

2007-021491

Klamath County, Oregon

Recording Requested By:
Aspen Title & Escrow, Inc.
525 Main Street
Klamath Falls, OR 97601



00037624200700214910080085

12/27/2007 11:07:56 AM

Fee: \$56.00

When Recorded Return To:

Aspen Title & Escrow, Inc.
525 Main Street
Klamath Falls, OR 97601

Until requested otherwise, send all tax statements:

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ATZ: 65261 RC

COVER SHEET

DOCUMENT: Construction Deed of Trust

GRANTOR: DK2 Enterprises, L.P.

GRANTEE: Bismark Mortgage Company, LLC.

\$56-A

Filed for record at the request of:
Bismark Mortgage Company, LLC
10500 NE 8th St., Suite 700
Bellevue, WA 98004

Loan # 274032

CONSTRUCTION DEED OF TRUST

This Deed of Trust, made **Tuesday, December 18, 2007** between
DK2 Enterprises, L.P.

Grantor(s), whose address is **731 Miner Road , Orinda, CA 94563,**
Aspen Title & Escrow, Inc.,

Trustee, whose address is **525 Main Street, Klamath Falls, OR 97601,**
Bismark Mortgage Company, LLC,

Beneficiary, whose address is **10500 NE 8th St., Suite 700 , Bellevue, WA 98004,**

Witnesseth: Grantor hereby bargains, sells and conveys to Trustee in trust, with power of sale, the following described real property: **See attached exhibit "A" for legal description(s)**, which property is not used principally for agricultural or farming purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

This deed of trust is for the purpose of securing performance of each agreement of Grantor herein contained, the terms of construction agreement(s) of even date herewith, and payment of the sum of **\$157,053.00** with interest, in accordance with the terms of a promissory note of even date herewith, payable to Beneficiary or order, and all renewals, modifications and extensions thereof, and any advance(s) or loan(s) as described in paragraph #8 herein. This Deed of Trust shall also secure any amount(s) owed to Beneficiary or its assigns by Grantor and/or maker(s) of the note arising from any written agreement, duty, subrogation, operation of law or any other basis whatsoever. **See attached exhibit "B" for special terms.**

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

1. To pay, or have paid, before delinquency all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.
2. To keep the property in good repair and condition; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon within **nine (9)** months from the date hereof or in accord with other specific written agreements between Grantor and Beneficiary; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.
3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire, earthquake, volcanic eruption, flood and other hazards, Beneficiary may require insurance in an amount not less than the original face amount of the debt secured hereby, or 100% of assessed value of the improvements, or the replacement valuation of the improvements, as determined by the insurance carrier, whichever is the higher amount, and in such companies as the Beneficiary may approve, and to have loss payable first to the Beneficiary then to Grantor. It is understood and agreed that all policies (or approved certified copies thereof) shall be held by Beneficiary. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such applications by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all Grantor's rights in insurance policies then in force shall pass to the purchaser at the foreclosure sale.
4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust. Beneficiary shall be entitled to choose the lawyer or law firm to provide any defense required herein. Grantor will pay the attorney fees in a manner satisfactory to the said attorney and/or firm chosen.

5. To pay all costs, fees and expenses incurred in connection with this Deed of Trust, including any Trustee and/or attorney's fees, costs and/or expenses incurred, in any activity undertaken to enforce, protect, ensure performance of or make claim for any obligation secured hereby. This agreement shall specifically include any such fee(s) and/or expense(s) incurred in any Bankruptcy proceeding.

IT IS MUTUALLY AGREED THAT:

6. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligations.

7. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

8. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances, prior encumbrances (see paragraph 20), if any, and/or other charges, fees or expenses related to the property herein described, Beneficiary may pay the same, and each amount so advanced, including advances or extensions of credit requested by Grantor or the maker(s) of the note, together with costs and expenses including reasonable attorney fees in connection therewith, and together with \$100.00 or 15% of each amount advanced (whichever sum is greater) which shall be due Beneficiary for service and handling costs, may be added to the debt secured by this Deed of Trust, and shall bear interest at the rate specified in the note, and all sums so advanced plus the costs and expenses described may be declared immediately due and payable and upon Grantor's failure to reimburse Beneficiary upon demand shall constitute an event of default under the terms of this Deed of Trust.

9. The note which is secured by this Deed of Trust may contain penalties for early payment of principal. During such time as the above referred prepayment penalties are due, and should Beneficiary accelerate the maturity of this Deed of Trust or note secured hereby, in accord with Paragraph #13 herein, then Beneficiary at its sole option may include in the total amount due, the additional amounts to satisfy in full the requirements of said prepayment penalties. Should Grantor tender payment of the entire indebtedness due prior to the foreclosure sale or Trustee sale said tender shall be deemed a voluntary prepayment and as such shall be inclusive of said prepayment penalties.

10. The note secured by this Deed of Trust requires the unpaid principal balance to be repaid by a date certain, and that date certain may require a final installment (Balloon Payment) substantially more than the regular installment (s) as specified in the note secured hereby. Grantor's failure to tender said final installment by its due date shall constitute a default in the terms of this Deed of Trust.

ASSIGNMENT OF RENTS:

11. As additional security hereunder, Grantor hereby assigns to Beneficiary the rents of the property, provided that Grantor shall, prior to acceleration in accord with Paragraph #13 herein, or abandonment of the property, have the right to collect and retain such rents as they become due and payable. Upon acceleration in accord with Paragraph #13 herein, or abandonment of the property, Beneficiary, in person, by agent, or by judicially appointed receiver, shall be entitled to enter upon, take possession of, and manage the property and to collect the rents of the property, including any past due. All rents collected by Beneficiary or receiver shall be applied first to payment of costs of the management of the property and collection of rents, including but not limited to, receiver's fees and expenses, reasonable attorney fees, expenses of maintaining rental flow, utilities, taxes, insurance, maintenance of the property, etc. and then to the sums secured by this Deed of Trust. Beneficiary and/or the receiver shall be liable to account only for those rents actually received.

12. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

IN CASE OF DEFAULT:

13. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, or referred to herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with applicable law, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and Attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed in accordance with applicable law.

14. Trustee shall deliver to the purchaser at the sale a Trustee's Deed, without warranty, which shall convey to the

purchaser the interest in the property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value.

15. The power of sale conferred by this Deed of Trust is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

16. In the event the Beneficiary should cause this Deed of Trust to be foreclosed as a mortgage then it is further agreed with respect to taxes, assessments, insurance premiums, liens and encumbrances, that the Beneficiary may make such additional advances as it may deem appropriate upon any payment that may have or may thereafter become due on any said encumbrance and Beneficiary shall have a separate and further right to make such additional prepayments as it shall deem appropriate on payments it believes may become due during any period of redemption and all such advances together with interest at the rate specified in the note, on each such advance so made shall be secured by this agreement and be included in any foreclosure judgment, and upon completion of any sheriff's sale whereby Beneficiary or its assigns successfully purchases at such sale, Beneficiary or its assigns may continue to advance funds on, not only those matters provided by the redemption statute of this state, but, may also make advances for insurance, maintenance, upkeep, and upon any prior encumbrances and that any sums so advanced, plus interest at the rate specified in the judgment on each such advance shall be added to such sums that otherwise would be due upon redemption under the redemption statutes, in the event of such redemption. It is agreed and stipulated that the Beneficiary may include all such provisions mentioned in this paragraph in any judgment granted in foreclosure. It is also agreed that any of the rights granted to Beneficiary regarding the making of advancements or prepayments are options only for the benefit of the Beneficiary or its assigns and shall not be construed as obligating Beneficiary or its assigns to make any such advances or prepayment.

17. Beneficiary may appoint in writing a successor Trustee, and upon the recording of such appointment in the mortgage records of the County in which this Deed of Trust is recorded, the successor Trustee shall be vested with all powers of the original Trustee. The 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, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

18. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

19. There may be unrecorded documents which are part of this transaction, the specific terms of which are incorporated herein by reference and may be ascertained by contacting the Beneficiary.

PRIOR ENCUMBRANCES:

20. The Terms and conditions of the prior encumbrances, if any, are hereby incorporated into this Deed of Trust and grantor agrees to promptly comply with all of the terms and conditions of said prior encumbrances, and upon failure to so comply such failure shall constitute a default under this Deed of Trust and Beneficiary may at its sole and exclusive option:

a. Perform such terms and conditions of the prior encumbrances which are in default and by so doing all costs and expenses incurred by the Beneficiary, including reasonable attorney fees and advance fees (see Paragraph #8), may be added to the debt which is secured by this Deed of Trust and shall bear interest as specified in the note, and all sums so advanced plus costs, fees and expenses incurred may be declared immediately due and payable and Grantors failure to reimburse Beneficiary upon demand thereof shall constitute an event of default under this Deed of Trust, and/or

b. Foreclose this Deed of Trust in accord with applicable law. In such event and upon written request of the Beneficiary, Trustee shall sell the trust property in accordance with applicable law, at public auction to the highest bidder. Any person except Trustee may bid at trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a reasonable Trustee's fee and Attorney fees; (2) to the obligation secured by this Deed of Trust; (3) the surplus if any, shall be distributed in accordance with applicable law.

WAIVER OF EXEMPTIONS:

21. Grantor hereby waives all rights of homestead and any other exemption(s) in the real property described herein under State or Federal law presently existing or hereafter enacted.

Continued next page

Continued from preceding page

By signing below I acknowledge that I have thoroughly read, understand and agree to all of the terms outlined in this Deed of Trust (Pages 1 through 6 inclusive). I further acknowledge and state that there are no oral or "side" agreements which modify or add to any portion of our written agreements contained herein and other related written loan documents of even date.

STATE OF **OREGON**) ss. **DK2 Enterprises, L.P.**
COUNTY OF **KLAMATH** by Douglas K. Ivey, General Partner

On this day personally appeared before me Douglas K. Ivey, to me known to be the General Partner of DK2 Enterprises, L.P., the Entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Entity and was executed with full authority of said Entity.
Given under my hand and official seal on: _____

Notary Public in and for the State of **OREGON**
Residing at _____
My commission expires _____

Notary's Stamp
*SEE ATTACHED NOTARY
ACKNOWLEDGMENT*

REQUEST FOR FULL RECONVEYANCE (to be used only when note is paid in full)
TO: TRUSTEE
The undersigned is legal owner and holder of the Note and all other indebtedness secured by the above Deed of Trust. Said Note, together with all other indebtedness secured hereby has been fully paid and satisfied. You are hereby requested and directed, upon payment to you of any sums owing under the terms of the Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured hereby, and to reconvey, without warranty, to the parties designated by the terms hereof, all estate now held by you and to mail said after recording Reconveyance to:
Dated: _____
Beneficiary: _____
Beneficiary: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

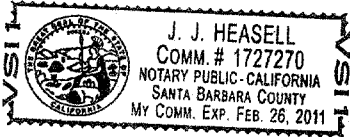
State of California

County of Contra Costa

On 12/20/2007 before me, J J Heasell, Notary Public

personally appeared Douglas Ivey

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Construction Deed of Trust

Document Date: Number of Pages:

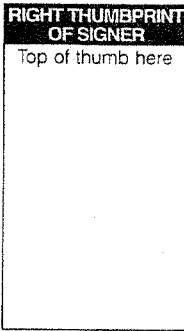
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- Individual
- Corporate Officer
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other:

Signer Is Representing:



Signer's Name:

- Individual
- Corporate Officer
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other:

Signer Is Representing:

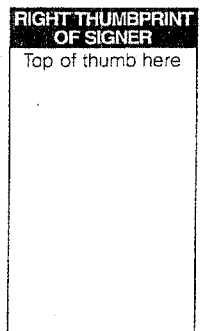


EXHIBIT "A"

(legal description(s) continued from page 1)

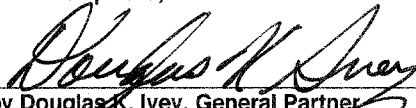
1. Lot 8, Block 14, WEST CHILOQUIN, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon. All situate in the County of Klamath, State of Oregon; commonly known as 420 S. Lalo Street (new home under construction), Chiloquin, OR 97624
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Continued from preceding page

EXHIBIT "B"
(special terms continued from page 1)

none

I have read and hereby acknowledge exhibits "A" and "B" above.

DK2 Enterprises, L.P.

by Douglas K. Ivey, General Partner