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**AFTER RECORDING  
RETURN TO:**

The Nature Conservancy  
Legal Department  
217 Pine Street, Suite 1100  
Seattle, WA 98101

Vol M04 Page 26519

State of Oregon, County of Klamath  
Recorded 04/30/2004 2:25 p m  
Vol M04 Pg 26519-31  
Linda Smith, County Clerk  
Fee \$ 96.00 # of Pgs 16

Attention: Division Attorney

**STATUTORY NOTICE:**

The name and address of the entity holding a lien or other interest created by this instrument is set forth below and the tax account number(s) of the property subject to the lien or in which the interest is created is:

Tax Account Nos. 3607-A-500-200; 3607-A-500-600; 3607-A-500-700; 3607-A-500-1000; 3607-A-500-1600; 3607-A-500-1700; 3607-A-800-100; 3607-A-800-600; 3607-A-900-600.

**TRUST DEED**

THIS TRUST DEED ("Trust Deed") is made on April 29, 2004, among MELINDA CAUVIN, a single woman, and LOREN C. WALCH, a single man, collectively as grantor and debtor (collectively, "Grantor"), whose address is 4745 Fern Valley Road, Medford, Oregon 97504, to FIRST AMERICAN TITLE INSURANCE COMPANY OF OREGON, as trustee ("Trustee"), whose address is 422 Main Street, Klamath Falls, Oregon 97601, for the benefit of THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, as beneficiary and secured party ("Beneficiary"), whose address is 4245 North Fairfax Drive, #100, Arlington, VA 22203.

FOR VALUE RECEIVED, Grantor conveys to Trustee in trust, with right of entry and power of sale, the real property located in Klamath County, Oregon, comprised of 499.19 acres, more or less, more particularly described as Parcel Two of Land Partition 30-02, situate in Section 5, Section 8, Section 16 and Section 17 of Township 36 South, Range 7 East of the Willamette Meridian.

1 TRUST DEED

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TOGETHER WITH, all and singular, the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining (being hereinafter sometimes collectively referred to as the "Real Property"); all personal property (including inventory, equipment, fixtures, accounts, contract rights, financial assets, intangible assets and each and every other item of personal property) located at, used in connection with, or originally obtained by Grantor for the operation of, the Real Property, whether now existing or hereinafter acquired (all of the foregoing being hereinafter sometimes collectively referred to as the "Personal Property"); all buildings, structures and improvements now or at any time hereafter erected, constructed and situated upon the Real Property or any part thereof (all of the foregoing being hereinafter sometimes collectively referred to as the "Improvements"); rents, issues and profits thereof now or hereafter attached to or used in connection with the Real Property, all of the foregoing including the Real Property, Personal Property and Improvements being hereinafter sometimes collectively referred to as the "Property."

GRANTOR IS INDEBTED to Beneficiary in the principal amount of EIGHT HUNDRED THOUSAND Dollars (\$800,000), as evidenced by a promissory note dated the same as this Trust Deed, under which the final payment of principal and interest will be due on the date four years from the date hereof. The promissory note, and any note or notes given in renewal, modification, substitution, or in addition to the promissory note originally issued, is referred to herein as the "Note." All payments on the Note are to be in U.S. funds.

The term "Indebtedness" as used in this Trust Deed shall mean (a) the principal, interest, late charges and other amounts set forth in the Note, (b) any future amounts that Beneficiary may in its discretion loan to Grantor, with interest thereon, to the extent the evidence of such future indebtedness indicates that the future indebtedness is to be secured by this Trust Deed and (c) any amounts expended or advanced by Beneficiary to discharge obligations of Grantor or expenses incurred by Beneficiary or Trustee to enforce obligations of Grantor, as permitted under this Trust Deed or under the Note, with interest thereon as provided below.

This Trust Deed is given to secure payment of the Indebtedness and performance of all obligations of Grantor under this Trust Deed. This Trust Deed is given and accepted on the following terms and conditions which Grantor shall promptly and faithfully observe and perform:

#### **1. Payment and Performance**

Grantor shall pay to Beneficiary promptly when due all amounts due under the Note (including, without limitation, late payment charges, and other charges), this Trust Deed, and any other document evidencing or securing the loan from Beneficiary to Grantor, payment of which is secured by this Trust Deed, and shall strictly perform all obligations imposed upon Grantor by this Trust Deed.

#### **2. Taxes and Special Assessments**

### **2 TRUST DEED**

Until the Indebtedness is paid in full, Grantor shall pay all property taxes and special assessments affecting the Property (collectively, the "Charges") as and when due, and Grantor shall promptly upon request from Beneficiary furnish to Beneficiary original receipts evidencing such payments or other evidence of payment satisfactory to Beneficiary. With respect to property taxes, payment when due, for purposes of this paragraph, shall mean payment in full by November 15 of each year or, with Beneficiary's prior written consent, payment in installments as permitted by applicable law at Grantor's election. With respect to special assessments, payment when due, for purposes of this paragraph, shall mean payment in full when the Property is assessed rather than in installments as would otherwise be permitted by law. Beneficiary shall have the right to contract with a tax service to verify payment of real property taxes and charge Grantor with the cost thereof.

### **3. Contests**

Grantor may, in good faith, contest, by proper legal proceedings, and at its own expense, with legal counsel acceptable to Beneficiary, the validity or amount of any Charges, provided that if Grantor has not paid such Charges, Grantor shall either post a bond with Beneficiary in form and substance satisfactory to Beneficiary (in its sole discretion) or deposit with Beneficiary a sum that shall be at least ten percent (10%) greater than the amount contested, and, also, from time to time, on demand of Beneficiary, such additional sums as may be reasonably required to cover interest, penalties and attorney fees accrued or that may accrue on such item or items, and Beneficiary may upon reasonable notice to Grantor pay such contested item or items out of any sum so deposited in case of undue delay in the prosecution of such proceedings, or if the protection of the Property or of Beneficiary's interest therein shall, in Beneficiary's reasonable judgment, require such payment.

### **4. Default Interest**

If the Note is not paid on the Maturity Date defined in the Note, then the principal balance thereunder (together with any accrued but unpaid interest and any other amounts past due) shall bear interest at the default interest rate of five percent (5%) above the interest rate set forth in the Note; said default interest rate shall apply to all amounts due pursuant to this Trust Deed in the event of Grantor's default hereunder. Also, in the event of a default hereunder (subject to any requirements of notice), and if Beneficiary declares the entire Indebtedness immediately due and payable, the balance due shall bear interest at the default interest rate. References in this Trust Deed to the "default interest rate" shall mean interest five percent (5%) above the Contract Interest Rate defined in the Note.

Grantor and Beneficiary acknowledge that it is difficult to estimate the actual loss and damage that Beneficiary will suffer if Grantor fails to make any installment payment when due or pay the full balance of the Indebtedness at maturity (or following an acceleration). Therefore, Grantor and Beneficiary specifically agree that the amount of the default interest rate

## **3 TRUST DEED**

is a reasonable advance estimate of Beneficiary's actual loss and is not a penalty for late payment.

**5. Possession and Maintenance of the Property**

(a) Until default, Grantor may remain in possession and control of the Property.

(b) Grantor agrees to maintain the Property in a rentable and tenantable condition and state of repair, to neither commit nor suffer any waste, to promptly comply with all requirements of federal, state and municipal authorities, and all other laws, ordinances, regulations, covenants, conditions and restrictions respecting the Property or the use thereof, and to pay all fees or charges of any kind in connection therewith. Beneficiary may recover as damages for any breach of this covenant and agreement the amount it would cost to put the Property in the condition called for herein. Proof of impairment of security shall be unnecessary in any suit or proceeding under this paragraph or any other provision of this Trust Deed or under any other documents which this Trust Deed secures.

(c) Grantor shall not conduct or permit any nuisance to be maintained on the Property.

(d) Grantor shall do all other acts, in addition to those set forth in this Trust Deed, that from the character and use of the Property are reasonably necessary to protect and preserve the security.

**6. Restoration**

Subject to the provisions dealing with condemnation in paragraph 11, Grantor covenants and agrees to restore promptly and in a good, workmanlike manner any Improvements that may be damaged or destroyed, and to pay when due all costs incurred in connection with such restoration.

**7. Alteration and Removal of Property**

None of the Improvements shall be structurally altered, removed or demolished without Beneficiary's prior written consent, which consent shall not be unreasonably withheld, nor shall any fixture or item of personal property constituting a part of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability and value owned by Grantor free and clear of any lien or security interest except such as may be approved in writing by Beneficiary.

**8. Liens**

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Grantor shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens, except for any lien of taxes and assessments not due. Grantor shall defend, indemnify and hold Beneficiary harmless from any claims or liens filed against the Property. If a construction lien is filed against the Property, Grantor agrees to cause such lien to be replaced by a bond (thereby freeing the Property from the lien) as provided in ORS 87.076 *et seq.* (as now existing or hereafter amended).

#### **9. Required Insurance and Terms of Insurance Policies.**

(a) During the term of this Trust Deed, Grantor at its sole cost and expense, must provide insurance policies and certificates of insurance satisfactory to Beneficiary as to amounts, types of coverage and the companies underwriting these coverages. In no event will such policies be terminated or otherwise allowed to lapse. Grantor shall be responsible for Grantor's own deductibles. Grantor shall also pay for any insurance, or any increase of policy limits, not described or required to be maintained by Grantor in the Trust Deed which Grantor requires for its own protection, for compliance with government statutes or for any other reason. Grantor's insurance shall be primary and without contribution from any insurance procured by Beneficiary.

Policies of insurance shall be delivered to Beneficiary in accordance with the following requirements:

(i) All Risk property insurance on the Improvements and the Personal Property (i) in an amount equal to the maximum insurable replacement value obtainable for the Improvements and Personal Property, which for purposes of this paragraph 9 shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation and with a Replacement Cost Endorsement; (ii) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions; and (iii) providing for no deductible in excess of \$10,000. The Full Replacement Cost shall be determined from time to time by an appraiser or contractor designated and paid by Grantor and approved by Beneficiary or by an engineer or appraiser in the regular employ of the insurer.

(ii) General Liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (i) to be in an amount not less than One Million Dollars (\$1,000,000).

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(b) Beneficiary's interest must be clearly stated by endorsement in the insurance policies described in this paragraph 9 as follows:

(i) The policies of insurance referenced in subparagraph (a) of this paragraph 9 shall identify Beneficiary under a Standard Mortgagee Clause (noncontributory) endorsement.

(iii) All of the policies referred to in paragraph 9 shall provide for at least thirty (30) days' written notice to Beneficiary in the event of policy cancellation and/or material change.

(c) All the insurance companies must be authorized to do business in the state of Oregon and be approved by Beneficiary. The insurance companies must have a general policy rating of A or better and a financial class of X or better by A.M. Best Company, Inc. and a claims paying ability of BBB or better according to Standard & Poors.

(d) Certified copies of the policies, and any endorsements, shall be made available for inspection by Beneficiary upon request. If any policy is canceled before the Indebtedness is satisfied, and Grantor fails to immediately procure replacement insurance, Beneficiary reserves the right but shall not have the obligation immediately to procure replacement insurance at Grantor's cost.

(e) Grantor shall be required during the term of the loan to continue to provide Beneficiary with original renewal policies or replacements of the insurance policies referenced in subparagraph 9(a). Beneficiary may accept certificates of insurance evidencing insurance policies referenced in subparagraph 9(a) instead of requiring the actual policies. Such certificates of insurance shall be an ACORD 27 form of certificate. Beneficiary shall be provided with renewal certificates of insurance, or binders, not less than fifteen (15) days prior to each expiration. The failure of Grantor to maintain the insurance required under this paragraph 9 shall not constitute a waiver of Grantor's obligation to fulfill these requirements.

(f) All binders, policies, endorsements, certificates, and cancellation notices are to be sent to the Beneficiary at the address set forth on page 1 until changed by notice from Beneficiary.

**WARNING: UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR CONTRACT OR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY COVERAGE ELSEWHERE.**

#### **6 TRUST DEED**

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. (Each reference to "you" and "your" shall refer to Grantor and each reference to "us" and "we" shall refer to Beneficiary.)

#### **10. Hazardous Materials**

(a) Grantor shall indemnify and hold harmless Beneficiary from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims (collectively, "Claims") arising out of or relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property of any hazardous material (including, without limitation, any Claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "superfund" or "super lien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous material), and occurring after the date of this Trust Deed.

(b) For purposes of this paragraph 10, the term "hazardous material" shall mean any and all hazardous or toxic substances, wastes or materials as listed or defined by any federal, state or local statute, regulation or ordinance pertaining to the protection of human health or the environment.

### **11. Condemnation or Casualty**

All compensation, awards, damages, rights of action, and proceeds, including the proceeds of any insurance affecting the Property, arising out of any taking or damage by reason of any public or private improvement (including change of grade), condemnation proceeding, zoning change or conveyance in lieu thereof, fire, earthquake or other casualty (collectively the "Proceeds"), are hereby assigned to Beneficiary. Beneficiary shall have the right, if it so elects, to require that all Proceeds be applied against the Indebtedness rather than releasing the Proceeds to Grantor.

### **12. Defense of Actions**

Grantor agrees to appear and defend any suit, action or proceeding that might affect the value of this Trust Deed or the security itself or the rights and powers of Beneficiary or Trustee. Beneficiary may appear in and defend any such action should Beneficiary elect to do so. Grantor will at all times indemnify and on demand reimburse Beneficiary for any and all loss, damage, expense or costs, including the cost of evidence of title, expert witness fees and attorney fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Trust Deed with interest at the default interest rate.

### **13. Beneficiary's Right to Cure Default**

Should Grantor fail to make any payment to other than Beneficiary or to do any act as herein provided, then Beneficiary, without obligation to do so, with notice to or demand upon Grantor and without releasing Grantor from any obligation hereunder, may make or do the same in such a manner and to such extent as it may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon the Property for such purposes, to pay, purchase, contest, or compromise any encumbrance, charge or lien, that in the judgment of Beneficiary appears to be prior or superior hereto, and, in exercising any such power, to incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefore, including cost of evidence of title, expert witness fees and attorneys fees.

### **14. Repayment of Advances**

Upon written notice, Grantor shall repay immediately all sums expended or advanced under any provision of this Trust Deed by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the default interest rate until paid, and the repayment thereof shall be secured by this Trust Deed. Grantor agrees to pay, in addition to the amount of such expenses or advances, all costs and expenses incurred by Beneficiary in collecting any such amounts, together with a reasonable attorneys fee.

### **15. Security and Zoning**

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Grantor shall not, without first obtaining Beneficiary's written consent, which shall not be unreasonably withheld, change the general nature of the occupancy of the Property or initiate or acquiesce in any zoning reclassification. Grantor shall not cause the Real Property to be partitioned, subdivided or its lot lines adjusted without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld.

#### **16. Junior Financing**

Without limiting the other provisions of this Trust Deed restricting encumbrances on the Property, it is agreed that there shall be no financing junior to this Trust Deed on the Property without the prior written approval of Beneficiary, which approval shall not be unreasonably withheld. Junior financing so approved shall be referred to herein as the "Approved Junior Financing". While any of the Indebtedness secured hereby is outstanding the Property shall not be encumbered by any lien other than the lien of this Trust Deed (except as otherwise expressly provided in this Trust Deed) and any Approved Junior Financing.

#### **17. Substitution of Trustee**

Beneficiary may from time to time appoint a successor or successors to any Trustee named herein or to any successor Trustee appointed hereunder. Upon such appointment, and without conveyance to the successor Trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the mortgage records of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor Trustee.

#### **18. Transfer or Further Encumbrance by Grantor**

(a) If, while any Indebtedness secured hereby is outstanding, Grantor, without the prior written approval of Beneficiary, which approval may be granted or withheld in Beneficiary's sole discretion, (i) sells, assigns, transfers or otherwise ceases to own the Property or any interest therein or (ii) further encumbers the Property or any part thereof or any interest therein (except for Approved Junior Financing), then Beneficiary may, at its option, accelerate the Indebtedness secured hereby and declare a default hereunder. For the purpose of this subparagraph (a), a sale by way of a land sale contract or a lease containing an option to purchase shall constitute a prohibited transfer under this subparagraph (a).

(b) Consent by Beneficiary to one transfer shall not constitute a consent to other transfers or a waiver of this section. No transfer by Grantor shall relieve Grantor or any guarantor of Grantor of liability for payment of the Indebtedness. Following a transfer, Beneficiary may agree to any extension of time for payment or modification of the terms of this Trust Deed or the Note or waive any right or remedy under this Trust Deed or the Note without

relieving Grantor or any guarantor of Grantor from liability. Grantor waives notice, presentment and protest with respect to the Indebtedness.

**19. Security Agreement; Security Interest and Fixture Filing**

(a) This instrument shall constitute a security agreement and fixture filing with respect to the personal property and fixtures included in the description of the Property.

(b) Beneficiary may file financing statements listing Grantor as debtor and take whatever other action Beneficiary deems prudent to perfect and continue Beneficiary's security interest in such personal property and fixtures. Beneficiary may file copies or reproductions of this Trust Deed as a financing statement at any time and without further authorization from Grantor. Grantor will reimburse Beneficiary for all filing or recording fees incurred in perfecting or continuing this security interest.

**20. Reconveyance on Full Performance**

If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Trust Deed, Beneficiary shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statements on file. The reconveyance and filing fees shall be paid by Grantor.

**21. Default**

The following shall constitute events of default:

(a) If Grantor shall fail to pay any sum due under the Note within ten (10) days commencing with the date it is due;

(b) If Grantor shall fail to pay any other amount required to be paid by Grantor pursuant to this Trust Deed or pursuant to any of the other documents connected therewith within ten (10) days commencing with the date it is due, including without limitation, taxes, assessments, insurance premiums and any other payment necessary to prevent filing or imposition of any liens;

(c) If Grantor defaults beyond applicable grace periods in the payment of any other indebtedness, including but not limited to any Approved Junior Financing, secured by all or any portion of the Property.

(d) If Grantor encumbers the Property or if Grantor transfers the Property without the written approval of Beneficiary as set forth in paragraph 18;

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(e) If Grantor shall become insolvent or shall admit in writing its inability to meet its debts as they become due, or if Grantor shall file a voluntary petition in bankruptcy, or make an assignment (or grant a security interest in all or a substantial part of its assets) for the benefit of creditors or consent to the appointment of a receiver or trustee for any portion of the Property or all or a substantial part of its assets, or file a petition, answer or other instrument seeking or acquiescing in the arrangements of its debts, or if a petition is filed against Grantor under any of the chapters of the federal bankruptcy code and is not discharged within thirty (30) days of such filing, or if Grantor seeks any other relief under the federal bankruptcy code or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof;

(f) If a decree or order of court having jurisdiction shall have been entered (i) adjudging Grantor to be bankrupt or insolvent, or (ii) approving a petition by one other than Grantor seeking any relief whatsoever involving Grantor or any portion of the Property under the federal bankruptcy code or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof, or (iii) appointing a receiver or trustee or assignee in bankruptcy or insolvency of Grantor or of any of its Property, or (iv) directing the winding up or liquidation of the affairs of Grantor, and such decree or order shall have continued undischarged or unstayed for a period of thirty (30) days;

(g) If any representation or warranty of Grantor contained herein shall be untrue in any material respect; or

(h) If Grantor shall default in the due observance or performance of any other covenant, term, condition or agreement contained in this Trust Deed and not mentioned above, and Grantor shall fail to cure the same within thirty (30) days after written notice shall have been given to Grantor by Beneficiary specifying such default and requiring that the same be cured or, if the default cannot be cured within such thirty (30) day period, if Grantor shall fail within such time to commence and pursue curative action with reasonable diligence and thereafter complete the cure within ninety (90) days.

## **22. Rights and Remedies on Default**

(a) Upon the occurrence of any event of default and at any time thereafter, Trustee or Beneficiary may exercise any one or more of the following rights and remedies which remedies shall be cumulative and in addition to any other remedies provided by law:

(i) Beneficiary may declare the entire Indebtedness immediately due and payable.

(ii) Trustee, at Beneficiary's direction, shall have the right to foreclose by advertisement and sale, or Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law. In any such action, Beneficiary shall be entitled to

obtain a deficiency judgment for any amount by which the Indebtedness secured hereby exceeds the sale proceeds.

(iii) Notwithstanding clause (ii), Beneficiary shall have the right, at its sole option, to waive its rights under this Trust Deed and pursue an independent action upon the Note. The Note and Trust Deed are separate and distinct instruments separately or collectively enforceable in accordance with their terms.

(iv) Trustee and Beneficiary shall have any other right or remedy provided in this Trust Deed, the Note, or any other instrument delivered by Grantor in connection therewith, or available at law, in equity, or otherwise.

(v) Beneficiary may at any time, without notice, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of the security for the Indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue or otherwise collect the rents, revenues and profits, if any, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any Indebtedness secured hereby, and in such order as Beneficiary may determine.

(b) In exercising its rights and remedies, Trustee or Beneficiary may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Beneficiary may bid at any public sale on all or any portion of the Property.

(c) A waiver by either party of a breach of a provision of this Trust Deed shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. An election by Beneficiary to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Beneficiary under this Trust Deed are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Grantor shall not affect Beneficiary's right to declare a default and exercise its remedies under this Trust Deed.

(d) If suit or action is instituted to enforce or interpret any of the terms of this Trust Deed, the prevailing party shall be entitled to recover its reasonable attorney fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law. Whether or not any court action is involved, all reasonable expenses incurred by Beneficiary that are necessary at any time in Beneficiary's opinion for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the default interest rate. Expenses covered by this paragraph include (without limitation) the cost of searching records, discovery deposition costs, obtaining title reports, surveyors' reports, attorney opinions, title insurance and fees for the Trustee.

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(e) If Grantor meets certain conditions, Grantor shall have the right to have enforcement of this Trust Deed discontinued at any time prior to five (5) days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Trust Deed. Those conditions are that Grantor (i) pay Beneficiary all sums which then would be due under the Trust Deed and the Note had no acceleration occurred; (ii) cure any default of any other covenant or agreement; (iii) pay all expenses incurred in enforcing this Trust Deed, including, but not limited to, reasonable attorneys' fees and Trustee's fees; and (iv) take such action as Beneficiary may reasonably require to assure that the lien of this Trust Deed, Beneficiary's rights in the Property and Grantor's obligation to pay the sums secured by this Trust Deed shall continue unchanged. Upon reinstatement by Grantor, this Trust Deed and the obligations secured hereby shall remain fully effective as if no acceleration had occurred.

(f) If the Trustee forecloses by advertisement and sale, as provided above, Trustee shall apply the proceeds of sale to the payment of (i) expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (ii) to the Indebtedness secured by this Trust Deed, (iii) to all persons having recorded liens subsequent to the interest of the Trustee and the Trust Deed, as their interest may appear in the order of their priority and (iv) the surplus, if any, to the Grantor or to the Grantor's successor in interest entitled to such surplus.

### **23. Miscellaneous**

(a) Time is of the essence of this Trust Deed.

(b) Subject to the limitations stated in this Trust Deed on transfer of Grantor's interest and subject to the provisions of applicable law with respect to successor trustees, this Trust Deed shall be binding upon and inure to the benefit of the parties, including, but not limited to, their successors, assigns, heirs, devisees, legatees, administrators and personal representatives.

(c) Any notice under this Trust Deed shall be in writing and shall be effective when either delivered in person or, if mailed, shall be deemed effective on the third day after deposited as registered or certified mail, postage prepaid, addressed to the party at the address stated in this Trust Deed. Any party may change its address for notices by written notice to the other.

(d) If any of the provisions contained in the Note or this Trust Deed shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions in this Trust Deed and the Note shall not be affected.

(e) This Trust Deed and any of its terms may only be changed, waived, discharged, or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or termination is sought. Any agreement

subsequently made by Grantor or Beneficiary relating to this Trust Deed shall be superior to the rights of the holder of any intervening lien or encumbrance.

(f) The Grantor within ten (10) days after written request from Beneficiary shall furnish a duly acknowledged written statement setting forth the amount of the Indebtedness secured by this Trust Deed, and stating either that no setoffs or defenses exist against the Trust Deed debt, or, if such set-offs or defenses are alleged to exist, the nature thereof.

(g) This Trust Deed shall be governed by the laws of the state of Oregon and all parties consent to the jurisdiction of the courts of the state of Oregon and service of process therein.

(h) Grantor on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights to require a marshaling of assets by Trustee or Beneficiary or to require Trustee or Beneficiary to first resort to the sale of any portion of the Property which might have been retained by Grantor before foreclosing upon and selling any other portion as may be conveyed by Grantor subject to this Trust Deed.

(i) IT IS MUTUALLY AGREED BY GRANTOR AND BENEFICIARY THAT THE RESPECTIVE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS TRUST DEED.

(j) The term "Beneficiary" shall mean the holder and owner, including pledgees, of the Note secured hereby whether or not named as Beneficiary herein. Without affecting the liability of any other person for payment of any obligation mentioned herein and without affecting the lien hereof upon any portion of the Property not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or part of the Property, take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or thereafter, and sell the same or otherwise realize thereon, either before, concurrently with, or after sale hereunder.

(k) This Trust Deed shall be so construed that wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of any gender shall be applicable to all genders and shall likewise be so construed as applicable to and including a partnership or corporation.

(l) Nothing contained in this conveyance or in any other document is intended to create any partnership, joint venture or association between Grantor and Beneficiary, or in any

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way make Beneficiary a co-principal with Grantor with reference to the Property, and any inferences to the contrary are hereby expressly negated.

#### 24. Grantor's Warranty of Title

Grantor covenants and agrees to and with Beneficiary, including Beneficiary's successor in interest, that Grantor is lawfully seized in fee simple of the Property and has a valid, unencumbered title thereto and that Grantor will warrant and forever defend the same against all persons whomsoever. Grantor purchased the Property from Beneficiary pursuant to an Agreement of Sale and Purchase dated November 15, 2001, and amended April 20, 2002 (collectively, the "Agreement"). Grantor represents and warrants to Beneficiary that Beneficiary fulfilled fully and completely all obligations of the seller under the Agreement and that Beneficiary has no continuing obligations to Grantor thereunder.

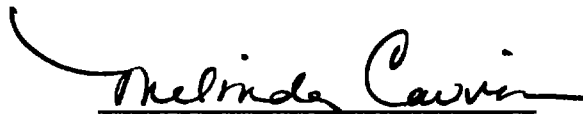
#### 25. Oral Loan Commitments

##### REQUIRED STATEMENT

**UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY US TO BE ENFORCEABLE.**

This statement is given pursuant to Sections 41.580(3)(a) and (b), of the Oregon Revised Statutes.

BY SIGNING BELOW, GRANTOR ACCEPTS AND AGREES TO THE TERMS AND COVENANTS CONTAINED IN THIS TRUST DEED, AND IN ANY RIDER(S) EXECUTED BY GRANTOR AND RECORDED WITH IT.

  
MELINDA CAUVIN

  
LOREN C. WALCH

(acknowledgements on following page)

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26534

STATE OF OREGON           )  
  ) ss.  
County of Klamath

The foregoing instrument was acknowledged before me this 29 day of April, 2004, by MELINDA CAUVIN.

  
\_\_\_\_\_  
Notary Public for Oregon

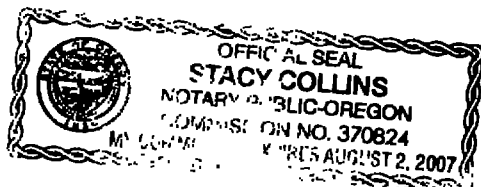
My Commission Expires: 8-2007

STATE OF OREGON           )  
  ) ss.  
County of Klamath

The foregoing instrument was acknowledged before me this 29 day of April, 2004, by LOREN C. WALCH.

  
\_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: 8-2007



16 TRUST DEED

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