

M06-14556

Klamath County, Oregon

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Pages 6 Fee: \$46.00

After recording return to:
Bendich, Stobaugh & Strong, P.C.
900 Fourth Avenue, Suite 3800
Seattle, WA 98164

DEED OF TRUST

1st 841953

This DEED OF TRUST, made this 30th day of June, 2006, by and between Brenda S. Toschik and William T. Toschik as tenants by the entirety, hereinafter referred to as "Grantor," whose address is 2846 Eberlein Avenue, Klamath Falls OR 97603, United States Small Business Administration, hereinafter referred to as "Trustee," whose address is 601 SW Second Avenue Suite 950, Portland OR 97204-3154, Oregon Business Development Corporation hereinafter referred to as "Beneficiary," who maintains an office and place of business at 2363 SW Glacier Place, Redmond OR 97756.

WITNESSETH, that for and in consideration of \$1.00 and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor does hereby bargain, sell, grant, assign, and convey unto the Trustee, his successors and assigns, all of the property ("Property"), including water rights, which Property is situated and being in the County of Klamath, State of Oregon, described as:

Parcel 2 of Land Partition 33-04, a replat of Parcels 2 and 3 of Partition 8-02, situated in the SW 1/4 SW 1/4 of Section 34, Township 38 South, Range 8, E.W.M., Klamath County, Oregon.

Together with all leases for the Property, and together with and including all buildings, all fixtures, including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the Grantor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, and the rents, issues, and profits of the Property. To have and to hold the same unto the Trustee, and the successors in interest of the Trustee, forever, in fee simple or such other estate, if any, as is stated herein, to secure the payment of a promissory note of this date, in the principal sum of \$438,000 signed by Grantor and payable to Beneficiary.

The note's maturity date will be twenty years from the date of the debenture sale, which is estimated to be September 13, 2006. The estimated maturity date of the note is September 1, 2026.

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Grantor also assigns to Beneficiary as security for payment of the Note, Grantor's interest in the rents, revenues, issues, profits and income of the Property and Grantor's interest in all present and future leases, licenses and other agreements for the occupancy or use of the Property, including all cash or security deposits, advances rentals, or payments of similar nature. Beneficiary grants to Grantor a license to collect the rents from the Property. The license, however, may be revoked at any time by Beneficiary and will be automatically revoked if the promissory note is in default and the unpaid balance is accelerated.

1. This conveyance is made upon and subject to the further trust that the said Grantor shall remain in quiet and peaceable possession of the above granted and described premises and take the profits thereof to his own use until default be made in any payment of an installment due on said note or in the performance of any of the covenants or conditions contained therein or in this Deed of Trust; and, also to secure the reimbursement of the Beneficiary or any other holder of said note, the Trustee or any substitute trustee of any and all costs and expenses incurred, including reasonable attorney's fees, on account of any litigation which may arise with respect to this Trust or with respect to the indebtedness evidenced by said note, the protection and maintenance of the Property hereinabove described or in obtaining possession of the Property after any sale which may be made as hereinafter provided.

2. Upon the full payment of the indebtedness evidenced by said note and the interest thereon, the payment of all other sums herein provided for, the repayment of all monies advanced or expended pursuant to said note or this instrument, and upon the payment of all other proper costs, charges, commissions, and expenses, the Property shall be released and reconveyed to and at the cost of the Grantor.

3. Upon default in any of the covenants or conditions of this instrument or of the note or loan agreement secured hereby, the Beneficiary or his assigns may without notice and without regard to the adequacy of security for the indebtedness secured, either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by the court, enter upon and take possession of the Property or any part thereof, and do any acts which Beneficiary deems proper to protect the security hereof, and either with or without taking possession of the Property, collect and receive the rents, royalties, issues, and profits thereof, including rents accrued and unpaid, and apply the same, less costs of operation and collection, upon the indebtedness secured by this Deed of Trust, said rents, royalties, issues, and profits, being hereby assigned to the Beneficiary as further security for the payment of such indebtedness. Exercise of rights under this paragraph shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice but shall be cumulative to any right and remedy to declare a default and to cause notice of default to be recorded as hereinafter provided, and cumulative to any other right and/or remedy hereunder, or provided by law, and may be exercised concurrently or independently. Expenses incurred by Beneficiary hereunder including reasonable attorney's fees shall be secured hereby.

4. If the Property or any part thereof is sold, conveyed, transferred, encumbered, or full possessory rights therein transferred, or if a controlling interest in Grantor (if a corporation) or a general partnership interest in Grantor (if a partnership) is sold, conveyed, transferred or encumbered, without the prior written consent of Beneficiary, then Beneficiary may declare all sums secured by the Deed of Trust immediately due and payable. This provision shall apply to each and every sale, transfer, conveyance or encumbrance regardless of whether or not Beneficiary has consented or waived its rights, whether by action or nonaction, in connection with any previous sale, transfer, conveyance or encumbrance.

5. The Grantor covenants and agrees that if he shall fail to pay said indebtedness, or any part thereof, when due, or shall fail to perform any covenant or agreement of this instrument or of the promissory note secured hereby, the entire indebtedness hereby secured shall immediately become due, payable, and collectible without notice, at the option of the Beneficiary or assigns, regardless of maturity, and the Beneficiary or assigns may enter upon the Property and collect the rents and profits thereof. Upon such default in payment or performance, and before or after such entry, the Trustee, acting in the execution of this Trust, shall have the power to sell the Property, and it shall be the Trustee's duty to sell the Property (and in case of any default of any purchaser, to resell) at public auction, to the highest bidder, in accordance with the law of this state. The Trustee is hereby authorized to execute and deliver to the purchaser at such sale a sufficient conveyance of the Property, which conveyance shall contain recitals as to the happening of default upon which the execution of the power of sale herein granted depends; and the said Grantor hereby constitutes and appoints the Trustee as his agent and attorney in fact to make such recitals and to execute said conveyance and hereby covenants and agrees that the recitals so made shall be binding and conclusive upon the Grantor. In the event of a sale as hereinabove provided, the Grantor, or any person in possession under the Grantor, shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to all other remedies for the collection of said indebtedness. The Beneficiary or Assigns may take any other appropriate action pursuant to state or Federal statute either in state or Federal court or otherwise for the disposition of the Property.

6. In the event of a sale as provided in paragraph 5, the Trustee shall be paid a fee by the Beneficiary. The amount of such fee shall be approved by the Beneficiary as to reasonableness. Said fee shall be in addition to the costs and expenses incurred by the Trustee in conducting such sale. The Trustee's fee, costs and expenses shall be deducted and paid from the sale's proceeds. It is further agreed that if the Property shall be advertised for sale as herein provided and not sold, the Trustee shall be entitled to a reasonable fee, in an amount acceptable to the Beneficiary for the services rendered. The Trustee shall also be reimbursed by the Beneficiary for all costs and expenses incurred in connection with the advertising of the Property for sale if the sale is not consummated.

7. The proceeds of any sale of the Property in accordance with paragraph 5 shall be applied first to payments of fees, costs, and expenses of said sale, the expenses incurred by the Beneficiary for the purpose of protecting or maintaining the Property and reasonable attorneys' fees; secondly, to payment of the indebtedness secured hereby; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

8. To the extent allowed by law, in the event the Property is sold pursuant to the authorization contained in this instrument or at a judicial foreclosure sale and the proceeds are not sufficient to pay the total indebtedness secured by this instrument, the Beneficiary will be entitled to a deficiency judgment for the amount of the deficiency.

9. The Grantor covenants and agrees as follows:

a. He will promptly pay the indebtedness evidenced by said promissory note at the times and in the manner therein provided.

b. He will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the Beneficiary.

c. He will pay such expenses and fees as may be incurred in the protection and maintenance of the Property, including the fees of any attorney employed by the Beneficiary for the collection of any or all of the indebtedness hereby secured, of such expenses and fees as may be incurred in any foreclosure sale by the Trustee, or court proceedings or in any other litigation or proceeding affecting the Property, and attorney's fees reasonably incurred in any other way.

d. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the indebtedness evidenced by said note or any part thereof secured hereby.

e. He will continuously maintain hazard insurance of such type or types and in such amounts as the Beneficiary may from time to time require, on the improvements now or hereafter on the Property, and will pay promptly when due any premiums therefor. All insurance shall be carried in companies acceptable to Beneficiary and the policies and renewals thereof shall be held by Beneficiary and have attached thereto loss payable clauses in favor of and in form acceptable to the Beneficiary. In the event of loss, Grantor will give immediate notice in writing to Beneficiary and Beneficiary may make proof of loss if not made promptly by Grantor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the Property damaged. In the event of a Trustee's sale or other transfer of title to the Property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the Grantor in and to any insurance policies then in force shall pass at the option of the Beneficiary to the purchaser or Beneficiary.

f. He will keep the said premises in as good order and condition as they are now and will not commit or permit any waste thereof, reasonable wear and tear excepted, and in the event of the failure of the Grantor to keep the buildings on said premises and those to be erected on said premises, or improvements thereon, in good repair, the Beneficiary may make such repairs as in the Beneficiary's discretion it may deem necessary for the proper preservation thereof, and any sums paid for such repairs shall bear interest from the date of payment at the rate specified in the note, shall be due and payable on demand and shall be fully secured by this Deed of Trust.

g. He will not without the prior written consent of the Beneficiary voluntarily create or permit to be created against the Property subject to this Deed of Trust any liens inferior or superior to the lien of this Deed of Trust and further that he will keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises.

h. He will not rent or assign any part of the rent of the Property or demolish, remove, or substantially alter any building without the written consent of the Beneficiary.

10. In the event the Grantor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged to the Property hereinabove described, the Beneficiary is hereby authorized to pay the same and any sum so paid by the Beneficiary shall be added to and become a part of the principal amount of the indebtedness evidenced by said promissory note. If the Grantor shall pay and discharge the indebtedness evidenced by said

promissory note, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing and executing this Deed of Trust, then this Deed of Trust shall be canceled and surrendered.

11. The Grantor covenants that he is lawfully seized and possessed of and has the right to sell and convey the Property; and that he hereby binds himself and his successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the lawful claims of all persons whomsoever.

12. For better security of the indebtedness hereby secured the Grantor, upon the request of the Beneficiary, its successors or assigns, shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the Property hereinabove described and all property acquired after the date hereof (all in form satisfactory to Grantee). Furthermore, should Grantor fail to cure any default in the payment of a prior or inferior encumbrance on the Property described by this instrument, Grantor hereby agrees to permit Beneficiary to cure such default, but Beneficiary is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

13. That all awards of damages in connection with any condemnation for public use of or injury to any of the Property are hereby assigned and shall be paid to Beneficiary, who may apply the same to payment of the installments last due under said note, and the Beneficiary is hereby authorized, in the name of the Grantor, to execute and deliver valid acquittances thereof and to appeal from any such award.

14. The irrevocable right to appoint a substitute trustee or trustees is hereby expressly granted to the Beneficiary, his successors or assigns, to be exercised at any time hereafter without notice and without specifying any reason therefor, by filing for record in the office where this instrument is recorded an instrument of appointment. The Grantor and the Trustee herein named or that may hereinafter be substituted hereunder expressly waive notice of the exercise of this right as well as any requirement or application to any court for the removal, appointment or substitution of any trustee hereunder.

15. Notice of the exercise of any option granted herein to the Beneficiary or to the holder of the note secured hereby is not required to be given the Grantor, the Grantor having hereby waived such notice.

16. Gender and number of pronouns are considered to conform to the undersigned. The term "Beneficiary" shall include any payee of the indebtedness hereby secured or any assignee or transferee thereof whether by operation of law or otherwise. The covenants herein contained shall bind and the rights herein granted or conveyed shall inure to the respective heirs, executors, administrators, successors, and assigns of the parties hereto.

17. This deed of trust is also to be recorded as a "fixture filing" as defined in the Oregon Uniform Commercial Code (ORS 79.0102(1)(nn)); it covers goods that are or are to become fixtures.

18. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.
- b) CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any

