

2006-020117

Klamath County, Oregon



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10/05/2006 03:41:05 PM

Fee: \$41.00

1st-913085

**COVER SHEET**

**ORS: 205.234**

This cover sheet has been prepared by the persons presenting the attached instrument for recording. Any errors in this cover sheet **DO NOT** affect the transaction(s) contained in the instrument itself.

After recording, return to:

Henry J. Caldwell, Jr. & Deborah L. Caldwell  
Trustees of the Caldwell Family Trust  
u/d/a 1-5-96  
7990 Hill Road  
Klamath Falls, OR 97603

Send Tax Statements to:

Same as on file

The date of the instrument attached is 10-5-06.

1) NAMES(S) OF THE INSTRUMENT(S) required by ORS 205.234(a)

Assignment of Rent

2) PARTY(IES)/GRANTOR, required by ORS 205.125(1)(b) and ORS 205.160:

Scott James De'Vry

3) PARTY(IES)/GRANTEE, required by ORS 205.125(1)(b) and ORS 205.160

CaldWell Family Trust

4) TRUE and ACTUAL CONSIDERATION (if any), ORS 93.030

\$ 120,000.00

5) FULL OR PARTIAL SATISFACTION ORDER or WARRANT FILED IN THE COUNTY CLERK'S LIEN RECORDS, ORS 205.121(1)(c)

6) RE-RECORDED to correct: \_\_\_\_\_  
Previously recorded as: \_\_\_\_\_

41.-F

## CONDITIONAL ASSIGNMENT OF RENTALS

THIS AGREEMENT, entered into this 5<sup>th</sup> day of October, 2006, between Scott James De'Vry, hereinafter referred to as Owner and Henry J. Caldwell, Jr. and Deborah L. Caldwell, Trustees of the Caldwell Family Trust u/d/a 1-5-96, and their successors in trust, hereinafter referred to as Beneficiary of the survivor thereof.

WITNESSETH:

WHEREAS, Owner is the present owner in fee simple of property described as:

See attached legal description

In Klamath County, State of Oregon, and the Beneficiary is owner and holder of a Trust Deed covering said premises, which said Trust Deed is in the original principal sum of \$120,000.00 made by owner to Beneficiary under the date of October 4, 2006; and

WHEREAS, Beneficiary, as a condition to making said loan and accepting said Trust Deed required the execution of this assignment of the rentals of the Trust Deed premises by owner.

NOW, THEREFORE, in order to further secure the payment of the indebtedness of the owner to Beneficiary and in consideration of the accepting of the afore said Trust Deed and the note secured thereby, the said owner does hereby sell, assign, transfer and set over until Beneficiary all of the rents, issues and profits of the aforesaid mortgaged premises, this assignment to become operative upon any default being made by the owner (grantor) under the terms of the aforesaid Trust Deed and the note secured thereby, and to remain in full force and effect so long as any default continues to exist in the matter of the making of any of the payments or the performance of any of the covenants set forth in the aforesaid Trust Deed and the note secured thereby.

1. In furtherance of the foregoing assignment, the owner hereby authorized the Beneficiary, its employees or agents, at its option, after the occurrence of a default as aforesaid to enter upon the mortgaged premises and to collect, in the name of the owner, or in their own name as assignee, the rents accrued but unpaid and in arrears at the date of such default, as well as the rents thereafter, accruing and becoming payable during the period of continuance of the said or any other default; and to this end, the owners further agree they will facilitate in all reasonable ways the Beneficiary's collection of said rents and will upon request by Beneficiary execute a written notice to the tenant directing the tenant to pay rent to the said Beneficiary.
2. The owner also hereby authorizes the Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the said mortgaged premises and to perform all acts necessary and proper to

expend such sums out of the income of the mortgaged premises as may be needful in connection therewith, in the manner and to the same extent as the owner theretofore might do, including the right to effect new leases, to cancel or surrender existing leases, to alter or amend the terms of existing leases, to make concessions to tenants, the owner hereby releasing all claims against the Beneficiary arising out of such management, operation and maintenance excepting the liability of the Beneficiary to account as hereinafter set forth.

3. The Beneficiary shall, after payment of all property charges and expenses, including reasonable compensation to such Managing Agent as it shall select and employ and after the accumulation of a reserve to meet taxes, assessments, water rents and fire and liability insurance in requisite amounts, credit the net amount of income received by it from the mortgaged premises by virtue of this assignment, to any amounts due and owing to it by the owners under the terms of the Trust Deed and the note secured thereby the manner of the application of such net income and what terms shall be credited, shall be determined in the sole discretion of the Beneficiary. The Beneficiary shall not be accountable for more moneys than it actually received from the mortgaged premises; nor shall it be liable for failure to collect rents. The Beneficiary shall make reasonable effort to collect rents, reserving, however, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted.
4. In the event, however, that the owner shall reinstate the Trust Deed loan completely in good standing, having complied with all the terms, covenants and conditions of the said Trust Deed and the note secured thereby, then the Beneficiary within one month after demand in writing shall re-deliver possession of the mortgaged premises to owner, who shall remain in possession unless and until another default occurs, at which time the Beneficiary may, at its option, again take possession of the mortgaged premises under authority of the instrument.
5. The owner hereby covenants and warrants to the Beneficiary that neither it, nor any previous owner, have executed any prior assignment or pledge of the rentals of the mortgage premises, nor any prior assignment or pledge of its landlord interest in any lease of the whole or any part of the mortgage premises. The owner also hereby covenants and agrees not to collect the rents of the said mortgaged premises in advance, other than as required to be paid in advance by the terms of any rental agreement, and further agrees not to do any other act which would destroy or impair the benefits to the Beneficiary of the assignment.
6. It is not the intention of the parties hereto that an entry by the Beneficiary upon the mortgaged premises under the terms of the instrument shall

constitute the said Beneficiary a "Beneficiary in possession" in contemplation of law, except at the option of the Beneficiary.

7. This assignment shall remain in force and effect as long as the Trust Deed debt to the Beneficiary remains unpaid in whole or in part.
8. The provisions of this instrument shall be binding upon the owner, its successors or assigns, and upon the Beneficiary and its successors or assigns. The word "Owner" shall be construed to mean any one or more persons or parties who are holders of the legal title or equity of redemption to or in the aforesaid mortgaged premises. The word "note" shall be construed to mean the instrument, whether note of bond, given evidence held by the Beneficiary against the mortgaged premises; and the word "Trust Deed" shall be construed to mean the instrument securing the said indebtedness owned and held by the Beneficiary, whether such instrument be Trust Deed, loan deed, vendor's lien or otherwise.

It is understood and agreed that a full and complete release of the aforesaid Trust Deed shall operate as a full and complete release of all the Beneficiaries rights and interests hereunder, and that after said Trust Deed has been fully released, this instrument shall be void and of no further effect.

Dated 10/5/06

Scott James De'Vry  
Scott James De'Vry

State of Oregon  
County of Klamath

This instrument was acknowledged before me on this 5 day of October, 2006, by SCOTT JAMES DE'VRY



Dori Crain - Notary Public for Oregon

commission expires November 7, 2009

**Exhibit "A"**

Real property in the County of Klamath, State of Oregon, described as follows:

A portion of the SW 1/4 NW 1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, more particularly described as follows:

Beginning at a point 720 feet East and 594 feet North of an iron pin driven into the ground at the Southwest corner of the NW 1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, which iron pin is 30 feet East of the center of a road intersecting the Dalles-California Highway (Klamath Falls-Lakeview Highway) from the North and 30 feet North of the center of said highway; thence East 270 feet; thence North 66 feet; thence West 270 feet; thence South 66 feet to the point of beginning.

Tax Parcel Number: R507384