

State of Oregon, County of Klamath
Recorded 10/29/04 9:20 a m
Vol M04 Pg 74077-86
Linda Smith, County Clerk
Fee \$ 86.00 # of Pgs 10
500 opa

WHEN RECORDED RETURN TO:

John D. Sorlie
Bryant, Lovlien & Jarvis, PC
591 SW Mill View Way
Bend, OR 97702

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

THIS TRUST DEED is made on September 27, 2004, by Ernst Brothers L.L.C., an Oregon limited liability company, whose mailing address is PO Box 637, Gilchrist, Oregon 97737, "Grantor;" AmeriTitle, whose address is PO Box 5017, Klamath Falls, Oregon 97601, as "Trustee," and Wayne G. Ernst and John S. Ernst, Personal Representatives of the Estate of William L. Ernst, whose mailing address is PO Box 637, Gilchrist, Oregon 97737, as "Beneficiary."

The real property subject to this instrument is described as follows:

See *Exhibit "A"*, attached.

WHEREAS, Beneficiary has entered into a Promissory Note of even date herewith, extending to the Grantor a loan in the amount of \$300,000 (The Promissory Note, as it may be modified, extended, or replaced from time to time, is referred to herein as the "Note"); and

WHEREAS, as a condition to the making of the loan to Grantor, Beneficiary has required, and Grantor has agreed to provide, this Trust Deed;

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Grantor hereby irrevocably grants, bargains, sells, conveys, assigns, and transfers to Trustee in trust for the benefit and security of Beneficiary, with power of sale, all of Grantor's right, title, and interest in and to the Property, together with (1) all buildings and other improvements now or hereafter located thereon, (2) all easements, tenements, hereditaments, and appurtenances relating thereto, (3) all awards for any taking of all or any portion thereof, and (4) all insurance proceeds for any damage thereto (collectively, the "*Trust Property*").

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

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

This Trust Deed, the Note, and all other agreements executed at any time in connection therewith, as they may be amended or supplemented from time to time, are sometimes collectively referred to as the "*Loan Documents*."

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

ARTICLE I
Particular Covenants and Warranties of Grantor

1.01 **OBLIGATIONS SECURED.** This Trust Deed secures the payment of all indebtedness, including but not limited to principal and interest, and the performance of all covenants and obligations of Grantor, under the Note, this Trust Deed, and the other Loan Documents, whether such payment and performance is now due or becomes due in the future (collectively, the "Obligations").

1.02 **PAYMENT AND PERFORMANCE.** Grantor shall pay and perform all of the Obligations when due.

1.03 **PROPERTY.** Grantor warrants that it holds good and merchantable title to the Trust Property, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except the liens of South Valley Bank & Trust ("SVBT") and easements, covenants and restrictions of record. Grantor covenants that it shall forever defend Beneficiary's and Trustee's rights hereunder, and the priority of this Trust Deed against the adverse claims and demands of all persons.

1.04 **FURTHER ASSURANCES.** Grantor shall execute, acknowledge, and deliver, from time to time, such further instruments as Beneficiary or Trustee may require to accomplish the purposes of this Trust Deed.

1.05 **COMPLIANCE WITH LAWS.** Grantor represents, warrants, and covenants that the Trust Property is currently in material compliance with, and will at all times be maintained in material compliance with, all applicable laws, and all covenants, conditions, easements, and restrictions affecting the Trust Property.

1.06 **MAINTENANCE AND IMPROVEMENTS.** Grantor shall maintain the Trust Property, and every portion thereof, in good repair and condition, except for reasonable wear and tear, and shall at Beneficiary's election restore, replace, or rebuild the Trust Property or any part thereof now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01). Grantor shall not commit or suffer any waste or strip of the Trust Property. Nothing contained herein shall restrict or limit in any way the ability of Grantor to develop and improve the Property in accordance with any approved uses or conditionally approved uses therefore.

1.07 **LIENS.** Grantor shall pay when due all claims for labor and materials that, if unpaid, might become a lien on the Trust Property. Grantor shall not create or suffer any lien, security interest, or encumbrance on the Trust Property that may be prior to, or on a parity with, the lien of this Trust Deed, except as specifically provided in Exhibit B attached hereto.

1.08 **IMPOSITIONS.** Grantor shall pay when due all taxes, assessments, fees, and other governmental and nongovernmental charges of every nature now or hereafter assessed against any part of the Trust Property or on the lien or estate of Beneficiary or Trustee therein

(collectively, the "Impositions"); provided, however, that if by law any such Imposition may be paid in installments or contested in good faith, Grantor may pay the same in installments together with accrued interest on the unpaid balance thereof, as they become due, or contest the same in good faith. Grantor shall furnish to Beneficiary promptly on request satisfactory evidence of the payment of all Impositions. Beneficiary is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

1.09 INSURANCE.

(1) ***Property and Other Insurance.*** Grantor shall obtain and maintain during the term of this Trust Deed all-risk property insurance (including flood insurance unless waived by Beneficiary) in an amount not less than the full remaining principal balance of the Note or, if greater, in the amount of the full replacement cost of the Trust Property, without reduction for coinsurance.

(2) ***Insurance Companies and Policies.*** All insurance shall be written by a company or companies reasonably acceptable to Beneficiary; shall contain a long-form mortgagee endorsement in favor of Beneficiary with proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed; shall require 10 days' prior written notice to Beneficiary of cancellation or reduction in coverage; and shall contain a waiver of subrogation. Grantor shall furnish to Beneficiary on request a certificate evidencing the coverage required under this Trust Deed and a copy of each policy.

1.10 CASUALTY/LOSS RESTORATION.

(1) After the occurrence of any casualty to the Trust Property, whether or not covered by insurance, Grantor shall give prompt written notice thereof to Beneficiary. Beneficiary may make proof of loss if it is not made promptly and to Beneficiary's satisfaction by Grantor.

(2) Subject to the rights of any mortgage or trust deed beneficiary as described in Section 7.13, all insurance proceeds with respect to the Trust Property shall be payable to Beneficiary. At Beneficiary's discretion, insurance proceeds may be applied to the Obligations or may be released to Grantor, on such terms and conditions as Beneficiary elects, for restoration of the Trust Property.

1.11 ACTIONS TO PROTECT TRUST PROPERTY; RESERVES.

(1) If Grantor shall fail to pay, perform, or observe any of its covenants hereunder, Beneficiary may, but shall not be required to, take such actions as it deems appropriate to remedy such failure. All sums, including reasonable attorney fees, so expended, or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of Beneficiary's rights hereunder, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Grantor on demand, together with interest thereon at the rate provided in the Note. No payment or other action by Beneficiary under this section shall impair any other right or remedy available to Beneficiary or constitute a waiver of any Event of Default.

(2) If Grantor fails to promptly perform any of its obligations under Section 1.09 of this Trust Deed, Beneficiary may require Grantor thereafter to pay and maintain with Beneficiary reserves for payment of such obligations. In that event, Grantor shall pay to Beneficiary each month a sum estimated by Beneficiary to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions, insurance premiums, or both. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Grantor shall pay any deficiency to Beneficiary on demand. The reserves may be commingled with Beneficiary's other funds. Beneficiary shall credit to Grantor interest on such reserves at the minimum rate required from time to time by applicable law. Beneficiary shall not hold the reserves in trust for Grantor, and Beneficiary shall not be the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

1.12 ESTOPPEL CERTIFICATES. Grantor, within five days of request therefor, shall furnish Trustee and Beneficiary a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against the Obligations secured hereby. If Grantor shall fail to furnish such a statement within the time allowed, Beneficiary shall be authorized, as Grantor's attorney-in-fact, to execute and deliver such statement.

ARTICLE II Condemnation

Should the Trust Property or any part thereof be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any other manner (a "Condemnation"), or should Grantor receive any notice or other information regarding such action, Grantor shall give immediate notice thereof to Beneficiary. Subject to the rights of any mortgagee or trust deed beneficiary as described in Section 7.13, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor ("Condemnation Proceeds") up to the full amount of the Obligations, and may appear in any Condemnation proceeding in its own or Grantor's name and make any settlement in connection therewith. Beneficiary may, at its option, apply the Condemnation Proceeds to the Obligations or release the proceeds to Grantor, on such terms and conditions as Beneficiary elects, for restoration of the Trust Property.

ARTICLE III Leases and Rents

3.01 ASSIGNMENT OF LEASES AND RENTS. Subject to the rights of any mortgagee or trust deed beneficiary as described in Section 7.13, Grantor assigns to Beneficiary all leases, rental contracts, and other agreements now or hereafter relating to the Trust Property or any portion thereof (the "Leases") and all rents and income derived therefrom (the "Rents"). Beneficiary shall have the right, but shall not be obligated, after the occurrence of an Event of Default, to notify any and all obligors under any of the Leases that the same have been assigned to Beneficiary; to discount, compromise, enforce, and collect the Leases and Rents; and to exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents. Beneficiary shall have the right to use and apply any Rents received (1) for any costs and expenses incurred in connection with enforcing this assignment and collecting Rents; (2) for the maintenance of the Trust Property; and (3) for reduction of the Obligations in such order as Beneficiary shall determine. Beneficiary hereby gives Grantor a revocable license to collect and receive the Rents. Such license may be revoked by Beneficiary, without notice to Grantor, on the

occurrence of any uncured Event of Default under this Trust Deed. This assignment shall not operate to place responsibility for the care, maintenance, or repair of the Trust Property on Beneficiary.

ARTICLE IV Security Agreement and Fixture Filing

To secure the Obligations, Grantor hereby grants to Beneficiary a security interest in all fixtures, equipment, machinery and other personal property located on the Trust Property. This Trust Deed shall constitute a security agreement and fixture filing under the Uniform Commercial Code statutes of the state of Oregon. Grantor authorizes beneficiary to authenticate and file all records (including financing statements, continuation statements, etc.) that are reasonably required by the secured party to perfect and continue its security interest in the collateral described in this Article IV. The mailing address of Grantor and the address of Beneficiary from which information may be obtained are set forth in the cover sheet of this Trust Deed.

ARTICLE V Events of Default; Remedies

5.01 EVENTS OF DEFAULT. Each of the following shall constitute an Event of Default under this Trust Deed and under each of the other Loan Documents:

- (1) **Nonpayment.** Any uncured default by Grantor under any of the Obligations.
- (2) **Breach of Other Covenants.** Failure of Grantor to perform or abide by any other covenant included in the Obligations, including without limitation those covenants in the Note, in this Trust Deed, or in any other Loan Document.
- (3) **Misinformation.** Falsity when made in any material respect of any representation, warranty, or information furnished by Grantor or its agents to Beneficiary in connection with any of the Obligations.
- (4) **Other Default.** The occurrence of any other event of default under the Note, the Loan Documents, or any of the other Obligations.
- (5) **Other Indebtedness, Secondary Financing.** Grantor's default beyond applicable grace periods in the payment of any other indebtedness secured by all or any portion of the Trust Property.
- (6) **Bankruptcy.** The occurrence of any of the following with respect to Grantor, any guarantor of the Obligations, or the then-owner of the Trust Property: (a) appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium, or insolvency law; (d) inability to pay debts when due; or (e) any general assignment for the benefit of creditors.
- (7) **Transfer; Due-on-Sale.** Any sale, conveyance, contract for conveyance,

transfer, or assignment of the Trust Property, or any part thereof or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), except as provided by Article VI, herein, to any unrelated third party, excluding any entities under common control with Grantor, without Beneficiary's prior written consent. The provisions of this subsection (7) shall apply to each and every Transfer, regardless of whether or not Beneficiary has consented or waived its rights in connection with any previous Transfer. Beneficiary may attach such conditions to its consent under this subsection (7) as Beneficiary may determine in its sole discretion, including without limitation an increase in the interest rate or the payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by Beneficiary.

5.02 REMEDIES IN CASE OF DEFAULT. If an Event of Default shall occur, Beneficiary or Trustee, as the case may be, may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

(1) **Acceleration.** Beneficiary may declare all or any portion of the Obligations immediately due and payable.

(2) **Rents.** Beneficiary may revoke Grantor's right to collect the Rents, and may collect the Rents. Beneficiary shall not be deemed to be in possession of the Trust Property solely by reason of exercise of the rights contained in this subsection (2).

(3) **Power of Sale.** Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Property by advertisement and sale under applicable law.

(4) **Foreclosure.** Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Trust Property.

(5) **Fixtures and Personal Property.** With respect to any fixtures or other property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

5.03 SALE. In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as Beneficiary may elect. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Grantor, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Beneficiary, may purchase at any such sale. Beneficiary is hereby irrevocably appointed Grantor's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold. Nevertheless, Grantor shall ratify and confirm any such sale or sales by executing and delivering to Beneficiary or to such purchaser or purchasers all such instruments requested by Beneficiary for such purpose.

5.04 CUMULATIVE REMEDIES. All remedies under this Trust Deed are cumulative. Any election to pursue one remedy shall not preclude the exercise of any other remedy. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of any Event of Default.

- 5.05 **APPLICATION OF PROCEEDS.** All proceeds from the exercise of the rights and remedies under this Article V shall be applied (1) to costs of exercising such rights and remedies; (2) to the Obligations, in such order as Beneficiary shall determine in its sole discretion; and (3) the surplus, if any, shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled thereto.

ARTICLE VI Subordination

Beneficiary agrees to subordinate its security interest in the Trust Property to the debt of Grantor to SVBT, and to execute such forms as are necessary to effectuate such subordination as shall reasonably be required by Grantor or SVBT.

ARTICLE VII General Provisions

7.01 **TIME IS OF THE ESSENCE.** Time is of the essence with respect to all covenants and obligations of Grantor under this Trust Deed.

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

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

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

7.05 **TRUST DEED BINDING ON SUCCESSORS AND ASSIGNS.** This Trust Deed shall be binding on and inure to the benefit of the heirs, legatees, personal representatives, successors, and assigns of Grantor, Trustee, and Beneficiary.

7.06 **INDEMNITY.** Grantor shall, to the fullest extent allowed by law, hold Beneficiary and Trustee and, if either is a corporation or other legal entity, their respective directors, officers, employees, agents, and attorneys harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Trustee's or Beneficiary's interests and rights under this Trust Deed.

7.07 EXPENSES AND ATTORNEY FEES. Grantor shall pay all fees and expenses, taxes, assessments, and charges arising out of or in connection with the execution, delivery, and recording of this Trust Deed. In the event of any dispute hereunder, any arbitration, suit, or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement or the obligations, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as fixed by the arbitrator, trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

7.08 APPLICABLE LAW. The enforcement of Beneficiaries rights under this Trust Deed shall be governed by the laws of the state of Oregon.

7.09 PERSON DEFINED. As used in this Trust Deed, the word *person* shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

7.10 SEVERABILITY. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, the other provisions of this Trust Deed shall not be affected.

7.11 ENTIRE AGREEMENT. This Trust Deed contains the entire agreement of the parties with respect to the Trust Property. No prior agreement or promise made by any party to this Trust Deed that is not contained herein shall be binding or valid.

7.12 JOINT AND SEVERAL LIABILITY. If this Trust Deed is executed by two or more persons as Grantor, all of such persons shall be liable, jointly and severally, for payment of all sums and performance of all other covenants in this Trust Deed.

7.13 RIGHTS OF PRIOR MORTGAGEE. In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted under Exhibit B, the rights of Beneficiary with respect to insurance and condemnation proceeds, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed beneficiary, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Grantor hereby authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to Beneficiary to be applied in accordance with this Trust Deed.

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7.14 **ORS 93.040 WARNING.** THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

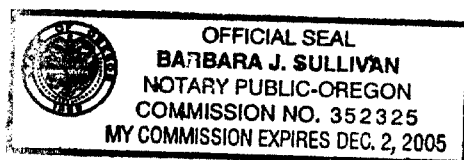
GRANTOR:

Ernst Brothers L.L.C.

BY: Wayne G. Ernst
Wayne G. Ernst, Manager

STATE OF OREGON)
) ss.
County of Klamath)

The foregoing instrument was acknowledged before me this 27th day of September, 2004, by Wayne G. Ernst, as Manager of Ernst Brothers L.L.C.



Barbara J. Sullivan
Notary Public for Oregon
My commission expires: 12-2-2005

EXHIBIT "A"
LEGAL DESCRIPTION

74086

PARCEL 1:

The following described real property situated in Klamath County, Oregon:

A piece or parcel of land situated in the NE $\frac{1}{4}$ of Section 19, Township 38, South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and more particularly described as follows:

Beginning at an iron pipe which is South 0 degrees 06' West 323.4 feet and North 89 degrees 49' West 234.2 feet from the NE Section Corner of Section 19, Township 38 South Range 9 East of the Willamette Meridian, Klamath County, Oregon which point of beginning is also the NE corner of that certain tract of land conveyed to Elmer W. and Flora M. Zigler on page 238 Deed Volume 278 of the records of Klamath County, Oregon; thence North 89 degrees 49' West along the Northerly boundary of said tract of land conveyed on page 238 Deed Volume 278, a distance of 334.8 feet to an iron pipe set at its intersection with a line which is parallel to and 192.77 feet Northeasterly of, when measured at right angles to, the Northeasterly right of way line of the Dalles-California Highway (No. US 97) as the same is now located across said Section 19; thence North 38 degrees 52' West parallel to and 192.77 feet distant from said Northeasterly highway right of way line a distance of 147.25 feet to an iron pipe; thence South 89 degrees 49' East a distance of 427.3 feet to an iron pipe; thence South 0 degrees 06' West a distance of 114.35 feet more or less, to the point of beginning.

PARCEL 2

Beginning at a point which is South 0 degrees 06' West a distant 477.4 feet and North 89 degrees 49' West a distance of 234.2 feet from the Northeast corner of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; thence North 0 degrees 06' East a distance of 154 feet to a point; thence North 89 degrees 49' West a distance of 336 feet, more or less, to a point on a line which is parallel to and distant 192.77 feet at right angles from the Northeasterly right of way line of the Dalles-California Highway; thence South 38 degrees 52' East a distance of 200 feet, more or less, to a point which is North 0 degrees 06' East a distance of 211.1 feet from the North line of Byrd Avenue in Chelsea Addition; thence South 89 degrees 49' East a distance of 210.2 feet to the place of beginning, being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 3

All that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: