

2007-018707

Klamath County, Oregon



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WHEN RECORDED MAIL TO:

E. Gunner Schull, Esq.  
Cades Schutte LLP  
1000 Bishop Street, Suite 1200  
Honolulu, Hawaii 96813  
Tel: (808) 521-9227

**LINE OF CREDIT DEED OF TRUST, SECURITY AGREEMENT  
AND FIXTURE FILING  
(WITH ASSIGNMENT OF RENTS AND LEASES)**

**ORS 86.155 STATEMENTS:**

<b>MAXIMUM PRINCIPAL AMOUNT TO BE ADVANCED:</b>	<b>\$600,000.00</b>
<b>MATURITY DATE OF GRID NOTE:</b>	<b>JULY 21, 2008</b>

Grantor (Borrower):	Aspen Builders & Contractors, LLC
Grantee (Trustee):	Chicago Title Insurance Company of Oregon
Beneficiary (Lender):	R & D Technologies, Inc.
Property Description (abbreviated):	2327 Unity Street, Klamath Falls, Oregon 97603-7127
Full Legal Description:	As set forth in Exhibit A attached hereto
Assessor's Tax Parcel Nos:	Parcel 1: 1-3909-001DB-0200-000 Parcel 2: 2-3909-001AC-04700-000 Parcel 3: 3-3909-001AC-04600-000

**THIS LINE OF CREDIT DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (WITH ASSIGNMENT OF RENTS AND LEASES)** (the "Deed of Trust") is made as of October 12, 2007, by and among Aspen Builders & Contractors, LLC, an Oregon limited liability company ("Grantor"), whose address is 515 Cascade Avenue, Space #3, Redmond, Oregon 97756; **CHICAGO TITLE INSURANCE COMPANY OF OREGON** ("Trustee"), whose address is Suite 930, 888 SW Fifth Avenue, Portland, Oregon 97204; and R & D Technologies, Inc., a Hawaii corporation, as beneficiary and secured party ("Beneficiary"), whose address is 3130 Koapaka Street, Honolulu, Hawaii 96819.

AMERITITLE, has recorded this  
Instrument by request as an accommodation only,  
and has not examined it for regularity and sufficiency  
or as to its effect upon the title to any real property  
that may be described therein.

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Line of Credit Instrument (Deed of Trust)

130 AMT

### RECITALS

A. The maximum amount to be advanced hereunder is \$600,000.00, and the maturity date of the line of credit is July 21, 2008.

B. Grantor is the owner of fee simple title to the real property described on Exhibit A attached hereto and incorporated herein by this reference.

C. This Deed of Trust is given to secure payment and performance of that certain grid note dated and effective as of July 22, 2007 (the "Note") which requires Grantor to pay to the order of Beneficiary the principal sum of \$600,000.00 (the maximum commitment thereunder) or so much thereof as may have been advanced to Grantor by Beneficiary, together with interest thereon as set forth therein. This Deed of Trust is further given to secure: (1) payment and performance of any renewals, extensions, substitutions and modifications of the Note and future advances under the Note; and (2) payment and performance of any other indebtedness or obligation of Grantor to Beneficiary now or hereafter arising, including, without limitation, any open account indebtedness and any other indebtedness or obligation arising under the terms hereof, the terms of the Note, any other agreement constituting additional security for the Note, and/or the terms of any other agreement now existing or hereafter entered into among Beneficiary and Grantor related to the foregoing, including any and all future advances. All of the obligations set forth above are cumulatively referred to herein as the "Secured Obligations."

### AGREEMENTS

THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Grantor agrees as follows:

1.

### GRANT AND CONVEYANCE

For the purpose of securing the Secured Obligations, Grantor hereby irrevocably grants, conveys, bargains and sells to Trustee, in trust, with power of sale, all of Grantor's right, title and interest, whether now owned or hereafter acquired, in and to the following described and defined Real Property, Improvements, Personal Property, and Rents, and all income, revenues and profits derived from such items of property (all sometimes referred to herein collectively as the "Trust Property"):

1.1 The Real Property. The real property described on Exhibit A, including all of Grantor's right, title and interest now held or hereafter acquired in and to any roads, easements, streets and ways, open or proposed, bounding such real property, and all rights of ingress and egress thereto (the "Real Property").

1.2 The Improvements. All buildings, structures, fixtures and other improvements of every kind and nature now or hereafter located on or about the Real Property, together with all renewals, replacements, substitutions, accessions, additions, products, and proceeds thereto and thereof (the "Improvements").

1.3 The Personal Property. All personal property of every kind and nature now owned or hereafter acquired and situated upon and/or used in connection with the operation, ownership, use, maintenance or enjoyment of the Real Property and/or Improvements, or derived from operation of the Real Property and/or Improvements, together with all renewals, replacements, substitutions, revenues, accessions, additions, products, and proceeds thereto and thereof (the "Personal Property"), including, without limitation, the following:

1.3.1 All insurance and/or condemnation proceeds and awards (including title insurance proceeds) related to the Trust Property or any interest therein, regardless of form or generation and regardless of the source of payment; and

1.3.2 All approvals, permits, licenses, or grants of rights or privileges which Grantor is required to obtain or comply with pursuant to business operations on the Real Property or in conjunction with the Trust Property.

1.4 The Rents. Subject to the provisions of Section 2.13 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Property, or the ownership, use, management, operation, leasing or occupancy thereof (cumulatively, the "Rents").

This Deed of Trust also constitutes a security agreement within the meaning of Article 9 of the Uniform Commercial Code (the "Code"), and Grantor hereby grants to Beneficiary a perfected security interest in and lien against all elements or constituent parts of the Trust Property which are, or are deemed to be, "personal property" within the meaning of the Code. This Deed of Trust, upon recording, shall also constitute a "fixture filing" within the meaning of the Code with respect to any and all of the Trust Property which may now or hereafter become "fixtures" within the meaning of the Code.

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**GRANTOR'S COVENANTS AND WARRANTIES**

Grantor warrants, covenants and agrees with and to Trustee and Beneficiary as follows:

2.1 Title.

2.1.1 Warranty of Title. Grantor warrants that the Trust Property is not used principally for agricultural, timber or farming purposes and that Grantor is the absolute legal and equitable owner of, and has good and marketable title to, the Trust Property free of all liens, claims, security interests, encumbrances, easements and restrictions, except as shown on the public record as of the date hereof. Grantor has full power and authority to convey the Trust Property in the manner and form herein conveyed. Grantor and its successors and assigns shall warrant and defend such title forever against all claims and shall promptly perform all, and not allow default under any, of the obligations to be performed hereunder and under any other agreement or instrument secured by or securing the Trust Property. Grantor shall furnish to Beneficiary written notice of any litigation, lien, or notice of default affecting the Trust Property or any portion thereof, within three (3) days of initial receipt of notice of such litigation, lien or default.

2.1.2 Further Assurances. Grantor shall, at its cost, perform, execute, acknowledge and deliver all further acts, deeds, conveyances, deeds of trust, assignments, notices of assignments, financing statements, transfers and assurances as Beneficiary shall from time to time require, for the better perfecting, continuing, assuring, conveying, assigning, transferring to and confirming unto the Trustee or Beneficiary of the Trust Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Grantor may be or may hereafter become bound to convey or assign to the Trustee or Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust.

2.2 Payment of Taxes. Grantor shall pay, when due and before delinquency, all Taxes (as defined below) with respect to the Trust Property. Grantor shall have the right to pay any Taxes in installments pursuant to and subject to any statute or ordinance allowing such method of payment. Upon demand, Grantor shall provide Beneficiary with evidence, satisfactory to Beneficiary, that such payments have been made. "Taxes" shall mean and include, without limitation, all personal and real property taxes and assessments, both general and special, and all other taxes or impositions, whether public or private, of any kind and

nature, levied, assessed or imposed upon the Trust Property or any portion thereof. If Grantor, in good faith, disputes the amount or validity of any Tax, Grantor may contest the same by any lawful means, provided (a) Grantor gives to Beneficiary prior written notice of such contest, (b) Beneficiary's interest in the Trust Property, in Beneficiary's sole determination, is not jeopardized by such contest, (c) Grantor provides to Beneficiary a surety bond or other security acceptable to Beneficiary in an amount acceptable to Beneficiary as security for the payment of the contested Tax, and (d) Grantor pays promptly all amounts ultimately determined or adjudged to be payable.

2.3 Construction, Maintenance and Repair. Without limiting Grantor's obligations under any other agreement executed in favor of Beneficiary, Grantor shall keep the Trust Property in good operating order, repair and condition, ordinary wear and tear excepted, and shall not commit or permit any waste thereof. Grantor, at its cost, shall make all repairs necessary to the Trust Property and all complete and restore promptly and in good and workmanlike manner any portion of the same which may be damaged or destroyed, and pay, when due, all costs incurred in connection therewith regardless of whether sufficient proceeds are available to pay such costs; the same shall be restored and repaired so as to be at least equal in value and of substantially the same character as existed prior to such damage or destruction. Grantor shall not remove from the Real Property or demolish any of the Improvements or Personal Property.

2.4 Compliance with Laws.

2.4.1 Generally. Grantor shall comply with all laws, ordinances, regulations, easements, agreements, covenants, conditions and restrictions now or hereafter affecting the Trust Property or the use or operation thereof. Grantor shall not cause, permit or suffer any violation of any of the foregoing and shall pay all fees or charges of any kind in connection therewith. Grantor shall indemnify and hold Beneficiary, its officers, directors and agents, harmless from any claim, cost, damage or expense, including attorneys' fees and penalties, with respect to any breach or alleged breach of the covenants set forth in this Section.

2.4.2 Environmental Laws. For purposes hereof, the phrase "Hazardous Materials" shall mean and include any oil, petroleum, hazardous substance, pollutant, contaminant, hazardous waste, hazardous material, dangerous waste, extremely hazardous waste, toxic waste, asbestos, urea-formaldehyde, radon or air pollution, as any such term or similar term is now or hereafter defined, regulated, used or understood in or under any Federal, state, county, city or other governmental statute, law, code, rule, regulation, ordinance, order or decree which (i) is applicable to the Trust Property and (ii) relates in any way to the protection of any aspect of human health or the environment, animal habitats, environmentally sensitive areas, or the use, quality or condition of air, soil, water, shorelines or wetlands ("Environmental Laws"). Grantor warrants and covenants to Beneficiary that, to the best knowledge and belief of Grantor and based on due and diligent inquiry by Grantor, no

Hazardous Materials have been or will be generated, stored, emitted or released from the Trust Property in violation of any Environmental Laws. Grantor shall indemnify and hold Beneficiary, its officers, directors and agents, harmless from any claim, cost, damage or expense, including attorneys' fees, monitoring costs, response costs and penalties, with respect to any breach or alleged breach of these warranties and covenants and any violation of Environmental Laws. These warranties and covenants shall survive the exercise of any remedies by Beneficiary, including (without limitation) foreclosure of the lien of this Deed of Trust or obtaining title to all or any part of the Trust Property in lieu of foreclosure.

## 2.5 Insurance.

2.5.1 Obligation to Insure. Grantor shall at all times provide, maintain and keep in force, at its own cost and expense, the following policies of insurance, and such other insurance (including, without limitation, flood and earthquake insurance) as Beneficiary may require from time to time against the same or other hazards:

2.5.1.1 Casualty Insurance. Insurance against loss or damage to the Trust Property by fire and any and all of the risks covered by "fire and extended coverage" insurance in an amount not less than the full replacement cost of the Improvements and Personal Property, without deduction for depreciation. Such policy of insurance shall be maintained for and name Grantor and Beneficiary as insureds, as their respective interests may appear.

2.5.1.2 Liability Insurance. Comprehensive public liability insurance, on an "occurrence basis," insuring against claims for bodily injury, death or property damage occurring in, on or about the Real Property. The limits of such coverage shall be no less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence. Such policy shall insure performance of Grantor's indemnity obligations hereunder and all name Beneficiary as an additional insured.

2.5.1.3 Builder's Risk Insurance. During the course of any construction or repair at the Real Property, builder's risk insurance against all risks of physical loss, on a completed value basis, covering the total value of work performed and equipment, supplies and materials furnished.

2.5.1.4 Exculpation; General Provisions Related to All Policies. Neither Trustee nor Beneficiary shall be obligated to obtain insurance, nor be responsible for the collection of any insurance proceeds or for any insolvency of any insurer or insurance underwriter. All policies of insurance required by this Deed of Trust (a) shall contain an endorsement or an agreement of the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of Grantor or Beneficiary which might otherwise result in forfeiture of said insurance and further waiving all rights of setoff, subrogation, counterclaim or deductions against Beneficiary; (b) shall be issued in amounts no less than those specified in this Section and shall be issued by companies acceptable to Beneficiary; and (c) shall contain a provision that such policies will not be canceled or amended, or be subject to any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary.

2.5.2 Delivery of Insurance Policies, Payment of Premiums. Grantor shall furnish Beneficiary with a copy of each policy of insurance required hereunder and a certificate of each policy of insurance required hereunder, each such certificate setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the expiration date.

2.5.3 INSURANCE WARNING: UNLESS GRANTOR PROVIDES BENEFICIARY WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED UNDER 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 TRUST PROPERTY BECOMES DAMAGED, THE COVERAGE BENEFICIARY PURCHASES MAY NOT PAY ANY CLAIM GRANTOR MAKES OR ANY CLAIM MADE AGAINST GRANTOR. GRANTOR MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT GRANTOR HAS OBTAINED PROPERTY COVERAGE ELSEWHERE.

GRANTOR IS RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY BENEFICIARY. THE COST OF THIS INSURANCE MAY BE ADDED TO GRANTOR'S CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO GRANTOR'S CONTRACT OR LOAN BALANCE, THE DEFAULT INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. IF NOT ADDED TO GRANTOR'S CONTRACT OR LOAN BALANCE, THE COST SHALL BE DUE ON DEMAND AS AN ADVANCE PURSUANT TO SECTION 2.10 BELOW. 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 CAN OBTAIN ON GRANTOR'S OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

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2.5.4 Waiver and Release. Grantor waives all claims against Beneficiary and its officers, employees, agents and representatives for loss or damage to Grantor, the Trust Property, Grantor's property or the property of others from any cause whatsoever, regardless of whether now existing or insured against or required to be insured against pursuant to this Deed of Trust. All terms of the Secured Obligations shall be paid and performed without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Grantor hereunder shall not be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Trust Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Trust Property or any part thereof by title paramount or otherwise; or (iv) any claim which Grantor has or might have against Beneficiary.

2.6 Condemnation. The Grantor, immediately upon obtaining knowledge of any contemplated condemnation of the Trust Property or any portion thereof, or of the institution of any proceeding for the condemnation of the Trust Property or any portion thereof, shall notify Beneficiary of the pendency thereof. Beneficiary, at its option, may declare the Secured Obligations to be entirely due and payable if the condemnation materially affects the Trust Property or the use thereof. Grantor agrees to execute such assignments of any compensation, award, damages, right of action and proceeds as Beneficiary may require.

2.7 Liens and Encumbrances. Without limiting Grantor's obligations pursuant to any other agreement executed in favor of Beneficiary, the Grantor shall pay, when due, all obligations, claims or demands of any person which, if unpaid, might result in, or permit the creation of, a lien or encumbrance on the Trust Property or any portion thereof, whether such lien would be senior or subordinate hereto, including, without limitation, all claims of mechanics, materialmen, laborers and others for work or labor performed or materials or supplies furnished in connection with any work, alteration, improvement of or construction upon or related to the Trust Property; provided, that in the event Grantor disputes the amount or validity of any claim which constitutes a lien or encumbrance, Grantor may contest such claim provided (a) Grantor gives to Beneficiary prior written notice of such contest, (b) Grantor causes such lien to be removed, by bond or deposit as allowed by applicable law, Trust Property within fifteen (15) days of the filing of such lien or claim, (c) Beneficiary's interest in the Trust Property and/or the lien of this Deed of Trust are not, in Beneficiary's sole opinion, jeopardized thereby, and (d) Grantor promptly pays any amount ultimately determined to be due.



2.8 Indemnification. Grantor shall appear in and defend any suit, action or proceeding that, in the sole judgment of Beneficiary, may affect the value of the Trust Property, the title to the Trust Property or the rights and powers of Trustee or Beneficiary. Grantor shall indemnify Beneficiary and Trustee from and against any claim, loss, cost, damage or expense (including attorneys' fees) arising out of or related to this Deed of Trust, the Trust Property or the condition (whether now existing or hereafter arising) thereof. The indemnity obligations of Grantor shall survive the reconveyance or foreclosure hereof.

2.9 Sale or Encumbrance of Trust Property.

2.9.1 Sales. In addition to any other right available hereunder, at law or in equity, Beneficiary may declare all sums secured hereby immediately due and payable if, without Beneficiary's prior written consent (which consent may be granted or withheld in Beneficiary's sole discretion), Grantor sells, assigns, transfers, conveys, contracts or agrees to sell (as by execution of a land sale contract), enters into a master lease, or a ground lease with respect to, encumbers, mortgages, assigns for security purposes, or otherwise disposes of, hypothecates or alienates, voluntarily or involuntarily, all or any part of the Trust Property or any interest of Grantor therein. The foregoing acts are herein referred to as a "Sale," and a Sale without the prior written consent of Beneficiary shall be an Event of Default hereunder. If Grantor requests Beneficiary's consent to a Sale, then Grantor shall pay Beneficiary for its fees and costs incurred in review of the request for such consent. Any consent by Beneficiary to one Sale shall not constitute a waiver of Beneficiary's rights hereunder with respect to any subsequent Sale.

2.9.2 Obligations of Third Party Transferee. In the event of a Sale which is a conveyance without the prior written approval of Beneficiary, the Beneficiary may, without notice to the Grantor, deal with such successor or successors in interest with reference to this Deed of Trust in the same manner as with Grantor, without in any way releasing, discharging or otherwise affecting the liability of Grantor hereunder. No Sale shall affect Grantor's obligation to perform each term and provision hereof, nor release Grantor from any liability hereunder. Any transferee (whether approved in advance by Beneficiary or not) hereby agrees to execute, acknowledge and deliver any such further documents to evidence or reflect the interest of Beneficiary in the Trust Property as Beneficiary shall require, upon demand.

2.10 Advances. If Grantor shall fail to perform any of the covenants contained herein, or in any document evidencing or securing any Secured Obligation, Beneficiary may, but without obligation to do so, make advances to perform same on behalf of Grantor, and all sums so advanced shall be secured by this Deed of Trust; provided, however, that Beneficiary shall give Grantor fifteen (15) days' prior written notice of such advance if such notice and time period will not, in Beneficiary's sole judgment, jeopardize Beneficiary's interest in the Trust Property. Grantor shall repay on demand all sums so advanced in its behalf with interest at the rate of eighteen percent (18%) per annum or the highest rate permitted to be charged by applicable law, whichever is the lesser (the "Advance Rate"), from the date of expenditure until the date repaid. Nothing herein contained shall prevent any such failure to perform on the part of Grantor from constituting an Event of Default and no exercise of Beneficiary of any right hereunder shall constitute a waiver of such Event of Default.

2.11 Time. Grantor agrees that time is of the essence with respect to all obligations of Grantor under this Deed of Trust.

2.12 Security Agreement Provisions. Grantor hereby grants to Beneficiary, as secured party, a security interest in the Personal Property and any other portion of the Trust Property which is deemed to be personal property or fixtures. In addition to the warranties, covenants and agreements contained elsewhere herein which also apply to the Personal Property, Grantor warrants, covenants and agrees as follows:

2.12.1 Grantor shall not voluntarily, involuntarily or by operation of law sell, assign, encumber, transfer, lease, grant a security interest in, or otherwise dispose of any portion of the Personal Property or any interest therein and shall not otherwise do or permit anything to be done or occur that may impair the same as security hereunder, except that so long as Grantor is not in default under this Deed of Trust, Grantor shall be permitted to sell or otherwise dispose of any tangible item of Personal Property when worn out, inadequate, unserviceable or unnecessary for use, upon replacing the same or substituting for the same other collateral of at least equal value and which performs the same function or task as the replaced item performed and in such a manner so that said replacement shall be subject to the security interest created hereby, which security interest shall be the first priority and only security interest in said replacement.

2.12.2 The Personal Property shall not be removed from the Real Property without the prior written consent of Beneficiary.

2.12.3 Grantor will pay, when due, all taxes, license fees and assessments relative to the Personal Property and its use.

2.12.4 Grantor shall, upon request, execute and deliver such financing statements and other documents and agreements as Beneficiary may request to perfect and continue Beneficiary's security interest in the Personal Property. A carbon, photographic, or other reproduction of this Deed of Trust may be filed and suffice as a financing statement. Without limiting any of the foregoing, Grantor expressly authorizes Beneficiary to execute on Grantor's behalf and file (including filing via electronic means) any financing statements necessary to perfect the security interests Grantor has granted to Beneficiary hereunder.

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2.13 Assignment of Rents and Leases.

2.13.1 Grantor hereby absolutely and unconditionally assigns, transfers, conveys and sets over to Beneficiary all the Rents; provided, however, that prior to any default by Grantor hereunder, Grantor shall have the right as the agent and fiduciary representative of Beneficiary, to collect and receive the Rents as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Trust Property or any part thereof, in its own name or in the name of Grantor, sue for or otherwise collect the Rents, including those past due and unpaid and apply the same, less costs and expenses of operation and collection, including attorneys' fees and expenses, to the payment of the principal and interest and all other sums due or payable under the Note and the other Secured Obligations, and to the payment of all other sums payable under this Deed of Trust, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of the Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

2.13.2 Grantor's irrevocable assignment of Rents hereunder shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Trust Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of any leases; (c) responsible or liable for any waste committed by the lessees under any lease or by any other parties; for any dangerous or defective condition of the Trust Property; or for any negligence in the management, upkeep, repair or control of the Trust Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person; or (d) responsible for or impose upon Beneficiary any duty to produce rents or profits. Beneficiary, in the absence of any gross negligence or willful disregard on its part, shall not directly or indirectly be liable to Grantor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Grantor arising under any leases.

2.13.3 All leases and rental agreements now or hereafter affecting the Real Property are hereby assigned and transferred to Beneficiary by the Grantor, and Grantor hereby agrees and covenants that none of said leases or rental agreements will be materially modified or terminated without the consent in writing of Beneficiary. If requested by Beneficiary, Grantor shall provide to Beneficiary a non-disturbance and attornment agreement, in form acceptable to Beneficiary, executed by each tenant under a lease or rental agreement for a portion of the Real Property executed after the date hereof.

2.14 Inspections. Beneficiary, and its agents, representatives and workmen, are authorized, but not obligated, to enter at any reasonable time upon or in any part of the Real Property for the purpose of inspecting the same, and for the purpose of performing any of the acts it or Grantor is authorized to perform under the terms of this Deed of Trust or any other document evidencing and/or securing any of the Secured Obligations.

2.15 Land Use Matters.

2.15.1 Warranty. Grantor warrants that (a) the Real Property and Improvements do and shall at all times comply with the applicable zoning ordinance and comprehensive plan (and any overlay zoning ordinances or other land use control laws and ordinances), and all applicable land use permits and approvals, and covenants, conditions and restrictions, and (b) the Improvements and uses thereof are permitted by applicable law.

2.15.2 Covenants. Grantor shall not cause any zone change or comprehensive plan change with respect to the Real Property and/or the Improvements, nor cause or allow any partition, subdivision or lot line adjustment with respect to all or any portion of the Real Property.

2.16 Utilities. Grantor shall pay or cause to be paid when due all utility charges which are incurred by Grantor or others for the benefit of or for service to the Real Property and/or Improvements, or which may become a charge or lien against the Real Property and/or Improvements for gas, electricity, water, sewer or other utility services furnished to the Real Property and/or Improvements and all other assessments or charges of a similar nature, whether public or private, affecting the Real Property and/or Improvements, or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

2.17 Actions by Beneficiary to Preserve Trust Property. Should Grantor fail to make any payment or to do any act as and in the manner provided herein, Beneficiary, at its discretion but without obligation so to do and without releasing Grantor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Beneficiary shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Trust Property; (ii) to make additions, alterations, repairs and improvements to the Trust Property which it may consider necessary and proper to keep the Trust Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Trust Property, the security hereof or the rights or powers of Beneficiary; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Beneficiary may affect or appears to affect the Trust Property or the security of this Deed of Trust or which may be prior or superior hereto; (v) to inspect and evaluate the condition and value of the Trust Property, including, without limitation, performance of environmental testing, structural

and mechanical evaluation, pest and dry rot inspection, and property appraisal; and (vi) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. Grantor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at Beneficiary's election, to do and cause to be done all or any of the foregoing in the event Beneficiary shall be entitled to take any or all of the action provided for in this paragraph. Grantor shall immediately, upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees, all of which shall constitute additional indebtedness secured by this Deed of Trust immediately due and payable, with interest thereon at the Advance Rate.

3.

### **DEFAULT**

3.1 Events of Default. Time is of the essence in the performance of each and every obligation of Grantor contained herein. The following, in addition to all other acts, events, and conditions declared to be events of default herein, are events of default hereunder ("Events of Default"):

3.1.1 The occurrence of any event of default with respect to the Note, the Loan Documents, or any other instrument or agreement which evidences, secures or is related to any of the Secured Obligations, other than this Deed of Trust.

3.1.2 Failure by Grantor to make any payment to Beneficiary or to any third party when due in accordance with the terms of this Deed of Trust.

3.1.3 Failure by Grantor to perform, when due, any of the terms, covenants and conditions set forth in this Deed of Trust; provided, however, that Grantor shall have a period of fifteen (15) days following notice from Beneficiary to cure any such Event of Default under this Deed of Trust if (a) Grantor promptly requests such cure period, in writing, and (b) in Beneficiary's opinion (i) such Event of Default can be cured within such time period, and (ii) the lapse of such time period would not jeopardize Beneficiary's interest in the Trust Property or Beneficiary's ability to collect all amounts secured hereby.

3.1.4 Breach of any warranty or representation given by Grantor to Trustee or Beneficiary.

3.1.5 Without implying Beneficiary's consent to the creation of any lien encumbering the Trust Property, institution of foreclosure or other proceedings (either judicial or nonjudicial) to enforce any security interest or other lien or encumbrance (junior or senior) of any kind upon the Trust Property or any portion thereof or interest therein.

3.1.6 Should the Grantor, any cotenant or general partner of Grantor, any guarantor of any Secured Obligation, or any successor or assign thereof:

- (a) Become insolvent, dissolve, or have its existence terminated;
- (b) File a petition in voluntary bankruptcy or for an arrangement or reorganization pursuant to the Federal bankruptcy statutes, or any similar law, state or Federal, whether now or hereafter existing ("Bankruptcy Proceeding"), or be the object of any involuntary Bankruptcy Proceeding which is not stayed or dismissed within thirty (30) days of filing;
- (c) File any answer admitting, or otherwise admit in writing, insolvency or inability to pay its debts;
- (d) Be adjudicated a bankrupt or declared insolvent in any Bankruptcy Proceeding;
- (e) Have a trustee or receiver appointed for or have any court take jurisdiction of any of its property, in any proceeding for the purpose of reorganization, arrangement, dissolution or liquidation unless such trustee or receiver is discharged or if such jurisdiction be relinquished or vacated within thirty (30) days of appointment or commencement; or
- (f) Make an assignment for the benefit of its creditors, or consent to an appointment of a receiver or trustee of any of its property.

3.1.7 Should any act, event, omission, or condition, or any combination of one or more of any of the foregoing, occur or exist which, either alone, or together with notice and/or the passage of time, constitutes or would constitute a default under any other agreement or instrument which is secured in whole or in part by the Trust Property.

3.2 Remedies. In addition to any other rights and remedies provided herein, in the Note, in the Loan Documents, in any document evidencing or securing the Secured Obligations, or otherwise available at law or in equity, Beneficiary shall have the following rights and remedies upon the occurrence of any Event of Default.

3.2.1 Acceleration. The Beneficiary, by written notice given to the Grantor, may declare the entire principal of the Note then outstanding, and all accrued and unpaid interest thereon, and all other obligations of Grantor to Beneficiary related to any Secured Obligation (including any prepayment penalty due under the Note upon acceleration thereof), to be due and payable immediately, anything in the Note or in this Deed of Trust to the contrary notwithstanding.

3.2.2 Possession and Receiver. The Trustee or Beneficiary personally or by its agents or attorneys, or through a duly appointed receiver, may enter into and upon all or any part of the Trust Property, and each and every part thereof, and may exclude the Grantor and its agents wholly therefrom; and, having and holding the same may possess, use, operate, manage, improve and control the Trust Property and conduct the business thereof; and the Trustee or Beneficiary shall be entitled to collect and receive all earnings, revenues, rents, issues, profits, income, accounts, accounts receivable, contract rights and general intangibles included in the Trust Property or generated by operations of the Trust Property and every part thereof whether or not Beneficiary, Trustee, or a receiver is then in possession of the Trust Property. Beneficiary shall be entitled to the appointment of a receiver as a matter of right, whether or not the apparent value of the Trust Property exceeds the indebtedness secured hereby, and any receiver appointed may serve without bond. Employment by Beneficiary shall not disqualify a person from serving as a receiver. The exercise of any right under this Section 3.2.2 shall not be deemed an election of remedies nor a "pending action" so as to preclude the exercise of any other right or remedy. Upon taking possession of all or any part of the Trust Property, the receiver may:

(i) Possess, use, operate, manage, control, and conduct the business of the Trust Property and make expenditures for all maintenance and improvements as in its judgment are proper;

(ii) Collect all revenues, income, issues, profits, contract rights, accounts, accounts receivable and general intangibles from the Trust Property and apply such sums or the proceeds thereof to the expenses of use, operation and management; and

(iii) Complete any construction in progress and, in that connection, pay bills, borrow funds, employ contractors and make any changes in plans or specifications as it deems appropriate.

If the revenues produced by the Trust Property are insufficient to pay expenses, the receiver may borrow, from Beneficiary or otherwise, such sums as it deems necessary for the purposes stated herein and repayment of such sums shall be secured by the lien hereof. The amounts borrowed from or advanced by Beneficiary shall bear interest at the Advance Rate from the date of expenditure until repaid, and such amounts and interest shall be an indebtedness of Grantor secured hereby.

3.2.3 Uniform Commercial Code. Beneficiary shall have all of the remedies of a secured party under the Code and any other applicable law. To the extent permitted by law, Grantor expressly waives any notice of sale or other disposition and notice of the exercise of any other right or remedy of Beneficiary arising by reason of an Event of Default hereunder, and to the extent any such notice is required and cannot be waived, Grantor agrees, for the purpose of this paragraph only, that if such notice is mailed, postage prepaid, to the Grantor at the above address at least five (5) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice.

3.2.4 Sale. The Trustee may, and upon the written request of Beneficiary, shall, and the Beneficiary may to the extent permitted by law, with or without entry, personally or by its agents or attorneys insofar as applicable: (a) sell the Trust Property and otherwise exercise the power of sale granted herein as a nonjudicial foreclosure of this Deed of Trust in the manner provided by applicable laws pertaining to the foreclosure of deeds of trust; or (b) institute proceedings for the complete or partial judicial foreclosure of this Deed of Trust as a mortgage in the manner provided by applicable law. Upon any judicial or nonjudicial sale of the Trust Property, the Beneficiary may bid for and acquire the Trust Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness secured by this Deed of Trust the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Beneficiary is authorized to deduct under this Deed of Trust.

3.2.5 Remedies Not Exclusive. No remedy granted herein is intended to be exclusive of any other remedy provided herein or at law or in equity, but each shall be cumulative. Each such remedy may be exercised singly, collectively or seriatim, and as often as may be deemed expedient by Trustee or Beneficiary. If there exists additional security for the performance of the obligations secured hereby, Beneficiary, at its sole option and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

4.

#### MISCELLANEOUS TERMS AND CONDITIONS

4.1 Acceptance of Trust; Notice. The Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is recorded. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless Trustee brings such action.

4.2 Protection and Substitution of Trustee. Grantor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of the trusts created hereunder, including reasonable attorneys' fees, but in no event more than allowed by applicable law. Grantor hereby indemnifies Trustee and Beneficiary against all losses, claims, demands and liabilities which either may incur, suffer or sustain in the execution of the trusts created hereunder or in the performance of any act required or permitted hereunder or by law. Beneficiary from time to time may appoint another trustee to act in the place and stead of Trustee or any successor.

4.3 Marshaling of Assets. Grantor hereby expressly waives all rights to require a marshaling of assets by the Trustee or Beneficiary or to require Trustee or Beneficiary to first resort to the sale of any portion of the Trust Property which might have been retained by Grantor before foreclosing upon and selling any other portion thereof.



4.4 Partial Release. Without affecting the liability of any other person for the payment of the Secured Obligations and without affecting the lien or priority hereof upon any property not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any obligation or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Trust Property described herein, release or abandon any security for payment of the Secured Obligations, including (without limitation) the Trust Property or any part thereof, or take or release any other security.

4.5 Nonwaiver. By accepting payment of any sum secured hereby after its due date or late performance of any obligation secured hereby, Beneficiary shall not waive its right against any person obligated directly or indirectly hereunder or on any indebtedness hereby secured either to require prompt payment or performance when due of all other sums and obligations so secured or to declare a default for failure to make such payment. No exercise of any right or remedy by Trustee or Beneficiary hereunder shall constitute a waiver of any other right or remedy allowed herein, in any other document evidencing or securing any Secured Obligation, or at law or in equity. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. Receipt of rents, proceeds or any other money, and any disposition of the same, shall not constitute a waiver of any obligation of Grantor or any right of Beneficiary hereunder.

4.6 Governing Law. This instrument shall be construed in accordance with the laws of the state in which the Real Property is situated.

4.7 Severability. If any term of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

4.8 Successors in Interest; Joint and Several Liability. Subject to the restrictions set forth in Section 2.9, this Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, executors, administrators, successors and permitted assigns. If Grantor is composed of more than one person or entity, then all obligations of Grantor hereunder are joint and several.

4.9 Notices. Notices under this Agreement shall be in writing and shall be effective when actually received or two (2) days after being deposited in the United States Mails, certified, return receipt requested, directed to the other party at the address first set forth above, or to such other address as the party may indicate by written notice to the other party.

4.10 Modifications. This Deed of Trust may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

4.11 Attorneys' Fees. If any litigation or arbitration is instituted to enforce or interpret any provision hereof, or to foreclose this Deed of Trust, the prevailing party shall be entitled to collect, in addition to all other amounts and relief allowed by law, its court costs, title search costs, and reasonable attorneys' fees, incurred both at and in preparation for trial, and on any appeal or review thereof. In addition to the foregoing, Grantor shall reimburse Beneficiary for all such costs and fees which Beneficiary may incur in connection with any bankruptcy or similar proceeding or any appeal or review therefrom wherein the Grantor, or any guarantor, surety or accommodation party is the "debtor." If Beneficiary is the prevailing party, such costs and attorneys' fees shall be secured by this Deed of Trust.

4.12 Authority. Each individual executing this Deed of Trust on behalf of Grantor hereby warrants his or her authority to do so.

4.13 Priority of Trust Deed. The terms of the Note and/or Secured Obligations may provide that the interest rate, payment terms or balance due thereunder may be indexed, adjusted or renewed. The priority of this Deed of Trust shall not be affected by renegotiation or adjustment of the interest rate provided in the Note and/or other Secured Obligations (which may increase or decrease the amount of periodic payments or extend or shorten the term of this Deed of Trust), any increase in the underlying obligation as a result of deferment of all or a portion of interest payments and the addition of such payments to the outstanding balance of the obligation, or the execution of new agreements which reflect such changes.

4.14 Commercial Trust Deed. Grantor warrants that the transactions evidenced by this Deed of Trust, the Note, the Loan Documents and Secured Obligations are for commercial purposes, and not for residential, household, agricultural, personal or consumer purposes.

4.15 Mutual Negotiation. Beneficiary and Grantor confirm that they have mutually negotiated this Deed of Trust and that none of the terms or provisions of this Deed of Trust shall be presumptively construed against either party.

**THIS AREA LEFT INTENTIONALLY BLANK**

4.16 WAIVER OF JURY TRIAL. GRANTOR ACKNOWLEDGE(S) AND AGREE(S) THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE LENDING RELATIONSHIP ESTABLISHED HEREBY WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, GRANTOR HEREBY WAIVE(S) ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ACTIONS SOUNDING IN TORT) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT OR ARISING FROM THE TRANSACTION CONTEMPLATED HEREUNDER OR THE LENDING RELATIONSHIP ESTABLISHED HEREBY AND AGREE(S) THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE AND NOT BY A JURY.

4.17 Assignment by Beneficiary. Beneficiary may assign this Deed of Trust in whole or in part to any person and may grant participation in any of its rights under this Deed of Trust, without notice and without affecting Grantor's liability under this Deed of Trust.

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

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust effective as of the date first set forth above.

GRANTOR:

ASPEN BUILDERS & CONTRACTORS, LLC

By: \_\_\_\_\_

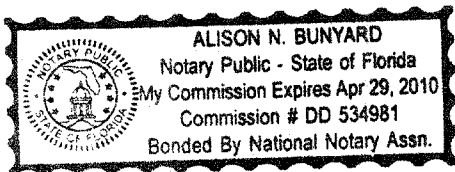
Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF Florida )  
County of Santa Rosa ) ss.

I certify that I know or have satisfactory evidence that Roger Parks is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Member of Aspen Builders + Contractors Inc to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 22, 2007



Alison N Bunyard  
(Signature of Notary Public)  
Alison N Bunyard  
(Printed Name of Notary Public)  
My Appointment expires Apr 22, 2010

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

Beginning at a point from which the Northeast corner of the Northwest quarter of the Southeast quarter of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, bears East 490 feet distant; thence, South 557 and 114/469ths feet; thence West 469 feet; thence North 557 and 114/469ths feet; thence East 469 feet to the point of beginning.

**PARCEL 2:**

The South half of the South half of the Southwest quarter of the Northeast quarter of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, less the Easterly 490 feet thereof.

**PARCEL 3:**

A tract of land situated in the SW1/4NE1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the South line of the SW1/4NE1/4 of said Section 1, said point being Westerly a distance of 490 feet from the Southeast corner of the SW1/4NE1/4 of said Section 1; thence Northerly along a line 490 feet from the parallel to the East line of said SW1/4NE1/4 to a point on the North line of S1/2S1/2SW 1/4NE1/4 of said Section 1; thence Southeasterly on a straight line to the point of intersection of the Northeasterly right of way line of the Enterprise Irrigation District Canal and the South line of the SW1/4NE1/4 of Section 1; thence Westerly to the point of beginning.