and

I. Any and all after-acquired right, title or interest of Grantor in and to any property of the types described in the preceding granting clauses.

TO HAVE AND TO HOLD the Property and all parts thereof together with the rents, issues, profits and proceeds thereof, unto Beneficiary to its own proper use, benefit, and advantage forever, subject, however, to the terms, covenants, and conditions herein.

Grantor covenants and agrees with Beneficiary as follows:

1. **Payment of Indebtedness; Performance of Obligations.** Grantor shall promptly pay when due the Indebtedness and shall promptly perform all Obligations when due to be performed.

2. **Taxes and Other Obligations.** Grantor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions and other charges and obligations, which may become a lien on or charge against the Property (collectively, "**Charges**"). Grantor shall have the right to contest, in good faith by appropriate proceedings, the amount or validity of any such Charges, so long as: (a) Grantor has given prior written notice to Beneficiary of Grantor's intent to so contest or object to any such Charges; (b) such contest stays the enforcement or collection of the Charges or any lien created; and (c) Grantor has (i) obtained an endorsement, in form and substance reasonably satisfactory to Beneficiary, to the loan policy of title insurance issued to Beneficiary insuring over any such lien, or if no such loan policy shall have been issued, and (ii) deposited with Beneficiary a bond or other security reasonably satisfactory to Beneficiary in the amount of 150% of the amount of such contested Charges. Should Grantor fail to make any of such payments required hereunder, Beneficiary may, at its option and at the expense of Grantor, after written notice to Grantor, pay the amounts due for the account of Grantor. Upon the request of Beneficiary, Grantor shall promptly furnish to Beneficiary copies of all notices of amounts due and receipts evidencing payment. Grantor shall promptly notify Beneficiary of any lien on all or any part of the Property and shall promptly discharge any unpermitted lien or encumbrance.

3. **Reserves for Taxes.** After the occurrence and during the continuance of an Event of Default, at the time of and in addition to the installments of principal and interest due under the Loan Agreement, Grantor shall pay to Beneficiary a sum equal to one-twelfth (1/12) of the amount estimated by Beneficiary to be sufficient to pay at least thirty (30) days before they become due and payable, all taxes, assessments and other similar charges levied against the Property (collectively, the "**Taxes**"). In such event, Grantor further agrees to cause all bills, statements or other documents relating to such Taxes to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Grantor has deposited sufficient amounts with Beneficiary pursuant to this Section 3, Beneficiary shall timely pay such amounts as may be due thereunder out of the amounts so deposited with Beneficiary. These sums shall be put in an interest bearing account, which will be a separate trust account, with all interest earned to be credited to Grantor. If at any time and for any reason (other than the

negligence or willful misconduct of Beneficiary) the amounts so deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due within the next twelve months, Grantor shall, within ten (10) days thereof, deposit with Beneficiary an amount equal to such deficiency. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a Trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 3. Beneficiary may commingle amounts deposited pursuant to this Section 3 with its own funds. Beneficiary may reserve for future payment of Taxes such portion of the amounts so deposited by Grantor, as Beneficiary may in its absolute discretion deem proper. Should Grantor fail to deposit with Beneficiary (exclusive of that portion of said payments which has been applied by Beneficiary upon any Indebtedness) sums sufficient fully to pay such Taxes at least fifteen (15) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amount required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided. On the maturity date of the Indebtedness, the monies then remaining on deposit with Beneficiary or its agent (including any accrued interest thereon) shall, at Beneficiary's option, be applied against the Indebtedness, and the balance if any returned to Grantor. The obligation of Grantor to pay the Taxes is not affected or modified by the provisions of this paragraph.

4. Insurance and Condemnation.

(a) Insurance.

(i) In case of loss or damage by fire or other casualty, Grantor shall give prompt written notice thereof to the insurance carrier(s) and to Beneficiary. Grantor shall make or file proofs of loss or damage and settle and adjust any claim under insurance policies, which insure against such risk. In addition, Beneficiary is authorized and empowered, and Grantor hereby irrevocably appoints Beneficiary as its attorney-in-fact (such appointment is coupled with an interest), at its option, to make or file proofs of loss or damage and to settle and adjust any claim under insurance policies which insure against such risks, or to direct Grantor, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss; provided, however, so long as no Event of Default under any of the Loan Documents is then continuing, Beneficiary shall not make any such settlement or adjustment without the prior written consent of Grantor, which consent shall not be unreasonably withheld, delayed or conditioned.

(ii) Provided no Event of Default then exists and Grantor certifies as to same, the net insurance proceeds (after deduction of Beneficiary's reasonable costs and expenses, if any, in collecting the same) shall be made available for the restoration or repair of the Property if, in Beneficiary's reasonable judgment of Beneficiary or such service or other consultant retained by Beneficiary: (a) restoration or repair and the continued operation of the Property is economically feasible; (b) the value of Beneficiary's security is not reduced; (c) the casualty loss is less than fifty percent (50%) of the cost of replacement of the Improvements (excluding the foundation and footing); (d) the loss does not occur in the six (6) month period preceding the maturity date of the Indebtedness; and (e) Grantor deposits with Beneficiary from time-to-time an amount, in cash, which Beneficiary, in its sole but reasonable discretion, determines is necessary, in

addition to the net insurance proceeds to pay in full the cost of the restoration or repair (Grantor's deposit shall be disbursed prior to any disbursement of insurance proceeds held by Beneficiary). Notwithstanding the foregoing, it shall be a condition precedent to any disbursement of insurance proceeds held by Beneficiary hereunder that consultant or other expert shall have reasonably approved (x) all plans and specifications for any proposed repair or restoration, (y) the construction schedule and (z) the architect's and general contractor's contract for all restoration that exceeds \$50,000 in the aggregate. Such consultant or other expert may establish other conditions it deems reasonably necessary to assure the work is fully completed in a good and workmanlike manner free of all liens or claims by reason thereof, and in compliance with all applicable laws, rules and regulations. At such consultant's or other expert's option, the net insurance proceeds shall be disbursed pursuant to a construction escrow reasonably acceptable to such consultant or other expert. If an Event of Default then exists, or any of the conditions set forth in clauses (a) through (e) or elsewhere in this Section 4(a)(ii) have not been met or satisfied, the net insurance proceeds shall be applied to the Indebtedness in the manner specified in the Loan Agreement, or, if not so specified, then in such order and manner as Beneficiary may elect, whether or not due and payable, with any excess paid to Grantor.

(iii) In the event Grantor fails to provide Beneficiary with evidence of the insurance coverage required by this Deed of Trust, Beneficiary may, after notice to Grantor, purchase insurance at Grantor's expense to protect Beneficiary's interests in the Property. This insurance may, but need not, protect Grantor's interests. The coverage purchased by Beneficiary may not pay any claim made by Grantor or any claim that is made against Grantor in connection with the Property. Grantor may later cancel any insurance purchased by Beneficiary, but only after providing Beneficiary with evidence that Grantor has obtained insurance as required by this Deed of Trust. If Beneficiary purchases insurance for the Property, Grantor will be responsible for the costs of that insurance, including interest and other charges imposed by Beneficiary in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The costs of the insurance may be more than the cost of insurance Grantor is able to obtain on its own.

(iv) WARNING: UNLESS GRANTOR PROVIDES BENEFICIARY WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY THE LOAN DOCUMENTS, BENEFICIARY MAY PURCHASE INSURANCE AT GRANTOR'S EXPENSE TO PROTECT BENEFICIARY'S INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT GRANTOR'S INTEREST. IF THE PROPERTY BECOMES DAMAGED, THE COVERAGE BENEFICIARY PURCHASES MAY NOT PAY ANY CLAIM GRANTOR MAKES OR ANY CLAIM MADE AGAINST GRANTOR. GRANTOR MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT THE GRANTOR HAS OBTAINED PROPERTY COVERAGE AS REQUIRED BY THE LOAN DOCUMENTS ELSEWHERE.

GRANTOR IS RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY BENEFICIARY. THE COST OF THIS INSURANCE MAY BE

ADDED TO GRANTOR'S INDEBTEDNESS. IF THE COST IS ADDED TO GRANTOR'S INDEBTEDNESS, THE INTEREST RATE ON THE UNDERLYING INDEBTEDNESS WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE GRANTOR'S PRIOR COVERAGE LAPSED OR THE DATE GRANTOR FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE BENEFICIARY PURCHASES MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE GRANTOR CAN OBTAIN ON GRANTOR'S OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

(b) Condemnation.

(i) Grantor shall within five (5) business days of its receipt of notice thereof, notify Beneficiary of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Grantor shall, after consultation with and subject to Beneficiary's reasonable approval, appear in and prosecute any such action or proceeding, if required by Beneficiary. Upon Grantor's failure to act in accordance with Beneficiary's prior approval, Grantor authorizes Beneficiary, at Beneficiary's option, after notice to Grantor as attorney-in-fact for Grantor (such appointment as attorney-in-fact is coupled with an interest), to commence, appear in and prosecute, in Beneficiary's or Grantor's name, any action or proceeding relating to any condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary and in accordance with the provisions of Section 4(b)(ii) below. Beneficiary is authorized (but is under no obligation) to collect any such proceeds.

(ii) Beneficiary may, in its sole discretion, elect to (a) apply the net proceeds of any condemnation award (after deduction of Beneficiary's reasonable costs and expenses, if any, in collecting the same) in reduction of the Indebtedness in such order and manner as Beneficiary may elect, whether due or not or (b) make the proceeds available to Grantor for the restoration or repair of the Property. If the net proceeds of the condemnation award are made available to Grantor for restoration or repair, the net proceeds of the condemnation award shall be disbursed upon satisfaction of and in accordance with the terms and conditions set forth in Section 4(a)(ii) above. Beneficiary is authorized (but is under no obligation) to collect any such proceeds.

5. Preservation and Maintenance of Property. Grantor shall: (a) not commit waste or permit impairment or deterioration of the Property (other than normal wear and tear); (b) not abandon the Property; (c) keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, upon any damage or loss thereto; (d) comply with all laws, ordinances, regulations and requirements of

any governmental body applicable to the Property; and (e) give notice in writing to Beneficiary of and, unless otherwise directed in writing by Beneficiary, appear in and defend any action or proceeding purporting to affect the Property, the security granted by the Loan Documents or the rights or powers of Beneficiary. Neither Grantor nor any tenant or other person shall remove, demolish or alter any Improvement on the Land except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

6. **Protection of Beneficiary's Security.** If (a) an Event of Default has occurred and is continuing, (b) any action or proceeding is commenced which affects or is reasonably likely to adversely affect the Property or Beneficiary's interest therein, including any loss, damage, cost, expense or liability incurred by Beneficiary with respect to (i) any environmental matters relating to the Property or (ii) the preparation of the commencement or defense of any action or proceeding or any threatened action or proceeding affecting the Loan Documents or the Property, then Beneficiary, at Beneficiary's option, may make such appearances, disburse such sums and take such action as Beneficiary deems necessary, in its sole discretion, to protect the Property or Beneficiary's interest therein, including entry upon the Property to take such actions as Beneficiary determines appropriate to preserve, protect or restore the Property. Any amounts disbursed by Beneficiary pursuant to this Section 6 (including attorneys' fees, costs and expenses), together with interest thereon at the interest rate set forth in the Loan Agreement from the date of disbursement, shall become additional Indebtedness of Grantor secured by the lien of this Deed of Trust and the other Loan Documents and shall be due and payable on demand. Nothing contained in this Section 6 shall require Beneficiary to incur any expense or take any action hereunder.

7. **Actions.** Grantor shall warrant title and appear in and defend any claim or any action or other proceeding purporting to affect title or other interests relating to any part of the Property, the security of this Deed of Trust or the rights of Beneficiary, and give Beneficiary prompt written notice of any such claim, action or proceeding. Beneficiary may, at the expense of Grantor, appear in and defend any such claim, action or proceeding and any claim, action or other proceeding asserted or brought against Beneficiary in connection with, or relating to, any part of the Property or this Deed of Trust.

8. **Leases; Assignment of Rents; Fixture Filing.**

(a) Grantor shall not, without Beneficiary's prior written consent, execute, modify, amend, surrender or terminate any Lease, except as expressly permitted by the Loan Agreement. Grantor shall not be authorized to enter into any ground lease of the Property without Beneficiary's prior written approval. If Beneficiary consents to any Lease or the renewal of any existing Lease, at Beneficiary's request, Grantor shall cause the tenant thereunder to execute a subordination and attornment agreement in form and substance satisfactory to Beneficiary prior to Grantor's execution of such Lease. Grantor shall comply with and observe Grantor's obligations as landlord under all Leases. Grantor absolutely and unconditionally assigns and transfers to Beneficiary, all of Grantor's right, title and interest in and to the Rents; provided, however, so long as there shall not have occurred and be continuing an Event of Default, Grantor shall have a revocable license to collect all Rents. If an Event of Default has occurred, is continuing, Grantor's right to collect and secure the Rents shall cease and

Beneficiary shall have the sole right, with or without taking possession of the Property to collect all Rents.

(b) This Deed of Trust encumbers, and Grantor hereby grants Beneficiary a security interest in, all personal property of any kind whatsoever which is now or becomes a "fixture" on the Property, for purposes of securing payment of the Indebtedness and performance of the Obligations. "**Fixtures**" shall include all articles of personal property, furniture and equipment, which are so related to the Property such that an interest arises in them under the real estate laws of the State of Oregon. Grantor hereby authorizes Beneficiary to file and record such financing statements and amendments and continuation statements thereto as necessary to reflect the interests of Beneficiary created hereunder. In addition, Grantor acknowledges that this Deed of Trust also constitutes a fixture filing between Grantor as Debtor and Beneficiary as Secured Party, as defined in the Oregon Uniform Commercial Code. To this end, Grantor acknowledges (i) that this Deed of Trust covers goods which are or are to become fixtures on the Property, (ii) this Deed of Trust is to be recorded in the real estate records, (iii) Grantor is the record owner of the Property, and (iv) products of any fixtures are also covered. For purposes of this Financing Statement, the respective addresses of the Grantor and Beneficiary for the giving of any notice under or in connection with this Deed of Trust is as first stated above. The mailing address of the Beneficiary is as stated above.

9. **Transfers of the Property or Interest in Grantor.** Grantor shall not (a) cause or permit the merger or consolidation of Grantor, or (b) sell, transfer, convey or otherwise dispose of (i) all or any part of the Property, or any interest therein, or (ii) any direct ownership interest in Grantor (including any interest in the profits, losses or cash distributions in any way relating to the Property or Grantor).

10. **No Additional Liens, Encumbrances or Indebtedness.** Grantor covenants not to execute any deed of trust, security agreement, assignment of leases and rents or other agreement granting a lien (except the liens granted to Beneficiary by the Loan Documents) against or encumbrance on the Property or take or fail to take any other action which would result in a lien against the Property or the interest of Grantor in the Property without the prior written consent of Beneficiary; provided, however, Grantor may in good faith, by appropriate proceeding, contest the validity or amount of any asserted lien and, pending such contest, Grantor shall not be deemed to be in default hereunder if Grantor shall first obtain an endorsement, in form and substance satisfactory to Beneficiary to the loan policy of title insurance issued to Beneficiary insuring over such lien, or, if no such loan policy shall have been issued, then Grantor shall deposit with Beneficiary a bond or other security satisfactory to Beneficiary in the amount of 150% of the amount of such lien to assure payment of the same as and when due.

11. **Grantor and Lien Not Released.** Without affecting the liability of Grantor or any other person liable for the payment of the Indebtedness or the performance of any Obligations, and without affecting the lien or charge of this Deed of Trust as security for the payment of the Indebtedness, Beneficiary may, from time to time and without notice to any junior lien holder or holder of any right or other interest in and to the Property: (a) release any person so liable; (b) waive or modify any provision of this Deed of Trust or the other Loan Documents or grant other indulgences; (c) release all or any part of the Property; (d) take

additional security for any obligation herein mentioned; (e) subordinate the lien or charge of this Deed of Trust; (f) consent to the granting of any easement; or (g) consent to any map or plan of the Property.

12. **Events of Default; Acceleration of Indebtedness.** The occurrence of an Event of Default, as defined under the Loan Agreement, shall constitute an "**Event of Default**" under this Deed of Trust. Upon the occurrence and during continuation of an Event of Default, at the option of Beneficiary, the Indebtedness shall become immediately due and payable without notice to Grantor, and Beneficiary shall be entitled to all of the rights and remedies provided in the Loan Documents or at law or in equity. Each remedy provided in the Loan Documents is distinct and cumulative to all other rights or remedies under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

13. **Remedies; Entry; Foreclosure.**

(a) Upon the occurrence and during the continuance of an Event of Default, in addition to all other powers, rights and remedies herein granted or by law or at equity conferred, Beneficiary shall have all of the rights and remedies of a mortgagee with respect to all of the Property; and in addition Trustee shall have all of the rights and remedies of a mortgagee and Trustee under a deed of trust granted, conferred or permitted by applicable law, and Beneficiary shall have all of the rights of a Beneficiary thereunder.

(b) Upon the occurrence and during the continuation of an Event of Default, Grantor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession of the Property, or to the extent permitted by law, Beneficiary or a receiver appointed by a court of competent jurisdiction, may enter and take possession of all or any part of the Property, and may exclude Grantor and its agents and employees wholly therefrom, and may have joint access with Grantor to the books, papers and accounts of Grantor. If Grantor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Beneficiary, Beneficiary or such receiver may obtain a judgment or decree conferring on Beneficiary or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Beneficiary or such receiver, and Grantor specifically consents to the entry of such judgment or decree. Upon every such entering upon or taking of possession, Beneficiary or such receiver may hold, store, use, operate, manage and control the Property and conduct the business thereof, and Beneficiary or such receiver may take any action required by applicable law or which Beneficiary or such receiver believes necessary to enforce compliance with the environmental provisions contained herein or in the other Loan Documents, and negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures in connection therewith. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission, which was taken or omitted in good faith.

(c) When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Beneficiary may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (i) enforce payment of the Loan Agreement or the

performance of any term, covenant, condition or agreement of Grantor under any of the Loan Documents; (ii) foreclose the lien hereof for the Indebtedness or part thereof and sell the Property as an entirety or otherwise, as Beneficiary may determine; and (iii) pursue any other right or remedy available to it under or by the law and decisions of the State in which the Land is located. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Grantor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property.

Upon any foreclosure sale, Beneficiary may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

14. **Appointment of Receiver or Mortgagee in Possession.** If an Event of Default is continuing or if Beneficiary shall have accelerated the Indebtedness, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the Indebtedness or the insolvency of any party bound for its payment, to the appointment, at its option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Property, and to collect and apply the Rents.

15. **Expenditures and Expenses.** In any action to foreclose the lien hereof or otherwise enforce Beneficiary's rights and remedies hereunder, there shall be allowed and included as additional Indebtedness all costs, expenses and fees which may be paid or incurred by or on behalf of Beneficiary. All such costs, expenses and fees as may be incurred by Beneficiary in the protection of the Property and the maintenance of the lien of this Deed of Trust, including, attorneys' fees and costs in any litigation or proceeding affecting this Deed of Trust and the other Loan Documents, including probate, appellate, and bankruptcy proceedings and any post-judgment proceedings to collect or enforce any judgment or order relating to this Deed of Trust or the other Loan Documents or in preparation for the commencement or defense of any action or proceeding, shall be immediately due and payable to Beneficiary, with interest thereon at the rate set forth in the Loan Agreement, and shall be secured by this Deed of Trust.

16. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Property shall be distributed and applied in the order of priority specified in the Loan Agreement, and if not specified, as provided under applicable law. To the extent permitted by applicable law, Grantor waives all claims, damages, and demands against Beneficiary arising out of the disposition, repossession or retention of the Property.

17. **Future Advances.** This Deed of Trust is given to secure not only the existing Indebtedness, but also future advances (whether such advances are obligatory or are made at the option of Beneficiary, or otherwise) made by Beneficiary under the Loan Agreement or this Deed of Trust, to the same extent as if such future advances were made on the date of the execution of this Deed of Trust.

18. **Waiver of Statute of Limitations.** Grantor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan

Documents or to any action brought to enforce the Loan Agreement, or any other obligation secured by any of the Loan Documents.

19. **Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the internal laws of the State of Oregon.

20. **Severability.** The invalidity, illegality or unenforceability of any provision of this Deed of Trust shall not affect or impair the validity, legality or enforceability of the remainder of this Deed of Trust, and to this end, the provisions of this Deed of Trust are declared to be severable.

21. **Marshalling.** Beneficiary shall not be required to marshal any present or future collateral security (including, but not limited to, other real property which may secure payment of the Indebtedness) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Grantor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of Beneficiary's rights and remedies under this Agreement or under any of the Loan Documents, and, to the extent that it lawfully may, Grantor hereby irrevocably waives the benefits of all such laws.

22. **Notice.** Notices shall be given under this Deed of Trust in conformity with the terms and conditions of the Loan Agreement and in conformity with applicable law.

23. **Successors and Assigns Bound; Agents; Captions.** The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and permitted assigns of Beneficiary and Grantor, subject to the provisions of Section 9 hereof. In exercising any rights under the Loan Documents or taking any actions provided for therein, Beneficiary may act through its employees, agents or independent contractors as authorized by Beneficiary. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

24. **Release.** Upon payment of all Indebtedness and performance of all Obligations, Beneficiary shall release this Deed of Trust, and Beneficiary shall execute and deliver to Grantor such other documents as Grantor may reasonably request to effect or evidence the release of the liens created hereby in favor of Beneficiary. Grantor shall be responsible for any filings and shall pay Beneficiary's reasonable costs incurred in releasing this Deed of Trust and any financing statements related hereto.

25. **Jury Trial Waiver.** GRANTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS DEED OF TRUST, ANY RIGHTS, REMEDIES, OBLIGATIONS, OR DUTIES HEREUNDER, OR THE PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF. Except as prohibited by law, Grantor

waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. Grantor (i) certifies that neither Beneficiary nor any representative, agent or attorney of Beneficiary has represented, expressly or otherwise, that Beneficiary would not, in the event of litigation, seek to enforce the foregoing waivers or other waivers contained in this Deed of Trust, and (ii) acknowledges that, in entering into the Loan Agreement and the other Loan Documents, Beneficiary is relying upon, among other things, the waivers and certifications contained in this Section 25.

26. ORS 93.040 Warning. The following notice is provided pursuant to ORS 93.040: **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 APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE IF ANY LIMITS OR LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.**

27. Non-residential Deed of Trust. Grantor represents and warrants that this Deed of Trust is not and will continue to not be a “residential Deed of Trust” as defined in ORS 86.705(3).

28. Statute of Frauds Notice. The following notice is made pursuant to ORS 41.580(1)(h), (2) and (3): **UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER 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 LENDER TO BE ENFORCEABLE.**

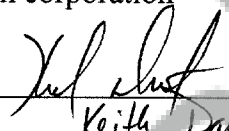
[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed by its duly authorized representative as of the date first set forth above.

GRANTOR:

PETERSON MACHINERY CO.,
an Oregon corporation

By: 
Name: Keith Dawidge
Title: CFO

Unofficial Copy

ACKNOWLEDGMENT

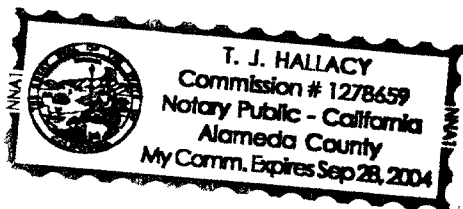
STATE OF CALIFORNIA) TH
COUNTY OF ALAMEDA) ss.

This instrument was acknowledged before me on JUNE 25, 2003 by KEITH DAVIDGE, as CFO of Peterson Machinery Co., an Oregon corporation.

T. J. Hallacy
Notary Public

My Commission Expires:

SEPT. 28, 2004



KLAMATH FALLS LEGAL DESCRIPTION

A tract of land in Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being a portion of Parcel 1 and 2 as described in and conveyed by Ewauna Box Company to Weyerhaeuser Timber Company by a deed dated November 30, 1948, and recorded in Volume 227 at page 47, Deed Records of Klamath County, Oregon. The said tract is more particularly described as follows; to wit:

Beginning at a point on the Southwesterly line of South Sixth Street, in the City of Klamath Falls, Oregon, which bears North 55 degrees 22' West, a distance of 1028.22 feet along said Southwesterly line from an iron pin which marks the intersection of the Southwesterly line of South Sixth Street and the Westerly line of the Central Pacific Railway Company, which point lies North 74 degrees 07' West, a distance of 186.73 feet and South 55 degrees 22' East, a distance of 390.32 feet from the intersection of the Easterly line of Broad Street and the Northeasterly line of South Sixth Street, and being the Northwestern corner of said above mentioned Parcel 1; thence Southwesterly along the arc of a curve to the right having a radius of 487.68 feet; a distance of 60.71 feet to the true point of beginning; thence South 27 degrees 17' 50" East (State Highway deed bearing South 27 degrees 42' 20" East) a distance of 122.44 feet; thence South 3 degrees 52' 00" East (State Highway deed bearing South 4 degrees 16' 30" East) a distance of 252.00 feet; thence South 34 degrees 38' West, a distance of 565.19 feet more or less to a point on the Southerly boundary of above mentioned Parcel 2; thence Northwesterly along the arc of a curve to the right having a radius of 467.68 feet, a distance of 55.58 feet through an angle of 6 degrees 48' 33" (the long chord of this curve being 55.55 feet and bears North 15 degrees 09' 46" West); thence Northerly along the arc of a curve to the right, having a radius of 686.05 feet, a distance of 519.76 feet through an angle of 43 degrees 24' 30" (the long chord of this curve being 507.43 feet long and bears North 9 degrees 56' 45" East) to the Northwestern corner of the above mentioned Parcel 2; thence continuing along the arc of said curve to the right having a radius of 686.05 feet, a distance of 33.93 feet through an angle of 2 degrees 50' (the long chord of this curve being 33.93 feet long and bears North 33 degrees 13' East); thence North 34 degrees 38' East a distance of 211.60 feet; thence along the arc of a curve to the left, having a radius of 487.68 feet, a distance of 77.22 feet through an angle of 8 degrees 56' 32" (the long chord of this curve being 76.32 feet long and bears North 30 degrees 08' 44" East) to true point of beginning, excepting any part taken for street.

ALSO, a tract of land in Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being a portion of Parcel 1 and 2 as described in and conveyed by Ewauna Box Company to Weyerhaeuser Timber Company by a deed dated November 30, 1948, and recorded in Volume 227 at page 47, Deed Records of Klamath County, Oregon. The said tract is more particularly described as follows, to wit:

Beginning at a point on the Southwesterly line of South Sixth Street, in the City of Klamath Falls, Oregon, which bears North 55 degrees 22' West, a distance of 1028.22 feet along said Southwesterly line from an iron pin which marks the intersection of the Southwesterly line of South Sixth Street and the Westerly line of the Central Pacific Railroad Company, which point lies North 74 degrees 07' West, a distance of 186.73 feet and South 55 degrees 22' East, a distance of 390.32 feet from the intersection of the Easterly line of Broad Street and the Northeasterly line of South Sixth Street, and being the Northwestern corner of said above mentioned Parcel 1; thence Southwesterly along the arc of a curve to the right having a radius of

487.68 feet; a distance of 60.71 feet; thence South 27 degrees 17' 50" East (State Highway deed bearing South 27 degrees 42' 20" East) a distance of 122.44 feet; thence South 30 degrees 52' 00" East (State Highway deed bearing South 4 degrees 16' 30" East, a distance of 252.00 feet; thence South 34 degrees 38' West 15.00 feet to the true point of beginning; thence South 55 degrees 22' East (State Highway deed bearing South 55 degrees 46' 30" East) a distance of 150.00 feet; thence South 34 degrees 28' West a distance of 640.36 feet, more or less to a point on the Southerly boundary of the above mentioned Parcel 2; thence Northwesterly along the arc of a curve to the right whose radius is 467.68 feet, a distance of 168.68 feet (the long chord of this curve being 167.77 feet long and bears North 28 degrees 45' 02" West); thence North 34 degrees 38" East a distance of 565.19 feet, more or less, to point of beginning, excepting any part taken for street.

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