

2006-023042

Klamath County, Oregon



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11/16/2006 03:43:38 PM

Fee: \$26.00

## GRANTOR,S

JOSHUA &amp; RACHEL HOWARD

134 PUTMAN ST

BROWNSVILLE, OR 97327

Beneficiary

KENT &amp; KRISTEN OAKLEY

12703 DRIVER VALLEY RD

OAKLAND, OR 97462

AFTER RECORDING

KENT &amp; KRISTEN OAKLEY

12703 DRIVER VALLEY RD

OAKLAND, OR 97462

1st-926982

ESCROW # 14-0056706

## TRUST DEED

THIS TRUST DEED is made as of the 15 day of NOV, 2006, by JOSHUA N. HOWARD & RACHEL HOWARD, AS TENANTS BY THE ENTIRETY, ("Grantor"), to WESTERN TITLE & ESCROW COMPANY, having its office at 1345 NW Wall Street, Suite 200, Bend, OR 97701 ("Trustee"), for the benefit of KENT C. OAKLEY & KRISTEN V. OAKLEY, AS TENANTS BY THE ENTIRETY ("Beneficiary").

Grantor owes Beneficiary the principal sum of \$28,000.00, which is evidenced by a promissory note (the Note) of even date herewith. The Note, if not sooner paid, is due and payable in full on 11/16/2010.

For the purpose of securing the Obligations below, Grantor irrevocably grants and conveys to Trustee, in trust, for the benefit and security of Beneficiary, with power of sale, the real property located in KLAMATH County, Oregon, and more particularly described :

**Lot 19, Tract 1318, Gilchrist Townsite, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon**

Hereto and incorporated herein, together with all buildings, other improvements and fixtures now or hereafter located thereon or attached thereto, all easements, appurtenances and other rights relating thereto, all awards for any taking of all or any portion thereof, and all insurance proceeds for any damage thereto (collectively, the "Property").

Provided, however, that if all the Obligations shall be paid, performed, and satisfied in full, then the lien and estate hereby granted shall be reconveyed to Grantor.

## TO PROTECT THE SECURITY OF THIS TRUST DEED, GRANTOR AGREES:

**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 and this Trust Deed, including any extensions or modifications of either (collectively, the "Obligations").

**1.02 Payment and Performance.** Grantor shall pay and perform all of the Obligations when due.

**1.03 Good Title.** Grantor warrants that it holds good title to the Property, free and clear of all liens, encumbrances, restrictions, easements, and adverse claims except those items shown on Exhibit B attached hereto and incorporated herein. 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 Compliance with Laws.** Grantor covenants that the Property will at all times be maintained in material compliance with all applicable laws, and all covenants, conditions, easements, and restrictions affecting the Property.

**1.05 Environmental Compliance**

(1) For purposes of this section, "Environmental Law" means any federal, state, or local law or regulation now or hereafter in effect pertaining to Hazardous Substances or environmental conditions. "Hazardous Substance" includes, without limitation, any substance that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local law or regulation.

(2) Grantor will not use, generate, store, release, discharge, or dispose of any Hazardous Substance on, under, or about the Property, and will not permit any other person to do so, except for storage and use of such Hazardous Substances (and in such quantities) as are commonly used for residential or household purposes. Grantor shall store and use such substances, and keep and maintain the Property, in compliance with all Environmental Laws.

**1.06 Maintenance and Improvements.** Grantor shall not permit the Property or any improvement thereon to be removed, demolished, or materially altered without Beneficiary's prior written consent. Grantor shall maintain the Property, and every portion thereof, including landscaping, in good repair and condition, except for reasonable wear and tear, and shall at Beneficiary's election restore, replace, or rebuild the Property or any part thereof now or hereafter damaged or destroyed by any casualty. Grantor shall not commit or permit any waste or strip of the Property.

**1.07 Liens.** Grantor shall pay when due all claims for labor and materials that, if unpaid, might become a lien on the Property. Grantor shall not create or permit any lien, security interest or encumbrance on the Property that may be prior to the lien of this Trust Deed, except for the lien of property taxes which are not yet due, and as otherwise provided herein.

**1.08 Taxes.** Grantor shall pay when due all taxes, assessments, fees, and other charges of every nature now or hereafter assessed against any part of the Property (collectively, the "Impositions"); provided, however, that if by law any such Imposition may be paid in installments, Grantor may pay the same in installments, together with interest on the unpaid balance thereof, as they become due. Grantor shall furnish to Beneficiary satisfactory evidence of the payment of all Impositions promptly after payment.

**1.09 Limitations on Use.** Grantor shall not initiate or consent to any rezoning of the Property or any change in any covenant or other public or private restrictions limiting or defining the uses that may be made of the Property without the prior written consent of Beneficiary.

**1.10 Insurance**

(1) Grantor shall obtain, and continuously maintain during the term of this Trust Deed, all-risk property insurance 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 all improvements on the Property, without reduction for coinsurance.

(2) All insurance shall be written by a company or companies reasonably acceptable to Beneficiary; shall contain a mortgagee endorsement in favor of Beneficiary with proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed; and shall require at least 10 days' prior written notice to Beneficiary of cancellation or reduction in coverage. Grantor shall furnish to Beneficiary a certificate evidencing the coverage required under this Trust Deed and a copy of each policy promptly when issued and at least fifteen days prior to the expiration of any policy now or hereafter in effect.

(3) ORS 746.201 WARNING: UNLESS GRANTOR PROVIDES BENEFICIARY WITH EVIDENCE OF INSURANCE COVERAGE AS REQUIRED BY THIS TRUST DEED, BENEFICIARY MAY PURCHASE INSURANCE AT GRANTOR'S EXPENSE TO PROTECT BENEFICIARY'S INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT GRANTOR'S INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE PURCHASED BY BENEFICIARY MAY NOT PAY ANY CLAIM MADE BY OR AGAINST GRANTOR. GRANTOR MAY LATER CANCEL THE COVERAGE BY PROVIDING EVIDENCE THAT GRANTOR HAS OBTAINED PROPERTY COVERAGE ELSEWHERE. GRANTOR IS RESPONSIBLE FOR THE COST OF ANY INSURANCE COVERAGE PURCHASED BY BENEFICIARY, WHICH COST MAY BE ADDED TO GRANTOR'S NOTE BALANCE. IF IT IS SO ADDED, THE INTEREST RATE ON THE UNDERLYING NOTE WILL APPLY TO IT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE GRANTOR'S PRIOR COVERAGE LAPSED OR THE DATE GRANTOR FAILED TO PROVIDE PROOF OF COVERAGE. THE COVERAGE BENEFICIARY PURCHASES MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE GRANTOR MIGHT OTHERWISE OBTAIN ALONE AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

**1.11 Casualty/Loss Restoration**

(1) After the occurrence of any casualty to the 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) All insurance proceeds with respect to the Property shall be payable to Beneficiary. At Grantor's election, insurance proceeds may be applied to the Obligations or may be used, on such reasonable terms and conditions as Beneficiary elects, for restoration of the Property.

**1.12 Actions to Protect Trust Property.** 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 protect or enforce any of Beneficiary's rights hereunder, 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.

**2.01 Condemnation.** Should the Property or any part thereof be taken by reason of any right of eminent domain or condemnation proceeding, or should Grantor

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receive any notice or other information regarding such action, Grantor shall give immediate notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefore up to the full amount of the Obligations. 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 Property.

**3.01 Security Agreement.** To secure the Obligations, Grantor hereby grants to Beneficiary a security interest in all fixtures located on the Property and in any manufactured home or other personal property expressly described above or in Exhibit A. This Trust Deed shall constitute a security agreement under the Uniform Commercial Code (UCC) of the state of Oregon. Grantor shall execute such financing statement(s) or other title documents as are necessary to perfect said security interest, and pay the cost for filing or issuance.

**4.01 Events of Default.** Each of the following shall constitute an Event of Default under this Trust Deed:

(1) **Nonpayment.** Failure of Grantor to pay any of the Obligations on or within 5 days after the due date.

(2) **Breach of Other Covenants.** Failure of Grantor to perform or abide by any other covenant included in the Obligations.

(3) **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 Property.

(4) **Transfer; Due-on-Sale.** The occurrence of any sale, gift, conveyance, formation of any contract for sale of, or option to purchase, the Property, or any part thereof or any interest therein, without Beneficiary's prior written consent (except for any earnest money agreement expressly conditioned on Beneficiary's written consent before closing, and any conveyance to Grantor's heirs or devisees after Grantor's death), then, at the beneficiary's option\*, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable. Beneficiary may attach such conditions to its consent 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 legal fees and costs incurred by Beneficiary in connection with such consent and transfer.

**4.02 Remedies in Case of Default.** If an Event of Default shall occur, Beneficiary 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) **Power of Sale.** Beneficiary may direct Trustee to foreclose this Trust Deed by advertisement and sale pursuant to ORS 86.735 to 86.795, subject to Grantor's right to cure the default as provided by ORS 86.753.

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

(4) **Fixtures and Personal Property.** With respect to any fixtures or personal 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.

**4.03 Sale.** In any sale under this Trust Deed or pursuant to any judgment, the 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. Any person, including Beneficiary, may purchase at any such sale.

**4.04 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.

**4.05 Application of Proceeds.** All proceeds from the exercise of the foregoing rights and remedies shall be applied to the costs of exercising such rights and remedies; then to the Obligations, in such order as Beneficiary shall determine in its sole discretion; and 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.

**5.01 Time is of the Essence.** Time is of the essence with respect to all covenants and obligations of Grantor under this Trust Deed.

**5.02 Reconveyance by Trustee.** At any time on the request of Beneficiary, payment of Trustee's fees, 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 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.

**5.03 Notice.** All notices under this Trust Deed shall be effective when actually delivered in writing, or when mailed by registered or certified mail to the address of the party stated herein or such other address as either party may designate by written notice to the other party.

**6.04 Successor Trustee.** From time to time Beneficiary may appoint one or more successor trustees to execute the trust hereby created, and the new trustee shall succeed to all the powers and duties of the prior trustee(s).

**6.05 Successors and Assigns.** This Trust Deed shall be binding on and inure to the benefit of the heirs, devisees, personal representatives, successors, and assigns of Grantor and Beneficiary.

**6.06 Expenses and Attorney Fees.** If Beneficiary refers any of the Obligations to an attorney for collection or seeks legal advice following a default, if Beneficiary is the prevailing party in any litigation instituted in connection with any of the Obligations, or if Beneficiary or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Property (including but not limited to foreclosure, bankruptcy, eminent domain, or probate proceedings), and an attorney is employed by Beneficiary to appear in any such proceeding or seek relief from a judicial or statutory stay, or otherwise enforce Beneficiary's interests, then in any such event Grantor shall pay reasonable attorney fees, costs and expenses incurred by Beneficiary in connection with the above mentioned events and any appeals, including the cost of any foreclosure or title report, trustee's fees, surveyors' reports and appraisal fees. Such amounts shall be secured by this Trust Deed and, if not paid upon demand, shall bear interest at the rate specified in the Note.

**6.07 "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.

Joshua N. Howard

Rachel Howard

STATE OF OREGON, COUNTY OF Lane ) SS.

This instrument was acknowledged before me on 11/14, 2006 by Joshua N. Howard & Rachel Howard

(Notary Public for Oregon)

My commission expires 5/8/07



**REQUEST FOR FULL RECONVEYANCE (to be used only when all obligations have been paid)**

TO: WESTERN TITLE & ESCROW COMPANY, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed the estate now held by you under the same. Mail reconveyance and documents to \_\_\_\_\_

DATED: \_\_\_\_\_, \_\_\_\_\_

Beneficiary

Beneficiary

Do not lose or destroy this Trust Deed or the Promissory Note which it secures, both must be delivered to trustee for cancellation before reconveyance will be made.