

WTC 13916-9756

2008-010982

Klamath County, Oregon



00050846200800109820060066

08/01/2008 03:33:04 PM

Fee: \$46.00

After Recording return to:

Steve Uriguen

C/O Bullivant Houser Bailey PC

888 SW 5<sup>th</sup> Ave., Suite #300

Portland, OR 97204-2089

Document Title:

DEED OF TRUST

NAME OF

GRANTOR(S):

(Last name first)

Timothy D. Smith

NAME OF

GRANTEE(S):

Bullivant Houser Bailey, PC

LEGAL

DESCRIPTION:

Block 2, Lot 2, River Pine Estates, in Klamath County,  
Oregon, City of La Pine, Oregon, 97739.

ASSESSOR'S

PROPERTY TAX

PARCEL ACCOUNT

NUMBER(S):

R131958

[Space Above This Line For Recording Data]

## DEED OF TRUST

THIS DEED OF TRUST is made this 13<sup>th</sup> day of June, 2008, by Timothy D. Smith ("Grantor(s)"), whose address is 35283 Oak View Drive, Brownsville, Oregon 97237 and whose mailing address is P.O. Box 395, Brownsville, Oregon 97237, Chicago Title Company ("Trustee"), whose address is 888 SW 5<sup>th</sup> Avenue, Suite #900, Portland, Oregon, 97204 and Bullivant Houser Bailey PC, an Oregon Professional Services Corporation ("Beneficiary"), whose address is 888 SW 5<sup>th</sup> Ave., Suite #300, Portland OR 97204-2089.

1. **Grant of Lien.** Grantor(s) grants, bargains, sells, conveys and warrants to Trustee, in trust with power of sale, all of Grantor's existing and after acquired interests in that certain property

46pmf

Chicago Title Insurance Co.

located in the County of Klamath, State of Oregon, as described on page one (1) of this Deed of Trust, and all improvements, fixtures and personalty thereon and all rights and interests appurtenant thereto (hereinafter collectively referred to as the ("**Property**") together with all rents, profits and proceeds thereof. This Deed of Trust also constitutes a security agreement in all of the property above described and for such purposes Grantor hereby grants to Beneficiary a security interest therein.

2. **Obligations Secured.** This Deed of Trust is made for the purpose of securing the performance of each Agreement of Grantor herein and in the payment of the indebtedness owed to "**Beneficiary**" in an amount to be determined at the time of Reconveyance, and all other advances made to Grantor by Beneficiary, its successors and assigns, under the Agreement or pursuant to the terms of this Deed of Trust; and the debts evidenced by all renewals, extensions, modifications, substitutions and consolidations of the Agreement.

3. **Grantor's Warranties of Title.** Grantor warrants to Beneficiary that it is the sole holder of fee simple absolute title to all of the Property and that said title is and shall be kept marketable and free from any lien or encumbrance except for known recorded priority liens and / or those imposed by law for nondelinquent real property taxes and assessments.

4. **Maintenance and Improvements.** Grantor shall maintain the buildings and other improvements now or hereafter located on the Property in a first class condition and state of repair. Grantor shall complete or restore promptly and in good workmanlike manner any building or improvement which may be damaged or destroyed and pay when due all costs incurred therefor. Grantor shall not commit or suffer any waste to the Property.

5. **Alterations.** No building or other improvement on the Property shall be structurally altered, removed or demolished without the Beneficiary's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the proper use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by the Grantor, free and clear of any lien or security interest except such as may be approved in writing by the Beneficiary.

6. **Compliance With Laws.** Grantor shall comply with all statutes, laws, ordinances and regulations which now or hereafter pertain to the construction, repair, condition, use, and occupancy of the Property, including, without limitation, all environmental, hazardous waste, subdivision, zoning, building code, fire, occupational, health, safety, occupancy, housing, condominium, and other similar or dissimilar statutes, and shall not permit any tenant or other occupant to violate the same. Grantor shall comply with all public and private easements, covenants, reservations and restrictions affecting the Property. In the event any statute requires any correction, alteration or retrofitting of any improvements Grantor shall promptly undertake the required repairs and restoration and complete the same with due diligence at its sole cost and expense.

7. **Hazardous Waste Indemnity.** Grantor shall permit no hazardous or dangerous objects, materials or products to be located upon or generated, stored, transported to or from, disposed of or used in any portion of the Property, nor permit any hazardous or dangerous use to be made of the Property. If the same do so exist, or hereafter exist on the Property, Grantor covenants to immediately cause the same to be collected, stored, treated, and removed and the Property restored to the extent required by all then applicable federal, state and local regulations and to immediately pay all of the costs thereof. Grantor agrees to defend, indemnify and hold Beneficiary, its directors, officers, agents, employees, participants and assigns harmless against any and all costs, actual and foreseeable consequential damages, and losses arising from or related to the breach of any warranty or covenant in this Section.

8. **Nonagricultural Property.** Grantor covenants and warrants that the Property is not used principally or primarily for agricultural or farming purposes.

9. **Beneficiary's Right to Inspect.** Beneficiary and its agents and representatives may enter upon the Property at all reasonable times to attend to Beneficiary's interests and to inspect, test, survey and conduct environmental assessments of the Property.

10. **Insurance.** Grantor shall continuously maintain insurance on the Property with all premiums prepaid and provide Beneficiary the original policies or originally signed certificates therefor. All such existing and future policies shall cover one hundred percent (100%) of the replacement value of the existing or future improvements comprising the Property, with agreed value and inflation protection endorsements approved by Beneficiary in writing and name Beneficiary as a loss payee under a standard endorsement acceptable to Beneficiary. Grantor shall provide Beneficiary with proof of premiums paid for each policy term so long as this Deed of Trust remains in effect. Grantor shall reimburse Beneficiary on demand for any premiums paid for such insurance by the Beneficiary upon the Grantor's default in so insuring the improvements. In the event of foreclosure or trustee's sale, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure or trustee's sale.

11. **Assignment of Insurance and Condemnation Proceeds.** Should the Property or any part or appurtenance thereof or right or interest therein be taken or damaged by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake or other casualty, or in any other manner, Beneficiary or Trustee may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all compensation, awards or other relief therefor. All compensation, awards, damages, rights of action and proceeds, including the policies and the proceeds of any policies of insurance affecting the Property, are hereby assigned to Beneficiary. Beneficiary may apply any insurance proceeds or condemnation awards assigned hereunder to the indebtedness secured hereby or, at its sole option, make the same available to Grantor to complete the necessary repairs and restorations upon such conditions and procedures as Beneficiary may require. If Beneficiary is required by law or elects to permit the use of any insurance proceeds or condemnation awards for the payment of the costs of repair and restoration, it may cause such proceeds and awards to be placed in a non-interest bearing disbursement account with disbursements to be conditioned upon the Grantor's satisfaction of conditions normally imposed when disbursing a construction loan. Such conditions include, without limitation, the absence of any default by Grantor, Grantor's payment of Beneficiary's administrative expenses and attorneys' fees, proceeds and awards needed to pay the estimated repair and restoration expenses, incremental disbursements and holdbacks based upon architects' percentage of completion certificates, and Beneficiary's receipt and approval of the restoration plans and specifications, governmental approvals, construction contracts, builder's risk insurance policies and payment and performance bonds.

12. **Property Taxes and Assessments.** Grantor shall pay in full on or before the due date thereof all rents, taxes, assessments, dues and encumbrances, with interest, that may now or hereafter be levied, assessed or claimed upon the Property that is the subject of this Deed of Trust or any part thereof, and upon request exhibit to Beneficiary official receipts therefor, and shall pay all taxes imposed upon, and reasonable costs, fees and expenses of, this Deed of Trust. Grantor shall reimburse Beneficiary on demand for any taxes and assessments paid by Beneficiary following any failure of Grantor to do so.

13. **Assignment of Leases.** Grantor does hereby assign, transfer and set over unto Beneficiary, as further security for the indebtedness and covenants secured hereby, all rentals and deposits

which may be received or contracted for under any existing or future leases of the Property encumbered hereby or any portion thereof, all of the Grantor's present and future interests in said existing and future leases. Grantor shall timely perform all of its obligations under said leases.

14. **Impairment of Security.** Grantor shall not, without first obtaining the Beneficiary's written consent, assign any of the rents or profits of the Property or change the general nature of the use of the Property or initiate or acquiesce in any zoning reclassification, special assessment district, dedication, vacation, or restriction affecting the Property, or do, or suffer to be done, any act or thing which would impair the security for said debt or the Beneficiary's lien upon the Property or the rents thereof.

15. **Defense of Suits.** Grantor shall appear in and defend any suit, action or proceeding that might affect the value, priority or enforceability of this security instrument or the security itself or the rights and powers of Beneficiary or Trustee, including any suits relating to damage to property or death or personal injuries, to the full extent of Grantor's negligence. Should Beneficiary elect also to appear in or defend any such action or proceeding or be made a party to such by reason of this Deed of Trust, or elect to prosecute such action as appears necessary to preserve said value, the Grantor will at all times indemnify from, and, on demand reimburse Beneficiary and Trustee for, any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and any appeal or petition for review thereof, and the sum of such expenditures shall be secured by this Deed of Trust with interest as provided in the Agreement secured hereby and shall be due and payable on demand.

16. **Assignments and Transfers.** The outstanding balance of the Note and all other sums then due to Beneficiary by Grantor hereunder or under any documents executed in connection with the Note may, at Beneficiary's option, be declared immediately due and payable if any of Grantor's interests in the Property or the improvements thereto, or any part thereof, are sold or transferred, voluntarily or involuntarily, without Beneficiary's written consent.

17. **Rights and Remedies on Default.** Upon the occurrence of any default under this Deed of Trust and at any time thereafter, Trustee or Beneficiary may exercise any one or more of the remedies in the Note. Additionally, upon written request of Beneficiary, Trustee shall sell the Property, in accordance with the any laws governing Deed of Trust transactions for the State of Oregon and the Uniform Commercial Code of the State of Oregon where applicable, at public auction to the highest bidder for cash at such time and at such place as are statutorily prescribed. Any person except Trustee may bid at a Trustee's sale. Subject to applicable law, Trustee shall apply the proceeds of the sale in the following order: (1) to the expense of sale, including a reasonable Trustee's fee and attorneys' fees; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed in accordance with said Deed of Trust Act. Trustee shall deliver to the purchaser at the sale its 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 Grantor's execution of this Deed of Trust, and such as Grantor 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 purchasers and encumbrancers for value. Beneficiary shall have such other rights and remedies as are available under any statute or at law or in equity generally, including but not limited to the right to judicially foreclose this Deed of Trust, to exercise any remedies available under the Uniform Commercial Code, to recover any advances made by Beneficiary on Grantor's behalf, to obtain the appointment of a receiver, and to collect any rents and proceeds herein assigned. Beneficiary shall have the right, but not the obligation, and without notice or consent, to pay or perform any obligation of Grantor herein which is not paid or performed by Grantor

when due or required, and any sums so expended and all Beneficiary's costs incurred in connection therewith shall be secured by this Deed of Trust, shall be repayable upon demand, and shall bear interest at the Default Rate specified in the Note from five (5) days after such demand is made to and including the date of collection. All rights and remedies of Beneficiary herein specified are cumulative and are in addition to, not in limitation of, any rights and remedies Beneficiary may have at law. No waiver of any default or failure or delay to exercise any right or remedy by Beneficiary shall operate as a waiver of any other default or of the same default in the future or a preclusion of any right or remedy with respect to the same or any other occurrence. Grantor agrees that any notices given in connection with the Agreement or this Deed of Trust or in connection with the enforcement of any remedy may be sent to the address indicated on the first page hereof.

18. **Attorneys' Fees; Costs.** Grantor agrees to reimburse Beneficiary for all costs, expenses, and reasonable attorneys' fees that Beneficiary incurs in connection with the realization or enforcement of any obligation or remedy contained in the Agreement, this Deed of Trust or other related documents, with or without litigation, including without limitation any costs, expenses, and fees incurred: (a) in any foreclosure, trustee's sale or deed in lieu of foreclosure or trustee's sale; (b) on appeal; (c) in any petition for review; (d) in any arbitration or mediation; (e) in any action contesting or seeking to restrain, enjoin, stay, or postpone the exercise of any remedy in which Beneficiary prevails; (f) in any bankruptcy, probate, receivership or other proceeding involving Grantor; and (g) in connection with all negotiations, documentation, and other actions relating to any work-out, compromise, settlement or satisfaction of the debt secured hereby or settlement of any debt secured by this Deed of Trust or which is evidenced by the Agreement or related documents. All such costs, expenses, and fees shall be due and payable upon demand, shall bear interest from the date incurred through the date of collection at the Default Rate stated in the Agreement and shall be secured by this Deed of Trust.

19. **Acceptance by Trustee.** Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law.

20. **Successor Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Beneficiary and duly recorded.

21. **Time of Performance.** Time is of the essence hereof in connection with all obligations of the Grantor herein.

22. **Multiple Grantors.** If Grantor is comprised of more than one person or entity, then the term "**Grantor**" shall refer to all such persons or entities collectively and to each such person or entity individually, such that all obligations, covenants, warranties, requirements, restrictions, and other provisions of this Deed of Trust shall apply both collectively and individually. If Grantor is comprised of more than one person or entity, then each of such persons or entities shall be jointly and severally liable for the indebtedness secured by this Deed of Trust (except to the extent otherwise provided in the Agreement or in the Section entitled Nonrecourse Parties herein), for the performance of Grantor's obligations and for any default on the part of any one or more of the persons or entities comprising Grantor.

IN WITNESS WHEREOF, the persons comprising Grantor(s) have caused these presents to be duly executed on the day and year first above written.

GRANTOR(S):

Timothy D. Smith

Timothy D. Smith

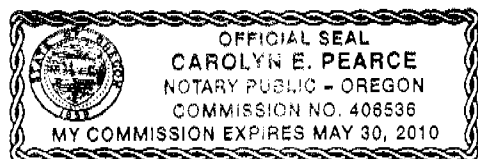
STATE OF OREGON                    )  
  ) ss.  
COUNTY OF Linn                    )

On this day personally appeared before me Timothy D. Smith, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged that s/he signed the same as her/his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 11<sup>th</sup> day of July, 2008.

Signature: Carolyn E. Pearce

Name (Print): Carolyn E. Pearce



NOTARY PUBLIC in and for the State  
of Oregon, residing at Brownsville  
My appointment expires: 5/30/2010