

WTC - 62701 TA

Vol M03 Page 85279

State of Oregon, County of Klamath  
Recorded 11/18/03 3:26 p m  
Vol M03 Pg 85279-98  
Linda Smith, County Clerk  
Fee \$ 13.00 # of Pgs 20

**LINE OF CREDIT INSTRUMENT**

Maximum principal amount to be advanced: \$2,200,000; however, such maximum principal amount to be advanced may be exceeded by principal advances made to complete construction of improvements upon the subject property.

Maturity date: December 1, 2010, exclusive of options to renew or extend, if any.

**DEED OF TRUST, SECURITY AGREEMENT,  
• FIXTURE FINANCING STATEMENT  
AND ASSIGNMENT OF LEASES AND RENTS**

BY JAMES L. THOMPSON FAMILY LIMITED PARTNERSHIP, AS GRANTOR,

TO AMERITITLE KLAMATH FALLS, AS TRUSTEE

FOR THE BENEFIT OF WELLS FARGO BANK, NATIONAL ASSOCIATION, AS  
BENEFICIARY,

TO SECURE \$2,200,000 REAL ESTATE NOTE

Dated: ~~NOVEMBER~~ 17 2003

**ADDITIONAL STATUTORY NOTICES:**

(a) The address of the entity holding a lien or other interest created by this instrument is:

Wells Fargo Bank, National Association  
MAC #U1851-033  
3033 Elder Street, 3rd Floor  
Boise, Idaho 83705  
Attn: Auto Dealer Finance

(b) The tax account number(s) for the property subject to the lien or in which the interest is created is/are: R-3903-004DD-01000-000; R-3909-004DD-00300-000; R-3909-004DD-00400-000; R-3909-003CC-00200-000; R-3909-003CC-00201-000; (c) Type of transaction: Creation of deed of trust lien and security interests encumbering the properties described herein.

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**DEED OF TRUST, SECURITY AGREEMENT,  
FIXTURE FINANCING STATEMENT AND  
ASSIGNMENT OF LEASES AND RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS (the "Deed of Trust"), is made as of the 17 day of November, 2003, by JAMES L. THOMPSON FAMILY LIMITED PARTNERSHIP, an Oregon limited partnership whose business address is located at 2761 Ivan Lane, Klamath Falls, Oregon 97603 (the "Grantor"), to AMERITITLE KLAMATH FALLS, whose business address is located at 222 South Sixth Street (P.O. Box 5017), Klamath Falls, Oregon 97601 (the "Trustee"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association whose business address is located at MAC #U1851-033, 3033 Elder Street, 3rd Floor, Boise, Idaho 83705, (the "Beneficiary").

**W I T N E S S E T H:**

WHEREAS, the Beneficiary has agreed to make a real estate loan to the Grantor in the amount of \$2,200,000 pursuant to the terms and subject to the conditions set forth in that certain loan agreement of even date herewith by and between the Grantor and the Beneficiary (the "Loan Agreement"); and

WHEREAS, the Grantor has executed and delivered that certain \$2,200,000 real estate note of even date herewith and payable to the order of the Beneficiary (the "Note"); and

WHEREAS, the Beneficiary has required as an express condition precedent to making the loan to the Grantor pursuant to the Note that the Grantor secure the Note by this Deed of Trust.

NOW THEREFORE, THIS DEED OF TRUST FURTHER WITNESSETH, that in consideration of the Beneficiary making a loan to the Grantor pursuant to the Note in the principal amount of Two Million Two Hundred Thousand and 00/100 Dollars (\$2,200,000.00) (the "Deed of Trust Amount") and other good and lawful consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure, and as security for, the payment of principal and interest and other premiums, penalties and charges on the Note and the performance and observance by the Grantor of all of the covenants, agreements, representations, warranties and conditions contained herein, and to secure, and as security for the payment to the Beneficiary of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under or in connection with any interest rate swap agreement that may be entered into now or in the future between the Grantor and the Beneficiary (the "Interest Rate Swap Agreement"), as the same may be amended, extended, renewed or restated from time to time, including without limitation, all costs and expenses pertaining to the enforcement of such Interest Rate Swap Agreement or the collection of any and all sums owing thereunder, the Grantor does hereby grant, bargain, sell, convey, assign, transfer, pledge, set over and confirm to Trustee, in trust, with power of sale, for the benefit and security of the Beneficiary, its successors and assigns, forever, and does hereby grant a Deed of Trust lien and security interest to the Beneficiary, its successors and assigns, forever,

in and to the tract of land legally described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Land");

Together with all of the Grantor's right, title and interest in and to (a) all of the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land; (b) all heating, plumbing and lighting apparatus, elevators and motors, engines and machinery, electrical equipment, incinerator apparatus, air-conditioning apparatus, water and gas apparatus, pipes, water heaters, refrigerating plant and refrigerators, water softeners, carpets, carpeting, storm windows and doors, window screens, screen doors, storm sash, window shades or blinds, awnings, locks, fences, trees, shrubs, and all other furniture, fixtures, machinery, equipment, appliances and personal property of every kind and nature whatsoever now or hereafter owned by the Grantor and attached or affixed or located on or in or used or intended to be used in connection with the ownership, use, operation or maintenance of, the Land and any improvements located thereon, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing; (c) all hereditaments, easements, rights, privileges and appurtenances now or hereafter belonging, attached or in any way pertaining to the Land or to any building, structure or improvement now or hereafter located thereon; (d) the immediate and continuing right to receive and collect all rents, income, issues and profits now due and which may hereafter become due under or by virtue of any lease or agreement (oral or written) for the leasing, subleasing, use or occupancy of all or part of the Land now, heretofore or hereafter made or agreed to by the Grantor; (e) all of the leases and agreements described in (d) above, together with all guarantees therefor and any renewals or extensions thereof; and (f) all insurance and other proceeds of, and all condemnation awards with respect to, the foregoing (all of the foregoing is hereinafter collectively referred to as the "Collateral Property").

The filing of this Deed of Trust shall constitute a fixture filing in the office where it is filed and a carbon, photographic or other reproduction of this document may also be filed as a financing statement:

Name and Address of  
Debtor and Record Owner  
of Real Estate:

James L. Thompson Family Limited Partnership  
2761 Ivan Lane  
Klamath Falls, Oregon 97603  
Organizational Identification Number: OR-580590-81

Name and Address of  
Secured Party:

Wells Fargo Bank, National Association  
MAC #U1851-033  
3033 Elder Street, 3rd Floor  
Boise, Idaho 83705  
Attn: Auto Dealer Finance

Description of the Types  
(or items) of property covered  
by this financing statement:

See above

Description of real estate to  
which all or a part of the  
collateral is attached or upon  
which it is located:

See Exhibit A attached hereto.

Some of the above described collateral is or is to become fixtures upon or minerals and mineral rights located upon the real estate described on Exhibit A, and this financing statement is to be filed for record in the public real estate records.

The Borrower will not change the principal place of business or chief executive office set forth above, or change the state of its registration, or change its name without in each instance the prior written consent of the Beneficiary, which consent shall not be unreasonably withheld, delayed or conditioned. The Beneficiary's consent will, however, be conditioned upon, among other things, the execution and delivery of security agreements and other instruments which may be necessary to effectively evidence or perfect the Beneficiary's security interest in the Collateral Property as a result of such changes.

AND THE GRANTOR, for itself, its successors and assigns, does covenant with the Beneficiary, its successors and assigns, that it is lawfully seized of the Collateral Property and has good right to sell and convey the same; that the Collateral Property is free from all encumbrances except as may be further stated in this Deed of Trust; that the Beneficiary, its successors and assigns, shall quietly enjoy and possess the Collateral Property; and that the Grantor will WARRANT AND DEFEND the title to the same against all lawful claims not specifically excepted in this Deed of Trust.

PROVIDED, NEVERTHELESS, that if the Grantor shall pay the principal balance of the Note in full, plus interest at the rate set forth in the Note, as the same changes from time to time and is adjusted in the manner set forth in the Note, on the unpaid principal balance, as computed in accordance with the terms and conditions of the Note, and any other sums due and owing under the Note and the Loan Agreement and shall also pay or cause to be paid all other sums, with interest thereon, as may be advanced by the Beneficiary in accordance with this Deed of Trust either to protect the lien of this Deed of Trust, or by way of additional loan or for any other purpose, and shall also keep and perform all and singular the covenants herein, required on the part of the Grantor to be kept and performed (the Note, including any and all renewals, amendments, extensions and modifications thereof, and all such sums, together with interest thereon, and such covenants herein collectively referred to as the "Indebtedness Secured Hereby"), then this Deed of Trust shall be null and void, in which event the Beneficiary will execute and deliver to the Trustee a request for full reconveyance of this Deed of Trust; otherwise this Deed of Trust shall remain in full force and effect.

## ARTICLE I.

### GENERAL COVENANTS, AGREEMENTS, WARRANTIES

SECTION 1.1. PAYMENT OF INDEBTEDNESS; OBSERVANCE OF COVENANTS. The Grantor shall duly and punctually pay each and every payment of principal, interest and all prepayment premiums and late charges, if any, required by the Note or the Loan Agreement and

all other Indebtedness Secured Hereby, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Loan Agreement or in any other instrument given as security for the payment of the Note.

**SECTION 1.2. MAINTENANCE; REPAIRS.** Subject to the provisions of Section 2.3 hereof, the Grantor shall keep and maintain the Collateral Property in good condition, repair and operating condition free from any waste or misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Collateral Property and its use, and will promptly repair or restore any building, improvements or structures now or hereafter located on the Land which may become damaged or destroyed to their condition prior to any such damage or destruction. The Grantor shall not acquiesce in any rezoning classification, modification or restriction affecting the Land, without the prior written consent of the Beneficiary, which consent shall not be unreasonably withheld nor delayed. The Grantor shall not vacate or abandon the Collateral Property.

**SECTION 1.3. PAYMENT OF UTILITY CHARGES, TAXES AND ASSESSMENTS.** The Grantor shall, before any penalty attaches thereto, pay or cause to be paid all charges made for electricity, gas, heat, water, sewer and other utilities furnished or used in connection with the Collateral Property, and all taxes, assessments and levies of every nature heretofore or hereafter assessed against the Collateral Property and, upon demand, will furnish the Beneficiary receipted bills evidencing such payment.

Nothing in this Section 1.3 shall require the payment or discharge of any obligations imposed upon the Grantor by this Section so long as the Grantor shall diligently and in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Collateral Property or any part thereof to satisfy the same; provided, however, that during such contest the Grantor shall, at the reasonable request of the Beneficiary, provide security satisfactory to the Beneficiary, assuring the discharge of the Grantor's obligation under this Section and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, however, that if at any time payment of any obligation imposed upon the Grantor by this Section shall become necessary to prevent the delivery of a tax deed conveying the Land or any portion thereof because of nonpayment, then the Grantor shall pay the same in sufficient time to prevent the delivery of such tax deed.

**SECTION 1.4. LIENS.** Except for liens and encumbrances, if any, listed on Exhibit B attached hereto or consented to in writing by or granted to the Beneficiary ("Permitted Encumbrances"), the Grantor will keep the Collateral Property free from all liens (other than liens for taxes, assessments and mechanics' liens not yet due and payable) and encumbrances of every nature whatsoever heretofore or hereafter arising and, upon written demand of the Beneficiary, the Grantor will pay and procure the release of any such lien or encumbrance.

**SECTION 1.5. COMPLIANCE WITH LAW.** The Grantor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Collateral Property unless the same is being diligently contested by the Grantor in good faith and by proper proceedings.

**SECTION 1.6. RIGHT OF THE BENEFICIARY TO ENTER.** The Grantor will permit the Beneficiary and its agents to enter, and to authorize others to enter, upon any or all of the Land, at any time and from time to time, during normal business hours, to inspect the Collateral Property to perform or observe any covenants, conditions or terms hereunder which the Grantor shall fail to perform, meet or comply with, or for any other purpose in connection with the protection or preservation of the Beneficiary's security, without thereby becoming liable to the Grantor or any person in possession under the Deed of Trust.

**SECTION 1.7. RIGHT OF THE BENEFICIARY TO PERFORM.** If the Grantor fails to pay all and singular any taxes, assessments, levies or other similar charges or encumbrances heretofore or hereafter assessed against the Collateral Property or fails to obtain the release of any lien or encumbrance (other than a Permitted Encumbrance) of any nature heretofore or hereafter arising upon the Collateral Property or fails to perform any other covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which adversely affects or questions the title to or possession of the Collateral Property or the interest of the Grantor or the Beneficiary therein, then the Beneficiary, at the Beneficiary's option, without notice to the Grantor, may perform such covenants and agreements, investigate and defend against such action or proceeding, and take such other action as the Beneficiary deems necessary to protect the Beneficiary's interest. Any amounts disbursed by the Beneficiary pursuant to this Section 1.7, including without limitation court costs and expenses and attorneys' fees, with interest thereon, shall become additional indebtedness of the Grantor and shall be secured by this Deed of Trust. Such amount shall be payable upon written notice from the Beneficiary to the Grantor requesting payment thereof, and shall bear interest from the date of disbursement at a rate equal to the greater of (i) the rate of interest then in effect under the Note, or (ii) eighteen percent (18%) per annum or, if such rate is illegal or usurious, at the maximum rate then permitted by law. Nothing contained in this Section 1.7 shall require the Beneficiary to incur any expense or to do any act or thing hereunder.

**SECTION 1.8. ASSUMPTION.** The Grantor shall not sell, assign, lease (except as permitted in the Loan Agreement), convey, mortgage or otherwise encumber or dispose of either the legal or equitable title or both to all or any portion of the Collateral Property or any other interest therein without the prior written consent of the Beneficiary. A sale, transfer, assignment or other disposition of any ownership interest in the Grantor shall constitute and be deemed a sale of all or a part of the Collateral Property for purposes of this Section 1.8.

**SECTION 1.9. ASSIGNMENT OF RENTS.** The Grantor does hereby sell, assign and transfer unto the Beneficiary (i) the immediate and continuing right to receive and collect all rents, income, issues and profits now due and which may hereafter become due under or by virtue of any lease or agreement (oral or written) for the leasing, subleasing, use or occupancy of all or any part of the Collateral Property now, heretofore or hereafter made or agreed to by the Grantor, and (ii) all of such leases and agreements, together with all guarantees therefor and any renewals or extensions thereof, for the purpose of securing payment of the indebtedness of the Grantor under the Note and the documents related thereto.

The Grantor does hereby irrevocably appoint the Beneficiary their true and lawful attorney in its name, place and stead, with or without taking possession of the Collateral Property, to rent, lease, sublease, let or sublet all or any portion of the Collateral Property to any party or parties at such rental and upon such terms, as it in its discretion may determine, and to collect all of said avails, rents, income, issues and profits arising from or accruing at any time hereafter under each and all of such leases and agreements, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Beneficiary would have upon taking possession of the Collateral Property.

The Grantor represents and agrees that no rent has been or will be paid in advance by any persons in possession of all or any portion of the Collateral Property for a period of more than one month and that the payment of none of the rents to accrue for all or any portion of the Collateral Property has or will be waived, released, reduced or discounted, or otherwise discharged or compromised, by the Grantor. The Grantor waive any right of setoff against any person in possession of all or any portion of the Collateral Property. The Grantor represents that it has not assigned any of said rents or profits to any third party and agrees that it will not so assign any of said rents or profits without the prior written consent of the Beneficiary.

Nothing contained herein shall be construed as constituting the Beneficiary "a Beneficiary in possession" in the absence of the taking of actual possession of the Collateral Property by the Beneficiary. In the exercise of the powers herein granted to the Beneficiary, no liability shall be asserted or enforced against the Beneficiary, all such liability being expressly waived and released by the Grantor.

The Grantor further agrees to assign and transfer to the Beneficiary all rents from future leases or subleases upon all or any part of the Collateral Property and to execute and deliver, immediately upon request of the Beneficiary, as such further assurances and assignments in the Collateral Property as the Beneficiary from time to time shall require.

Although it is the intention of the parties that this assignment of leases and rents shall be a present assignment, it is expressly understood and agreed that, anything herein contained to the contrary notwithstanding, the Beneficiary shall not exercise any of the rights and powers conferred upon it herein unless and until an Event of Default shall occur and nothing herein contained shall be deemed to affect or impair any rights which the Beneficiary may have under the Note, the Loan Agreement, this Deed of Trust or any other document or agreement related hereto or thereto.

The Grantor acknowledges and agrees that this assignment of leases and rents, and the Beneficiary's rights and remedies hereunder, may be enforced by the Beneficiary throughout the entire redemption period provided by applicable law following any foreclosure sale of all or any portion of the Collateral Property.

At any time after the occurrence of an Event of Default under the Loan Agreement, the Beneficiary, without in any way waiving such default, may:

- I. at the Beneficiary's option without notice to the Grantor and without regard to the adequacy of the security for the Note, either in person or by agent, with or without

any action or proceeding, or by a receiver appointed by a court of competent jurisdiction, peaceably take possession of the Collateral Property and have, hold, manage, lease, sublease and operate the same as a Beneficiary in possession; or

- II. the Beneficiary, without taking possession of the Collateral Property, may sue for or otherwise collect and receive all rents, income and profits from the Collateral Property to which the Grantor would otherwise be entitled, including those past due and unpaid with full power to make from time to time all adjustments thereto, as may seem proper to the Beneficiary.

The Beneficiary shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease, sublease or rental agreement relating to the Collateral Property, and the Grantor shall and do hereby agree to indemnify and hold the Beneficiary harmless from and against any and all liability, loss or damage which it may or might incur under any such lease, sublease or agreement or under or by reason of the assignment of the rents thereof and from and against any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of such leases, provided that the Grantor shall not indemnify and hold harmless the Beneficiary from any liability loss or damage resulting from acts or omissions of the Beneficiary which occur on or after the date the Beneficiary takes possession of the Collateral Property. Should the Beneficiary incur any liability, loss or damage by reason of this assignment of leases and rents, or in the defense of any claim or demand, the Grantor agree to reimburse the Beneficiary for the amount thereof, including costs, expenses and attorneys' fees, immediately upon demand.

The Beneficiary, or such agent or receiver, in the exercise of the rights and powers conferred upon it by this assignment of leases and rents shall have the full power to use and apply the avails, rents, issues, income and profits of the Collateral Property to which the Grantor would otherwise be entitled to the payment of or on account of the following in the order listed below:

- I. Reasonable receiver's fees;
- II. Application of tenant security deposits;
- III. Payment, when due, of prior or current real estate taxes or special assessments with respect to the Collateral Property, or the periodic escrow for the payment of the taxes or special assessments;
- IV. Payment, when due, of premiums for insurance of the type required by this Deed of Trust, or the periodic escrow for the payment of the premiums; and
- V. All expenses for normal maintenance of the Collateral Property.

Any excess cash remaining after paying the expenses listed in clauses (I) through (V) above shall be applied to the payment of the Note and shall be deemed to be credited to the amount required to be paid to effect a reinstatement or redemption or, if the period of redemption ends without



redemption, such remaining amounts shall be paid to the purchaser at the foreclosure sale, its successors or assigns.

The Grantor does further specifically authorize and instruct each and every present and future lessee, sublessee, tenant or subtenant of the whole or any part of the Collateral Property to pay all unpaid rental agreed upon in any lease or sublease to the Beneficiary upon receipt of demand from the Beneficiary so to pay the same.

Any tenants, subtenants or other occupants of all or any part of the Collateral Property are hereby authorized to recognize the claims of the Beneficiary hereunder without investigating the reason for any action taken by the Beneficiary, or the validity or the amount of indebtedness owing to the Beneficiary, or the occurrence or existence of any Event of Default, or the application to be made by the Beneficiary of any amounts to be paid to the Beneficiary. The sole signature of any officer or attorney of the Beneficiary shall be sufficient for the exercise of any rights under this assignment of leases and rents and the sole receipt of the Beneficiary for any sums received by such tenants, subtenants or other occupants shall be a full discharge and release therefor. Checks for all or any part of the rentals collected under this assignment of leases and rents shall be drawn to the exclusive order of the Beneficiary.

**SECTION 1.10. FURTHER ASSURANCES.** At any time and from time to time, upon request by the Beneficiary, the Grantor will make, execute and deliver or cause to be made, executed and delivered, to the Beneficiary, any and all other further instruments, certificates and other documents as may, in the reasonable opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, the obligations of the Grantor hereunder and under the Note, the Loan Agreement and the Deed of Trust and security interest granted by this Deed of Trust. Upon any failure by the Grantor so to do, the Beneficiary may make, execute and record any and all such instruments, certificates and documents for and in the name of the Grantor and the Grantor hereby irrevocably appoints the Beneficiary its agent and attorney in fact of the Grantor so to do.

**SECTION 1.11. EXPENSES.** The Grantor will pay or reimburse the Beneficiary for all attorneys' fees, costs and expenses incurred by the Beneficiary in any legal proceeding or dispute of any kind in which the Beneficiary is made a party, or appears as party plaintiff or defendant, affecting the Indebtedness Secured Hereby, this Deed of Trust, the interest created herein or the Collateral Property, including but not limited to the exercise of the power of sale set forth in this Deed of Trust, any condemnation action involving the Collateral Property or any action to protect the security hereof and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by this Deed of Trust.

**SECTION 1.12. BOOKS AND RECORDS; FINANCIAL STATEMENTS.** The Grantor will keep and maintain full, true and accurate books of account adequate to reflect correctly the results of the operation of the Collateral Property, all of which books and records relating thereto shall be open to inspection by the Beneficiary or its representative during normal business hours.

**SECTION 1.13. HAZARDOUS SUBSTANCES.** The Grantor warrants, covenants and represents that there does not exist in or under the Collateral Property any pollutant, toxic or

hazardous waste or substance, or any other material the release or disposal of which is regulated by any law, regulation, ordinance or code related to pollution or environmental contamination, and, that no part of the Collateral Property was ever used for any industrial or manufacturing purpose or as a dump, sanitary landfill, or gasoline service station, and that there exists on the Collateral Property no storage tanks, electrical transformers or other equipment containing PCBs or material amounts of asbestos. The Grantor represents that it has received no summons, citations, directives, letters or other communications, written or oral, from any federal, state or local agency or department concerning the storing, releasing, pumping, pouring, emitting, emptying or dumping of any pollutant, toxic or hazardous waste or substance on the Collateral Property.

The Grantor covenants and agrees that it shall not, nor shall it permit others to, use the Collateral Property for the business of generating, transporting, storing, treating or disposing of any pollutant, toxic or hazardous waste or substance, nor shall it either take or fail to take any action which may result in a release of any hazardous substance from or onto the Collateral Property. In addition to all rights of access granted the Beneficiary pursuant to Section 1.6 hereof, during the term of the loan contemplated hereby, the Beneficiary, or any authorized agent, contractor or representative of the Beneficiary, is hereby irrevocably authorized to enter upon the Collateral Property at any time and from time to time for the purpose of performing inspections, taking soil borings or other borings, or conducting any other tests or procedures on, in or about the Collateral Property as the Beneficiary deems necessary or appropriate to determine whether any hazardous or toxic substances, including without limitation asbestos or PCBs, are present on, under or about the Collateral Property.

The Grantor agrees to indemnify and to hold the Beneficiary harmless from any and all claims, causes of action, damages, penalties, and costs (including, but not limited to, attorneys' fees, consultants' fees and related expenses) which may be asserted against, or incurred by, the Beneficiary resulting from or due to release of any hazardous substance or waste on the Collateral Property or arising out of any injury to human health or the environment by reason of the condition of or past activity upon the Collateral Property. The Grantor's duty to indemnify and hold harmless includes, but is not limited to, proceedings or actions commenced by any person (including, but not limited to, any federal, state, or local governmental agency or entity) before any court or administrative agency. The Grantor further agrees that pursuant to its duty to indemnify under this section, the Grantor shall indemnify the Beneficiary against all expenses incurred by the Beneficiary as they become due and not waiting for the ultimate outcome of the litigation or administrative proceeding. The Grantor's obligations to indemnify and hold the Beneficiary harmless hereunder shall survive repayment of the Deed of Trust Amount and satisfaction or foreclosure of this Deed of Trust.

**SECTION 1.14. TAX ESCROW.** Upon request by the Beneficiary, the Grantor shall pay to the Beneficiary, on each day monthly installments of principal and/or interest are payable under the Note, until the Note is paid in full, a sum equal to one-twelfth (1/12th) of the annual taxes and assessments payable with respect to the Collateral Property, all as estimated initially and from time to time determined by the Beneficiary, to be applied by the Beneficiary to pay said taxes and assessments (such amounts being hereinafter referred to as the "Funds"). The Beneficiary shall apply the funds to pay said taxes and assessments prior to the date that penalty

attaches for non-payment. The Funds are hereby pledged as additional security for the Indebtedness Secured Hereby. No interest shall accrue on the Funds.

If the amount of the Funds held by the Beneficiary shall exceed at any time the amount deemed necessary by the Beneficiary to provide for the payment of taxes and assessments, such excess shall, at the option of the Beneficiary, either be promptly repaid to the Grantor or be credited to the Grantor on the next monthly installment of Funds due. If at any time the Funds are less than the amount deemed necessary by the Beneficiary to pay taxes and assessments as they fall due, the Grantor shall promptly pay to the Beneficiary any amount necessary to make up the deficiency upon written notice from the Beneficiary to the Grantor requesting payment thereof.

Upon the occurrence of an Event of Default under the Loan Agreement, the Beneficiary may apply in any order as the Beneficiary shall determine in its sole discretion, any Funds held by the Beneficiary at the time of application to pay taxes and assessments which are then or will thereafter become due or as a credit against the Indebtedness Secured Hereby. Upon payment in full of all Indebtedness Secured Hereby, the Beneficiary shall promptly refund to the Grantor any Funds held by the Beneficiary.

## ARTICLE II.

### INSURANCE, CONDEMNATION AND USE OF PROCEEDS

SECTION 2.1. INSURANCE. Until the Indebtedness Secured Hereby has been paid in full, the Grantor shall obtain and maintain the following:

(1) The Grantor shall keep the buildings, structures, fixtures and other improvements now existing or hereafter erected on the Land insured against loss by fire, vandalism, and malicious mischief, perils of extended coverage, and such other hazards, casualties and contingencies as may be specified by the Beneficiary, in an amount not less than the greater of (a) the full replacement cost thereof and (b) the full insurable value thereof, which in no event shall be less than the amount of Indebtedness Secured Hereby, and naming the Beneficiary as Beneficiary and loss payee. The Grantor shall also maintain rent loss or business interruption insurance in an amount sufficient to make the required monthly payments under the Note, to pay taxes and insurance and to continue operations during an assumed reconstruction period of one (1) year, naming the Beneficiary and additional loss payee. The Grantor shall also maintain comprehensive general public liability insurance providing for limits of coverage of not less than \$2,000,000 combined single limit coverage, and naming the Beneficiary as an additional insured. The Grantor shall also maintain such insurance as is required by the Loan Agreement.

(2) The Grantor shall also maintain flood insurance in the event the Beneficiary notifies the Grantor that the Federal Emergency Management Agency ("FEMA") has determined that the Collateral Property is located in a flood hazard area. Such insurance must meet FEMA coverage requirements, must name the Beneficiary as loss payee, and must be in an amount equal to the lesser of the

Deed of Trust Amount or the maximum insurance available under the National Flood Insurance Program. The Grantor understands and agrees that even though the Collateral Property may not be currently located within a FEMA designated flood hazard area or that the community in which the Collateral Property is located does not currently participate in the federal flood insurance program, this may change in the future. In the event of the change of such designation, the Grantor agrees to obtain the flood insurance required above within forty-five (45) days after receipt of notice thereof from the Beneficiary. The Grantor shall reimburse the Beneficiary for all costs and expenses incurred by the Beneficiary in ascertaining from time to time whether the Collateral Property is located in a flood hazard area.

(3) All insurance shall be carried in companies licensed to do business in the State of Oregon and approved by the Beneficiary and the policies and renewals thereof shall (i) contain a waiver of defense based on coinsurance, (ii) be constantly assigned and pledged to and held by the Beneficiary as additional security for the Indebtedness Secured Hereby, (iii) have attached thereto loss-payable clauses in favor of and in form acceptable to the Beneficiary, and (iv) provide that the Beneficiary shall receive at least thirty (30) days' prior written notice of cancellation or any substantial modification of the policy. The Grantor shall provide the Beneficiary with written evidence acceptable to the Beneficiary of all such insurance on the date hereof and prior to each renewal date of such policies of insurance. In default thereof, the Beneficiary may effect any insurance required to be maintained by the Grantor pursuant to this Section 2.1 and the amount paid therefor shall become immediately due and payable with interest at a rate equal to the greater of (i) eighteen percent (18%) per annum, or (ii) the rate of interest then in effect under the Note or, if such rate is illegal or usurious, at the maximum rate permitted by law, and shall be secured by this Deed of Trust. The Grantor acknowledges that any insurance obtained by the Beneficiary hereunder may be more expensive than the insurance which could be obtained by the Grantor and that such coverage may not be as inclusive as the coverage obtained by the Grantor due to the fact that it may not include contents coverage or liability coverage. In the event of loss or damage to the Collateral Property, the Grantor will give immediate written notice thereof to the Beneficiary, who may make proof of loss or damage if not made promptly by the Grantor. The Grantor hereby authorizes the Beneficiary to settle and compromise all claims on such policies and hereby authorizes and directs each insurance company concerned to make payment for any such loss to the Grantor and the Beneficiary jointly. In the event of foreclosure of this Deed of Trust, all right, title and interest of the Grantor in and to any property insurance policies then in force shall pass to the purchaser at the foreclosure sale.

The following warning is given pursuant to ORS 746.201:

**WARNING**

Unless you (Grantor) provide us (Beneficiary) 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.

**SECTION 2.2. CONDEMNATION.** The Grantor shall give the Beneficiary immediate written notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Collateral Property or any easement therein or appurtenance thereof. If all or any part of the Collateral Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking, acquisition or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to the Beneficiary, who is empowered to collect and receive the same and to give proper receipts therefor in the name of the Grantor and the same shall be paid forthwith to the Beneficiary, to be applied to the Indebtedness Secured Hereby, and any excess shall be paid to the Grantor.

**SECTION 2.3. THE GRANTORS TO REPAIR, REPLACE, REBUILD OR RESTORE.** If any Indebtedness Secured Hereby is outstanding when all or any part of the Collateral Property is destroyed or damaged, unless the Beneficiary elects, at its option, which option is hereby irrevocably granted by the Grantor to the Beneficiary, to apply such proceeds as a prepayment of the Note:

- (1) the Grantor shall either prepay the Note in full or proceed promptly, subject to the provisions of subsection (2) of this Section 2.3, to replace, repair, rebuild and restore the Collateral Property to substantially the same condition as existed before the taking or event causing the damage or destruction;

(2) all proceeds of any insurance claim shall be paid directly to the Beneficiary. The Beneficiary shall apply the proceeds, less such sum, if any, required for payment of all expenses incurred in collecting the same ("Net Proceeds"), to payment of the costs of repair, replacement, rebuilding or restoration of the Collateral Property upon compliance with such construction and disbursement terms as the Beneficiary may deem reasonably necessary, including deposit by the Grantor with the Beneficiary of such funds of the Grantor as may be required to insure payment of all costs of rebuilding, restoration, repair or replacement. If such deposit is not made when requested by the Beneficiary, or if an Event of Default occurs while the Beneficiary is retaining the Net Proceeds, the Beneficiary may apply the Net Proceeds to the Indebtedness Secured Hereby. The balance of the Net Proceeds remaining after payment of all costs of any repair, rebuilding, replacement or restoration of the Collateral Property shall be applied as a prepayment of the Indebtedness Secured Hereby, and any excess shall be paid to the Grantor; and

(3) the Grantor shall not, by reason of the payment of any costs of repair, rebuilding, replacement or restoration, be entitled to any reimbursement from the Beneficiary or any abatement or diminution of the amounts payable under the Note, the Loan Agreement or on any other Indebtedness Secured Hereby.

### ARTICLE III.

#### REMEDIES

SECTION 3.1. REMEDIES. Upon the occurrence of an Event of Default or at any time thereafter, the Beneficiary may, at its option, exercise any and all of the following rights and remedies (and any other rights and remedies available to it under applicable law or any document related hereto):

(1) the Beneficiary shall be entitled to seek immediate appointment of a receiver for the Collateral Property; and

(2) the Beneficiary may foreclose this Deed of Trust by action under any applicable provision of law in which case the Collateral Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; and

(3) Sell for cash or upon credit the Collateral Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; and

(4) the Beneficiary may exercise any of the remedies made available to a secured party under the Uniform Commercial Code in effect in the State of

Oregon, or other applicable law, with respect to any of the Collateral Property which constitutes personal property, including without limitation the right to take possession thereof, proceeding without judicial process or by judicial process (without a prior hearing or notice thereof, which the Grantor hereby waives), and the right to sell, lease or otherwise dispose of or use any or all of such personal property. The Beneficiary may require the Grantor to assemble such personal property and make it available to the Beneficiary at a place designated by the Beneficiary which is reasonably convenient to both the Grantor and the Beneficiary. If notice to the Grantor of any intended disposition of any of the Collateral Property constituting personal property or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given (in the manner specified in Section 4.2 hereof) at least ten (10) calendar days prior to the date of intended disposition or other action.

In the event of a sale under this Deed of Trust, whether by virtue of judicial proceedings or otherwise, the Collateral Property may, at the option of the Beneficiary, be sold as one parcel and as an entirety or in such parcels, manner and order as the Beneficiary in its sole discretion may elect.

**SECTION 3.2. PURCHASE OF COLLATERAL PROPERTY.** In case of any sale of the Collateral Property pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Deed of Trust, the Beneficiary, its successors and assigns, may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Note and any claims for interest, late charges and prepayment premiums matured and unpaid thereon, together with any other Indebtedness Secured Hereby, if any, in order that there may be credited as paid on the purchase price the sum, or any part thereof, then due under the Note, including principal thereof and interest, late charges and prepayment premiums, if any, thereon, and any other Indebtedness Secured Hereby.

**SECTION 3.3. FORECLOSURE BY POWER OF SALE.** If Beneficiary elects to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with the Trustee this Deed of Trust, the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded and given all notices required by law. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property at the time and place of sale fixed by it in said Notice of Sale either as a whole, or in separate lots or parcels as Trustee shall deem expedient, unless Beneficiary specifies certain terms and conditions that are permitted by applicable law, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. The Trustee may postpone any sale by public announcement at the time and place noticed for the sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters

or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation, Grantor, Trustee or Beneficiary, may purchase at such sale.

**SECTION 3.4. ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.**

Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust, or a certified copy thereof, for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any other obligation, Trustee may, without liability therefor and without notice: (a) reconvey all or any part of the Property; (b) consent to the making of any map or plat of the Collateral Property; (c) join in granting any easement on the Collateral Property; (d) join in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Nothing contained in the immediately preceding sentence shall be construed to limit, impair or otherwise affect the rights of Trustee in any respect. Trustee is not obligated to notify any party hereto of a 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 brought by Trustee.

**SECTION 3.5. SUBSTITUTION OF TRUSTEE.** Beneficiary may at any time, and from time to time, and without notice, replace and substitute a new trustee in place of the existing Trustee under this Deed of Trust, in the manner provided for under, and as allowed by, current Oregon law.

**SECTION 3.6. RECONVEYANCE BY TRUSTEE.** Upon written request of Beneficiary stating that all Indebtedness Secured Hereby has been paid and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

**ARTICLE IV.**

**MISCELLANEOUS**

**SECTION 4.1. SUCCESSORS AND ASSIGNS.** The covenants and agreements contained herein, including, without limitation, the provision of Section 1.8 hereof, shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the Grantor and the Beneficiary, including among the Grantor's assigns any purchasers or transferees of the Collateral Property.

**SECTION 4.2. NOTICES.** Any notice, request, demand or other communication permitted or required hereunder shall be deemed duly given if delivered or mailed postage prepaid, certified or registered, addressed to the address of such party on page 2 of this Deed of Trust.

**SECTION 4.3. HEADINGS.** The headings of the sections contained herein are for convenience only and are not to be construed to be a part of or limit or affect the terms hereof.



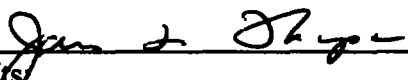
**SECTION 4.4. EXPENSES.** The Grantor shall reimburse the Beneficiary and any participant, upon demand, for all costs and expenses, including without limitation attorneys' fees, appraisal fees, survey fees, closing charges, documentary or tax stamps, recording and filing fees, insurance premiums and service charges, paid or incurred by the Beneficiary in connection with (i) the preparation, negotiation, approval, execution and delivery of the Note, the Loan Agreement, this Deed of Trust and any other documents and instruments related hereto or thereto; (ii) the negotiation of any amendments or modifications to any of the foregoing documents, instruments or agreements and the preparation of any and all documents necessary or desirable to effect such amendments or modifications; and (iii) the enforcement by the Beneficiary during the term hereof or thereafter of any of the rights or remedies of the Beneficiary or any participant hereunder or under any of the foregoing documents, instruments or agreements, including without limitation costs and expenses of collection, whether or not suit is filed with respect thereto and whether such costs are paid or incurred, or to be paid or incurred, prior to or after entry of judgment.

**SECTION 4.5. DEFINITIONS.** As used herein, the term "Event of Default" shall have the meaning assigned to such term in the Loan Agreement.

**SECTION 4.6. COMMERCIAL TRUST DEED.** This Deed of Trust is a commercial trust deed and is not a residential trust deed, as the phrase "residential trust deed" is defined in ORS 86.705, and the provisions of ORS 86.705 through 86.795 applicable to the foreclosure of commercial trust deeds shall apply to this Deed of Trust at the option of Beneficiary.

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

JAMES L. THOMPSON FAMILY  
LIMITED PARTNERSHIP

By:   
Its: \_\_\_\_\_

85296

STATE OF ARIZONA )  
 ) ss.  
County of MARICOPA )

On this 12 day of November, 2003, before me MARY F. TRAHAN, personally appeared JAMES L. THOMPSON known or identified to me (or proved to me on the oath of \_\_\_\_\_) to be the General Partner of JAMES L. THOMPSON FAMILY LIMITED PARTNERSHIP, the limited partnership that executed the instrument or the person who executed the instrument on behalf of said limited partnership, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Mary F. Trahan  
NOTARY PUBLIC FOR ~~OREGON~~ ARIZONA  
Residing at SCOTTSDALE, AZ 85250  
My Commission Expires 3-5-2007

3231-458  
2059410v2

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

**85297**

**PARCEL 1**

A tract of land situate in Lot 4, Block 6, TRACT 1080, WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, described as follows:

Beginning at a point on the East line of said Lot 4 which bears North 0 degrees 04' 50" East a distance of 51.29 feet from the iron pin marking the Southeast corner of said Lot 4; thence West a distance of 249.36 feet to a point; thence North 0 degrees 09' 45" East a distance of 379.06 feet, more or less, to the North line of said Lot 4; thence South 89 degrees 55' 10" East a distance of 248.82 feet to the iron pin marking the Northeast corner of said Lot 4; thence South 0 degrees 04' 50" West along said East line of Lot 4 a distance of 378.71 feet, more or less, to the point of beginning.  
(Affects 3909-004DD, Tax Lot 300)

**PARCEL 2**

A tract of land situated in Lots 4 and 5, Block 6, Tract 1080, WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at the East corner common to said Lots 4 and 5; thence South 00 degrees 04' 50" West, along the Westerly line of Washburn Way, 123.71 feet; thence West 249.61 feet; thence North 00 degrees 09' 45" East 175.00 feet; thence East 249.36 feet to said Westerly line of Washburn Way; thence South 00 degrees 04' 50" West 51.29 feet to the point of beginning, containing 1.00 acre (43,600 square feet) with bearings based on the subdivision plat of said Tract 1080, WASHBURN PARK.  
(Affects 3909-004DD, portion Tax Lot 400)

**PARCEL 3**

Lot 3, Block 5, Tract 1080, WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.  
(Affects 3909-003CC, Tax Lots 200 and 201)

**PARCEL 4**

The Southerly 220 feet of Lot 3 in Block 6 of TRACT 1080, WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.  
(Affects 3909-004DD, Tax Lot 1000)

**PARCEL 5**

A tract of land situated in Lot 5, Block 6, Tract 1080, WASHBURN PARK, a duly recorded subdivision, Klamath County, Oregon, more particularly described as follows:

**85298**

Commencing at the Southeast corner of said Lot 5; thence West along the North line of Hilyard Avenue, 194.04 feet; thence North 00 degrees 09' 45" East, 50.00 feet; thence West, 50.00 feet; thence North 00 degrees 09' 45", 354.06 feet to a point on the North line of said Lot 5 and being the True Point of Beginning of this description; thence North 89 degrees 55' 10" West, 210.57 feet to the Northwest corner of Lot 5; thence South 00 ° 04' 50" West, 124.36 feet along the West line of said Lot 5; thence leaving the West line of said Lot 5, East, 210.39 feet; thence North 00 degrees 09' 45" East, 124.06 feet to the True Point of Beginning, with bearings based on the subdivision plat of said Tract 1080, WASHBURN PARK.

(Affects 3909-004DD, portion Tax Lot 400)