

MTC 83814

2008-017056  
Klamath County, Oregon



12/31/2008 03:58:23 PM

Fee: \$61.00

**WHEN RECORDED MAIL TO:**  
Oregon Housing & Community Services Department  
Attn: Homeownership Program Manager  
725 Summer Street, Ste B  
Salem, Oregon 97301-0302

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST**

THIS DEED OF TRUST is made this 26th day of December, 2008, among the Grantor David T. John and Frances B. Small (herein "Borrower"), Fidelity Title (herein "Trustee"), and the Beneficiary, the State of Oregon, acting by and through its Housing and Community Services Department whose address is:

Oregon Housing & Community Services Department  
Attn: Homeownership Program Manager  
725 Summer Street Ste B  
Salem, Oregon 97301-0302

(herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Klamath, State of Oregon:

which has the address of 10216 Split Rail Road La Pine  
[Street Address] [City]  
Oregon 97739 (herein "Property Address");  
[Zip Code]

and whose legal description is:

Lot 41 in Block 2 of TRACT 1098-SPLIT RAIL RANCHOS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property".

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's Promissory Note dated December 22, 2008 and extensions and renewals thereof (herein "Note"), in the principal some of U.S. \$ 1,500.00 with interest hereon, providing for payments of principal and interest, with the balance of the indebtedness, as described in the Note. The

Klamath

payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained. The terms of the Note are incorporated herein by reference.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note, together with other charges and fees as provided herein and in the Note.

Borrower represents and warrants, as an eligibility condition for the Loan secured by this Trust Deed and evidenced by the Note, that Borrower is as of the time of the closing of the Loan:

(A) a first-time homebuyer as defined by lender's Home Purchase Assistance Program (the "Program"); and

(B) one where combined household income from all adults over the age of 18 who shall reside at the Property is no greater than 80% of the area median income as defined by the Program and by the U.S. Department of Housing and Urban Development ("HUD").

**2. Application of Payments.** Unless applicable law provides otherwise, all payments of amounts payable to Lender by the Note and paragraph 1 hereof shall be applied by Lender first to interest and other charges payable on the Note, and then to the principal of the Note or in such other order as the Lender may decide at its own discretion.

**3. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

**4. Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property reasonably insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

## WARNING

UNLESS YOU (THE GRANTOR) PROVIDE US (OHCSO) WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY THIS AGREEMENT, WE (OHCSO) MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL (YOUR PROPERTY) BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY COVERAGE ELSEWHERE.

YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE. IF THE COST IS ADDED TO YOUR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERED OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

---

5. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest.

Any amounts disbursed by Lender pursuant to this paragraph with interest thereon, at the Note rate shall become additional indebtedness of Borrower secured by this Deed of Trust and may be added by Lender to the principal. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph shall require Lender to incur any expenses or take any action hereunder.

6. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

7. **Condemnation:** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part

hereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement which has priority over this Deed of Trust.

**8. Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successions in interest. Lender shall not be required to commence proceedings by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising and right to remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**9. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be the joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the property to Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Note, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

**10. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address, as allowed under the Agreement, or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein, as allowed under this Agreement, or to such other address as

Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**11. Governing Law; Severability.** The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**12. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and this Deed of Trust at the time of execution or after recordation hereof.

**13. Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

**14. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold, assigned, refinanced, transferred or otherwise conveyed without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust.

**15. Acceleration of Debt.** Except as provided above, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall give notice to Borrower as provided in this Trust Deed specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform the Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall give notice of sale in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of the sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of say previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the

proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

**16. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier of: (a) five days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (b) entry of a judgment enforcing this Deed of Trust if: (i) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (ii) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust, including the Agreement; (iii) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorney's fees; and (iv) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred. All payment obligations are subject to the appreciation limitation established in the Agreement.

**17. Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

**18. Substitute Trustee.** In accordance with applicable law, Lender may from time to time remove Trustee and appoint a successor Trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

**19. Use of Property.** The Property is not currently used for agricultural, timber or grazing purposes.

**20. Attorney's Fees.** As used in this Deed of Trust and in the Note, "attorneys' fees" shall include attorneys' fees, if any, which shall be awarded by an appellate court.

**21. Events of Default**

(1) The following shall constitute Events of Default

(a) If Borrower fails to timely perform in any material way under this Deed of Trust.

- (b) If Borrower causes or allows the unauthorized sale, transfer, assignment or refinancing, or attempts to sell, transfer, assign or refinance, any interest in the Property without prior written authorization from Lender.
- (c) If Borrower uses the Property, or allows anyone else to use the Property, in a way that is not permitted under this Deed of Trust.
- (d) If the Property is taken by execution of a judgment, or any other process of law, or if the Borrower becomes unable, or admits in writing the Borrower is unable, to pay debts as they mature, or if the Borrower files or has filed against the Borrower a voluntary or involuntary petition in bankruptcy, or if the Borrower makes a general assignment for the benefit of creditors, or if, the Borrower is adjudicated bankrupt or insolvent.
- (e) If the Borrower fails to maintain the Property as required in this Deed of Trust, fails to occupy the Property as Borrower's principal residence as required herein, or if Borrower fails to obtain and pay for insurance as required herein, which lists Lender as a Second Mortgagee and is adequate to replace the Property in the event of fire or casualty.
- (f) If the Borrower is in default on any other obligation with respect to the Property, including being in default on any obligation to the first mortgagee.

## 22. Remedies on Default

- (1) Lender has the right to exercise the following remedies upon any Event of Default:
- (a) Declare all the amounts secured under this Deed of Trust immediately due and payable;
  - (b) Assign its interest to a Trustee who shall have the right to foreclose by notice and sale, or foreclose by judicial foreclosure itself, as the law allows;
  - (c) If Lender forecloses by judicial foreclosure, it will be entitled to a judgment that says that Borrower must pay any amount that Borrower owes according to this Deed of Trust.
  - (d) If Borrower remains in possession of the Property after Lender is entitled to possess it, or after it has been sold, then the Borrower will have to pay rent to Lender or the new owner. Borrower will become a tenant at will.
  - (e) The Trustee and Lender shall have any other right or remedy allowed under the Note, this Trust Deed, or at law, or in equity.

It is understood that all of the Lender's rights incurred as a result of this Trust Deed are subordinate in all respects to the rights of the first mortgagee and note holder who is in a first lien position. In the event that the first mortgagee forecloses on the Property, or executes a deed-in-lieu of foreclosure, all rights of the Lender are extinguished and the full amount of the Loan and all repayment obligations described by this Trust Deed are waived. Furthermore, and notwithstanding any provisions in this Note or the Trust Deed, except in the event of a material misrepresentation by Borrower, Borrower's obligation to repay the Loan shall not exceed fifty percent of the Borrower's Net Gain on the sale or other transfer of the Property. For the purposes of this Trust Deed, "Net Gain" means any remaining sale or other transfer proceeds that the borrower receives or is owed as a result of selling or otherwise transferring the Property after the Borrower has first paid off the first mortgagee and all real estate fees and closing costs normally paid by the seller.

**23. Time is of the Essence.** Time is of the essence with respect to all covenants and obligations you have made under this Agreement.

**24. Indemnity.** You agree to save, defend and to hold harmless Lender, its employees, agents and assigns, from any and all claims, demands, damages, liabilities, and expenses arising out of Lender's interest under this Agreement.

**25. Miscellaneous Rights of Lender.** Lender may at any time and from time to time, without notice, release any person liable for the payment of any obligation under this Agreement; extend the time or agree to alter the terms of payment of any obligation; release any property securing any obligation; or agree to otherwise alter or amend the terms of this Agreement in any way without affecting the liability of any person or the validity of this Agreement.

**26. Cross Default.** Events of Default hereunder shall constitute Events of Default under the Agreement and Note. Events of Default under the Note and the Agreement shall constitute Events of Default hereunder.

**27. Post Judgment Interest.** If this Trust Deed is foreclosed, or any remedy exercised hereunder, any judgment or decree will bear interest on the unpaid balance at the rate of twelve percent, compounded annually.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Trust Deed and in any rider(s) executed by Borrower and recorded with it.

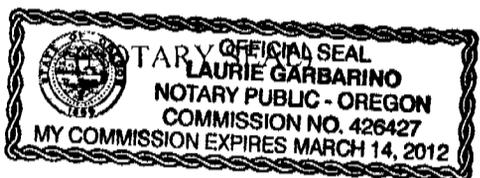
David T. John  
Borrower

Frances B. Small  
Borrower

STATE OF OREGON            )  
  : SS  
County of Lincoln        )

On the 29 day of December, 2008, before me, the undersigned Notary Public, in and for the County and State aforesaid, personally appeared before me the above-named ~~Kristi Savoie Smith~~ <sup>Kristi David T. John & Frances B. Small</sup>, who is known to me to be the identical individual(s) who executed the within instrument, and acknowledged to me execution of said instrument freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written. *D.T. John*



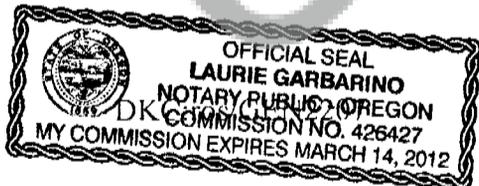
Laurie Garbarino  
NOTARY PUBLIC FOR OREGON

STATE OF OREGON            )  
  : SS  
County of Lincoln        )

On the 29 day of December, 2008, before me, the undersigned Notary Public, in and for the County and State aforesaid, personally appeared before me the above-named David T. John and Frances B. Small, who is known to me to be the identical individual(s) who executed the within instrument, and acknowledged to me execution of said instrument freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written.

(NOTARY SEAL)



Laurie Garbarino  
NOTARY PUBLIC FOR OREGON