

2009-007473

Klamath County, Oregon

After Recording Return to:
 Evergreen Federal Savings and Loan
 ATTN: PROCESSING
 969 SE Sixth Street
 Grants Pass, OR 97526



05/29/2009 11:37:04 AM

Fee: \$81.00

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COMMERCIAL DEED OF TRUST

THIS DEED OF TRUST (the "Trust Deed") is made this 26TH day of MAY, 20 09 among the Grantor, David McDonald aka David H McDonald aka David H McDonald Sr and Yvonne McDonald and Yvonne M McDonald, as tenants by the entirety whose address is 5732 Hugo Road, Grants Pass, Oregon 97526, (herein "Borrower"); the Trustee, Patrick J Kelly, Attorney at Law, whose address is 717 NW 5TH Street, Grants Pass, OR 97526, (the "Trustee"); and the Beneficiary, EVERGREEN FEDERAL SAVINGS AND LOAN, whose address is 969 S.E. 6th Street, Grants Pass, Oregon 97526, (the "Lender").

Borrower, in consideration of the indebtedness recited in this Trust Deed and the trust created by this Trust Deed, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the property located in the County of Klamath, State of Oregon, described in Exhibit A attached hereto and by this reference incorporated herein; together with all buildings, improvements and tenements now or in the future erected on the property, and all previously or in the future vacated alleys and streets abutting the property, and all easements, rights, appurtenances, leases, included, without limitation, the leases or agreements now or hereafter existing, however evidenced, covering all or any portion of the property, together with all rents or monies due or to become due thereunder; and together with all now existing or in the future arising or acquired: (a) revenues, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property; (b) all fixtures, machinery, equipment located or to be located on the property; personal property required for the maintenance and operation of the property, included, but not limited to, engines, boilers, incinerators, building materials, and all appliances (included, but not limited to, those for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air and light); and (c) escalators and elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, communications apparatus, plumbing, plumbing fixtures, water heaters, paneling, attached floor and wall coverings; all of which, including replacements, substitutions and additions thereto, shall be deemed to be and remain a part of the property covered by this Trust Deed and all the estate, interest or other claim or demand, including insurance which Borrower now has or may in the future acquire in and to the property described above; the specific enumerations herein not excluding the general; and all of the foregoing, together with said property and together with the proceeds of the foregoing are referred to in the Trust Deed as the "Property."

This Trust Deed is given as security for the following (collectively the "Indebtedness"): (a) the repayment of the indebtedness evidenced by Borrower's promissory note in favor of Lender dated MAY 26, 20 09 (the "Note") in the principal sum of Two Hundred Fifty Thousand and no/100 dollars (\$ 250,000.00), with interest thereon, the balance of which, if not sooner paid, is due and payable on June 1, 2012 and all amendments, renewals, extensions and modifications of the Note; (b) the payment of any future advances, with interest thereon, made by the Lender to Borrower pursuant to this Trust Deed ("Future Advances"); (c) the performance of the covenants and agreements of Borrower contained in the Loan Agreement, if any, between Lender and Borrower dated N/A, and any amendments (collectively the "Loan Agreement"); (d) the payments of all other sums, with interest thereon, advanced in accordance with this Trust Deed to protect the security of this Trust Deed; and (e) the performance of the covenants and agreements of Borrower contained in this Trust Deed.

Borrower and Lender covenant and agree as follows:

1. **COVENANT OF TITLE.** Borrower covenants that Borrower is lawfully seized of the estate conveyed by this Trust Deed and has the right to grant, convey and assign the Property, that the Property is unencumbered, except as disclosed in writing to and approved by Lender prior to the execution of this Trust Deed. Borrower covenants that they will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions acceptable to Lender and listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

2. **PROMISE TO PAY.** Borrower shall pay promptly when due the principal of and interest on the Indebtedness and any other charges provided in the Note, this Trust Deed, the Assignment of Leases, Rents and Agreements, the Loan Agreement and other documents executed in connection with the Indebtedness (collectively the "Loan Documents").

3. **LATE PAYMENT CHARGES.** Lender may charge a late charge on any scheduled payment which Lender fails to receive within 15 days after the due date, or by the next business day, if

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the 15-day period ends on a Saturday, Sunday, or legal holiday. The amount of the late charge shall be as specified in the Note or Loan Agreement or, if the Note or Loan Agreement specifies no late charge, then five percent of the amount of the payment of principal and interest not paid when due. Such late charge shall in no event exceed the maximum charge, if any, specified under applicable law. Collection of a late charge shall not constitute a waiver of or prejudice the Lender's right to pursue any other right or remedy available on account of the delinquency.

4. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, or unless specified to the contrary in the Loan Documents, each complete installment payment received by Lender under the Note or this Trust Deed or other Loan Documents shall be applied by Lender first to payment of late payment charges assessed pursuant to Section 3 and legal fees, if any, then to reserves, if any, due under Sections 5 and 6 of this Trust Deed, next to interest due and payable on the Indebtedness, then to principal due and payable pursuant to the terms of the Note, this Trust Deed, and any other Loan Documents. Upon a breach of any covenant or agreement in this Trust Deed or other Loan Document, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any payments received by Lender under the Note, this Trust Deed or under the other Loan Documents. Lender, at Lender's option, may reject any partial payment. Any partial payment which Lender accepts may be held in a non-interest bearing account until Lender receives funds sufficient to equal a complete installment payment, or, may be applied to the Indebtedness in any amount and any order as Lender may determine in Lender's sole discretion.

5. **TAXES AND LIENS: RESERVES.**

5.1 **Payment.** Borrower shall pay when due all taxes and assessments levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Borrower shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Trust Deed, except for the lien of taxes and assessments not due and except as disclosed in writing to and approved by Lender prior to the execution of this Trust Deed. Without Lender's prior written consent, Borrower shall not allow any lien inferior to this Trust Deed to be perfected against the Property.

5.2 **Evidence of Payment.** On Lender's demand, Borrower promptly shall furnish evidence acceptable to Lender of payment of taxes and assessments and shall authorize the appropriate county official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

5.3 **Reserves.** At Lender's option, lender may require Borrower to maintain with Lender reserves for payment of taxes and assessments. The reserves shall be created by monthly payments of a sum estimated by Lender to be sufficient to produce, at least 30 days before the taxes and assessments are due, amounts at least equal to the taxes and assessments to be paid. If Lender determines that the reserve funds are insufficient at any time, Borrower shall promptly pay any deficiency to Lender on its demand. The reserve funds shall be held by Lender in a deposit account, and the funds may be commingled with other funds held by Lender. Unless Lender and Borrower agree in writing otherwise or applicable law requires that Lender pay Borrower interest on the funds, Lender shall not be required to pay Borrower any interest on the funds. Lender shall apply the reserve funds to pay the taxes and assessments so long as Borrower is not in breach of any covenant or agreement of Borrower in this Trust Deed, but only to the extent that funds are available to do so. Lender does not hold the funds in trust for Borrower and is not the agent of Borrower for payment of taxes and assessments required to be paid by Borrower. Upon Borrower's breach of any covenant or agreement of Borrower in this Trust Deed, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any reserve funds held by Lender (i) to pay taxes and assessments which are due or (ii) as a credit against the Indebtedness.

6. **HAZARD INSURANCE.**

6.1 **Policies.** Borrower shall keep any improvements now existing or in the future erected on the Property insured by carriers who are at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", flood insurance, if and when from time to time required by Lender, rent loss, business interruption and such other hazards, casualties, liabilities and contingencies as Lender shall require from time to time or at any time during the term of this Trust Deed and in such amounts, on a 100% replacement cost basis without co-insurance clause, and for such periods as Lender shall require. On Lender's request, Borrower, at Borrower's expense, shall have an independent appraiser satisfactory to Lender determine the current replacement cost of the Property. All insurance policies and renewals thereof shall be in a form and substance acceptable to Lender and shall include a loss payable endorsement in favor of and in form and substance acceptable to Lender and a provision that coverage will not be cancelled, altered or diminished without a minimum of 30 days' prior written notice to Lender. Lender shall have the right to hold the policies, and Borrower promptly shall furnish all renewal notices.

6.2 **Payment; Reserves.** All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in

writing. Prior to the expiration date of any policy, Borrower shall deliver to Lender a renewal policy in form and substance satisfactory to Lender and receipts for paid premiums. At Lender's option, Lender may require Borrower to maintain with Lender reserves for payment of insurance premiums. The reserves shall be created and held in the same manner as provided in Section 5.3 for reserves for payment of taxes and assessments.

6.3 **Loss.** In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to the Lender. Lender may give written notice to the insurance carrier if Borrower fails to do so within 20 days of the casualty. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under

insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section 6 shall require Lender to incur any expense or take any action hereunder.

6.4 **Application of Proceeds.** Borrower authorizes Lender, at Lender's option, (a) to apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due, or (b) after deducting Lender's costs and expenses described above, to hold the balance of such proceeds to be disbursed to Borrower for the cost of reconstruction or repair of the Property. If the insurance proceeds are held by Lender to disburse to Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may require that Borrower deposit with Lender any amount in excess of the insurance proceeds necessary to complete restoration, which amounts shall be disbursed prior to disbursement of any insurance proceeds. Unless Lender and Borrower agree in writing otherwise or applicable law requires that Lender pay Borrower interest on the proceeds, Lender shall not be required to pay Borrower any interest on the proceeds or any other sum which Lender may require Borrower to deposit with Lender pursuant to this Section. Lender, at Lender's option, may condition disbursement of those proceeds on Lender's approval of plans and specifications for the restoration and repair to be prepared by an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanic and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If Lender chooses to hold any insurance proceeds for the restoration or repair of the Property, Lender will be entitled to an administration fee of one (1) percent of the costs of such restoration or repair. If the insurance proceeds are applied to the payment of the sums secured by this Trust Deed, any such application of proceeds to principal shall be applied to the most remote unpaid installment of principal and shall not extend or postpone the due dates of any payments required under Section 2 or change the amounts of any such payments. If the Property is sold to Lender pursuant to Section 22 of this Trust Deed or if Lender otherwise acquires title to the Property, then in addition to the lien and security interests otherwise granted to Lender under this Trust Deed, Lender shall have all of the right, title and interest in and to any insurance policies and unearned premiums thereon and in to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

7. PRESERVATION AND MAINTENANCE OF PROPERTY; ENVIRONMENTAL LAWS; INDEMNIFICATION.

7.1 Preservation and Maintenance. Borrower:

- (a) shall not commit waste or permit impairment or deterioration of the Property;
- (b) shall not abandon the Property;
- (c) unless Lender directs Borrower in writing to the contrary, shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as the Lender may approve in writing, in the event of any damage, injury or loss to the Property, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair;
- (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances on the Property in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, and all of such replacements shall be and are subject to the lien of this Trust Deed;
- (e) shall operate and maintain the Property in compliance with all applicable laws and regulations and in a manner to ensure maximum rentals; and
- (f) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property (including, without limitation, matters pertaining to land use, zoning and Environmental Laws and Hazardous Substances as defined below), the security of this Trust Deed or the rights or powers of Lender. Neither Borrower, nor any tenant nor other person, without the written approval of Lender, shall remove, demolish or alter any improvement now existing or in the future erected on the Property or any

fixtures, equipment, machinery or appliance in or on the Property and in which Lender has any interest by virtue of this Trust Deed, any security agreement, or any other Loan Document, except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind, which shall thereupon become subject to the lien of this Trust Deed.

7.2 Environmental laws. In this Trust Deed, "Environmental Laws" means any and all state, federal, and local statutes, regulations and ordinances relating to the protection of human health or the environment. "Hazardous Substances" is used in its very broadest sense and refers to materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Substances" shall include, without limitation, petroleum products or crude oil or any fraction thereof and any and all hazardous or toxic substances, materials or waste as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other of the Environmental Laws. To the best knowledge of Borrower no substances considered to be hazardous or toxic wastes under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976 or any similar federal or state laws or regulations are now present on, in or under the real property. Borrower shall cause the Property and all operations on the Property to comply with all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws. Borrower shall exercise extreme care in handling Hazardous Substances and shall undertake any and all preventive, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws or orders by any governmental authority having jurisdiction under Environmental Laws, or (b) necessary to prevent or minimize property damage (including, without limitation, damage to Borrower's own property), personal injury or damage to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or operations on the Property. In the event Borrower fails to perform any of their obligation under this Section, Lender may perform (but shall not be required to perform) such obligations at Borrower's expense pursuant to Section 9 of this Trust Deed. In performing any such obligations of Borrower, Lender shall at all times be deemed to be the agent of Borrower and shall not by reason of such performance be deemed to be assuming any responsibility of Borrower under any Environmental Law or to any third party.

7.3 Further assurances. At any time Lender requests, Borrower shall provide to Lender further assurances of Borrower's compliance with this Section 7. The assurances shall be in form and substance satisfactory to Lender in Lender's sole discretion, and may include, but not be limited to, Borrower providing to Lender an environmental audit from a source acceptable to Lender at Borrower's expense.

7.4 Indemnification. Borrower agrees to indemnify and hold harmless Lender and its officers, directors, employees and agents, and Lender's successors and assigns and their officers, directors, employees and agents against any and all claims, demands, losses, liabilities, costs and expenses (including, without limitation, attorney fees at trial and on any appeal or petition for review) incurred by such person (a) arising out of or relating to any investigatory or remedial action involving the Property and the operations conducted on the Property and required by Environmental Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws, or (b) on account of injury to any person whatsoever or damage to any property arising out of, in connection with or in any way relating to (i) the violation of any Environmental Laws, (ii) the use, treatment, storage, generation, manufacture, transport, release, spill, disposal or other handling of Hazardous Substances on the Property or in connection with operations, or (iii) the contamination of any of the Property by Hazardous Substances by any means whatsoever, and (c) without in any way limiting the foregoing for any other reason, or on account of, or in connection with the Property or this Trust Deed.

7.5 Survival. The covenants contained in this Section 7 shall survive the repayment of the Indebtedness and the delivery of a deed in lieu of foreclosure to Lender or any successor of Lender and shall survive any foreclosure, whether judicial or nonjudicial, of the Property by Lender or any successor of Lender, and shall be for the benefit of Lender, and any successor to Lender, as holder of any security interest in the Property or the Indebtedness, or as owner of the Property or any other property of Borrower following foreclosure or the delivery of a deed in lieu of foreclosure.

8. USE OF PROPERTY. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Trust Deed was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification or comprehensive plan governing the Property without Lender's prior written consent, Borrower warrant that this Trust Deed is and will at all times constitute a commercial deed of trust, as defined under applicable law.

9. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this Trust Deed, or if any action or proceeding is commenced which affects the property or title to the Property or the interest of Lender in the Property, including, but

not limited to, eminent domain, insolvency, code enforcement, violation of any law concerning environmental protection and pollution control referred to in Section 7 above, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary or advisable, in its sole discretion, to protect Lender's interest, including, but not limited to, (a) employment of attorneys or other advisors, (b) entry upon the Property to investigate and make repairs, (c) procurement of satisfactory insurance, and (d) payment of any tax or liens. Any amounts disbursed by Lender pursuant to this Section 9, with interest thereon, shall become additional Indebtedness of Borrower secured by this Trust Deed. Unless Borrower and Lender agree in writing to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the interest rate stated in the Note, as adjusted pursuant to the terms of the Note. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured by this Trust Deed. Nothing contained in this Section 9 shall require Lender to incur any expense or take any action.

10. **INSPECTION.** Lender may make or cause to be made reasonable entries upon the Property to inspect the Property including; but not limited to, inspecting any buildings on the Property and inspection and/or environmental evaluation of the Property.

11. **BOOKS AND RECORDS.** Borrower shall keep and maintain at all times complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases, and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. In addition, Borrower shall provide Lender not later than May 1 of each year (a) a current financial statement; (b) a copy of the Borrower's tax return for the previous year; and, (c) a statement of income and expenses of the property, each in reasonable detail and certified by Borrower to be complete and correct, and, if Lender shall require, reviewed by an independent certified public accountant. Borrower shall furnish, at any time upon Lender's request, a rent schedule for the Property, certified by the Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid.

12. **MAINTENANCE OF PERFORMANCE AND INCOME.** Borrower shall comply with all provisions in the Loan Agreement and other loan documents with regard to the maintenance of specific performance levels. If Borrower is unable to perform at those specific performance levels as stated in the Loan Agreement or other loan documents, Lender, at Lender's option, may declare all of the sums secured by this Trust Deed to be immediately due and payable, and may invoke any of the remedies permitted by this Trust Deed.

13. **CONDEMNATION.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part of the Property, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect and to settle or compromise any claim in connection with any such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part of the Property, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the Indebtedness, whether or not then due, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall be applied to the most remote unpaid installment of principal and shall not extend or postpone the due date of any payments required under this Trust Deed or change the amount of any such payments. Borrower agrees to execute such further evidence or assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

14. **BORROWER AND LIEN NOT RELEASED.** From time to time, at Lender's option, without giving notice to or obtaining the consent of Borrower, their successors or assigns or of any junior lienholder or guarantor and without any liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement in the Loan Documents (including, but not limited to, this Trust Deed), Lender may do any or all of the following:

- (a) Extend the time for payment of the Indebtedness or any part of it;
- (b) Reduce the payments on the Indebtedness;
- (c) Release anyone liable on any part of the indebtedness;
- (d) Accept renewal note or notes for the Indebtedness;
- (e) Release from the lien of this Trust Deed any part of the Property pursuant to

Borrower's request;

- (f) Release other or additional security pursuant to Borrower's request;
- (g) Reconvey any part of the Property pursuant to Borrower's request;
- (h) Consent to any map or plat of the Property;
- (i) Consent to any easement pursuant to Borrower's request;
- (j) Execute any subordination agreement;
- (k) Upon agreement with Borrower, renegotiate or adjust the initial interest rate provided in the note or mortgage, upward or downward, which may increase or decrease the amount of periodic payments or may extend or shorten the term of the mortgage, or both;
- (l) Increase the underlying obligation secured by the mortgage as a result of deferment of all or a portion of the interest payments and the addition of such payments to the outstanding balance of the obligation;
- (m) Execute new notes at designated intervals during the term of the mortgage which reflect changes made pursuant to paragraph (a) or (b) of this subsection;
- (n) Substitute a note if there is no increase in the principal amount or interest rate to be paid under the note, or;
- (o) Modify the periodic payments required under the note if there is no increase in the principal amount due or the interest rate to be paid under the note.

Any action taken by Lender pursuant to the terms of this Section or any modification of the rate of interest upward or downward, or modification of the period of amortization of the Note or change in the amount of the monthly installments payable under the Note or other Loan Documents, or any combination thereof, which may extend or reduce the term of the Note or this Trust Deed or both, shall not affect the obligation of Borrower's successors or assigns to pay the sums secured by this Trust Deed and the obligations of Borrower to observe the covenants of Borrower contained in this Trust Deed, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness secured by this Trust Deed, and shall not affect the lien or priority of lien of this Trust Deed on the Property. Unless otherwise provided by law, the priority of this Trust Deed shall not be affected by any change in terms whether or not it adversely affects subordinate or prior interest holders. Borrower shall pay Lender a service charge, together with such title insurance premiums and attorney fees as may be incurred at Lender's option for any such action if taken at Borrower's request.

15. FORBEARANCE BY LENDER OR RECEIPT OF AWARDS NOT A WAIVER.

Any forbearance by lender in exercising any right or remedy under this Trust Deed, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of any sum secured by this Trust Deed after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment, nor shall Lender's receipt of any awards, proceeds or damages under this Trust Deed operate to cure or waive any default in payment of sums secured by this Trust Deed.

16. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Trust Deed is intended to be a security agreement pursuant to the Uniform Commercial Code of Oregon for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code of Oregon, and the Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Trust Deed, or a reproduction of it, in the real estate records, office of the Oregon Secretary of State, or other appropriate filing index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Trust Deed or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments of them, and reproductions of this Trust Deed in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases of them, and shall pay all costs and expenses of any record searches for financing statements Lender may require. Borrower shall notify Lender in writing prior to changing their names or moving their chief executive office or any of the Property secured by this Trust Deed. Without the prior written consent of Lender, Borrower shall not create or suffer to be created any other security interest in those items, including replacements, substitutions and additions to them. Upon the Breach by Borrower of any covenant or agreement of Borrower contained in this Trust Deed, including, but not limited to, the covenants of Borrower to pay when due all sums secured by this Trust Deed, Lender shall have the remedies of a secured party under the Uniform Commercial Code of Oregon and, at Lender's option, may also invoke the remedies provided in this Trust Deed as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, whether by nonjudicial sale or otherwise, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code of Oregon or of the other remedies provided in this Trust Deed.

17. LEASES OF THE PROPERTY. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower shall furnish Lender with executed copies of all leases now existing or in the future made of all or any part of the Property, and all leases now or in the future entered into will be in form and substance subject to the

prior written approval of Lender. All leases of the Property shall specifically provide that such leases are subordinate to this Trust Deed; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of tenant shall not be terminated by foreclosure; that the tenant agrees to execute such estoppel certificates in form and substance satisfactory to Lender; and that Lender, at Lender's option, may accept or reject such attornments. Without Lender's written consent, Borrower shall not request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Trust Deed. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of setoff against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a setoff against rent, (ii) notify Lender thereof and of the amount of said setoffs, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to setoff or take such other steps as shall effectively discharge such setoff and as shall assure that rents thereafter due shall continue to be payable without setoff or deduction.

18. **ASSIGNMENTS OF RENTS.** As additional security under this Trust Deed, Borrower hereby assigns to Lender the leases, rents or agreements concerning the Property now existing or in the future arising, provided that unless there is an event of default under the Loan Documents, Borrower shall have the right to collect and retain such rents as they become due and payable. Upon Lender's request, Borrower shall execute any additional documents requested by Lender to assign to Lender any leases and all security and other deposits concerning Property. This assignment is not a delegation or assignment to Lender of Borrower's duties or obligations under or in connection with the Property. Lender's acceptance of this assignment does not constitute a promise by it nor does it in any way obligate it to perform any of Borrower's duties or obligations under or in connection with the leases, rents or agreements. Borrower hereby agrees to indemnify Lender against and hold it harmless from any and all liability, loss or damage which it may or might incur under the leases, rents or agreements or under or by reason of the assignment and of and from any and all claims and demands whatsoever which may be asserted against it by any reason of any alleged obligation or undertaking on Lender's or Borrower's part to perform or discharge any of the terms of the leases, rents or agreements.

19. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option so long as this Trust Deed secures Indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Trust Deed if the loan documentation related to the Future Advance provides that the Future Advance is to be secured by this Trust Deed.

20. **PROHIBITION OF TRANSFER OF PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION.** Without prior written consent of Lender, Borrower shall not transfer or agree to transfer all or any part of Property or any interest in the Property. For the purpose of this section, the occurrence of any of the following events, without limitation, or any agreement to do any of the following, without limitation, shall be deemed to be a transfer of the Property:

(a) Any sale, contract to sell, conveyance, assignment or other transfer of, or grant of a mortgage, deed of trust, other lien, or other security interest in, all or any part of the legal or equitable title to Property;

(b) If Borrower is a corporation, any sale, conveyance, assignment, or other transfer of, on the grant of a security interest in, twenty-five percent (25%) or more in the aggregate during the term of the Trust Deed, of Borrower's voting stock and securities which may be converted to voting stock;

(c) If Borrower is a general partnership, the sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any general partnership interest of Borrower;

(d) If Borrower is a limited partnership, the sale, conveyance, assignment or other transfer of, or grant of a security interest in, any general partnership interest of Borrower, or twenty-five percent (25%) or more in the aggregate during the term of the Trust Deed, of the limited partnership interests of Borrower;

(e) The grant of a leasehold interest which contains an option to purchase.

If any of (a), (b), (c), (d) or (e) or any combination thereof occur, Lender, at Lender's option, may declare all of the sums secured by this Trust Deed to be immediately due and payable, and may invoke any of the remedies permitted by this Trust Deed. If Borrower or a prospective transferee applies to Lender for consent to transfer, Lender may require such information as may be reasonably necessary for Lender to assess the prospective transferee's prior business experience, reputation and financial ability to perform Borrower's obligations under this Trust Deed. As a condition of its consent to any transfer, Lender in its discretion may impose an assumption fee, and may increase the interest rate on the Note or under the other Loan Documents. However, notwithstanding any of the foregoing, Lender, in its sole discretion, may withhold its consent to any transfer for any reason whether or not withholding consent is reasonable under the circumstances.

21. **LOAN AGREEMENT PROVISIONS.** Borrower agrees to comply with the covenants

and conditions of the Loan Agreement, if any, and all other Loan Documents executed in connection with the Indebtedness secured by this Trust Deed. Borrower agrees that, if the terms of this Trust Deed are inconsistent with the terms of the Loan Agreement, if any, the terms of the Loan Agreement will control.

22. **DEFAULT.** The following shall constitute events of default:

(a) Failure of Borrower to pay any portion of the indebtedness when it is due.

(b) Failure of Borrower within the time required by this Trust Deed to make any payment for taxes, insurance or any other payment necessary to prevent filing of or discharge of any lien.

(c) Transfer or agreement to transfer any part or interest in the Property in any manner whatsoever, including, but not limited to, allowing any lien inferior to this Trust Deed on the Property, or transfer of any other interest of Borrower as described in Section 19, except for leases entered into by Borrower subject to Lender's approval as set forth in Section 16 of this Trust Deed.

(d) Dissolution, termination of existence, insolvency or business failure of Borrower; the commencement by Borrower of a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's relief; the filing of an involuntary petition against Borrower under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief which Borrower has not caused to be dismissed within 30 days after such filing; the appointment or the consent by Borrower to the appointment of a receiver, trustee, or custodian of Borrower or of any of Borrower's property which Borrower has not caused to be withdrawn within 30 days after such appointment; an assignment for the benefit of creditors by Borrower; the making or suffering by Borrower of a fraudulent transfer under applicable federal or state law; concealment by Borrower of any of its property in fraud of creditors; the imposition of a lien through legal proceedings or distraint upon any of the property of Borrower or Borrower's failure generally to pay its debts as such debts become due. The Events of Default in this paragraph shall apply and refer to Borrower, any guarantor of the Indebtedness, and to each of the individuals or entities which are collectively referred to as "Borrower".

(e) Failure of Borrower to make any payment or perform any obligation under any superior liens, inferior liens or encumbrances, within the time required under those liens or encumbrances, or commencement of any suit or other action to foreclose any superior or inferior liens or encumbrances.

(f) Breach or default under the Loan Agreement or any other Loan Documents, which is not cured within any applicable cure period.

(g) Termination or revocation of any guaranty delivered to Lender in connection with the Indebtedness.

(h) Failure of Borrower to maintain performance levels required by Section 12 of this Trust Deed.

(i) Failure of Borrower to perform any obligations under this Trust Deed other than those described in the preceding paragraphs (a) through (g) of this Section, within ten (10) days after receipt of written notice from Lender specifying the nature of the default. No notice of default and no opportunity to cure shall be required if during the prior twelve (12) months Lender already has sent a notice to Borrower concerning default in performance of the same obligation.

23. **RIGHTS AND REMEDIES ON DEFAULT.**

23.1 **Remedies.** Upon the occurrence of any event of default and at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

(a) Lender may declare all sums secured by this Trust Deed immediately due and payable, including, without limitation, any prepayment premium which Borrower would be required to pay under the terms of the Note or Loan Agreement.

(b) The Trustee shall have the right to foreclose by notice and sale, or Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law.

(c) If this Trust Deed is foreclosed by judicial procedure, Lender will be entitled to a judgment against Borrower which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount of the unpaid balance of the judgment.

(d) With respect to all or any part of the Property that constitutes personalty, Lender shall have all rights and remedies of a secured party under the Uniform Commercial Code of Oregon.

(e) Lender shall have the right to take possession of the Property and, with or without taking possession of the Property, collect all the rents and revenues of the Property in accordance with this Trust Deed and/or in any other assignment of rents.

(f) Lender shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect all the rents and revenues from the Property and apply the proceeds, over and above cost of the receivership, against the sums due under this Trust Deed. The receiver may serve without bond if permitted by applicable law. Lender's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the sums due under this Trust Deed by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver pursuant to applicable law.

(g) In the event Borrower remains in possession of the Property, after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Borrower, Borrower shall become tenants at will of Lender, or the purchaser of the Property, and shall pay a reasonable rental for use of the Property while in Borrower's possession.

(h) Trustee and Lender shall have any other right or remedy provided in this Trust Deed, the Note, the Loan Agreement, or any other Loan Document, or available at law, in equity or otherwise.

23.2 Rights of Receiver or Lender-in-Possession. Upon taking possession of all or any part of the Property, the receiver or Lender may:

(a) Use, operate, manage, control and conduct business on the Property and make expenditures for all maintenance and improvements as in its judgment are proper;

(b) Collect the income from the Property, including any past due, and apply such sums to the expenses of use, operation and management, including, but not limited to, receiver's fees, premiums on receiver's bonds, and reasonable attorney fees and to the sums secured by this Trust Deed in any order as Lender shall determine in Lender's sole discretion;

(c) At Lender's option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans or specifications as Lender deems appropriate.

Lender or the receiver shall be liable to account only for those rents actually received. If the revenues produced by the Property are insufficient to pay expenses, the receiver may borrow from Lender (if Lender, in its sole discretion, agrees to lend) or otherwise, or Lender may borrow or advance, such sums as the receiver or Lender may deem necessary for purposes stated in this paragraph. The amounts borrowed or advanced shall bear interest from the date of expenditure until repaid at the same interest rate as provided in Section 9. Such sums shall become part of the Indebtedness secured by this Trust Deed and shall be payable by Borrower on demand.

23.3 Waiver of Marshaling; Sale of the Property. Notwithstanding the existence of any other mortgage, deed of trust, other lien or other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property, real or personal or mixed, shall be subject to the remedies provided in this Trust Deed. Lender shall have the right to determine the order in which any or all portions of the Indebtedness secured by this Trust Deed are satisfied from the proceeds realized upon the exercise of the remedies provided in this Trust Deed. In exercising its rights and remedies, Lender, at Lender's sole discretion, may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Lender may bid at any public sale on all or any portion of the Property(s). Borrower, any party who consents to this Trust Deed and any party who now or in the future acquires a security interest in the Property and who has actual or constructive notice of this Trust Deed hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided in this Trust Deed.

23.4 Notice of Sale. Lender shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean notice given in accordance with applicable law, and may include, without limitation, only notice required for the nonjudicial sale of the real property.

23.5 Waiver; Election of Remedies; Remedies Cumulative. A waiver by any party of a breach of a provision of this Trust Deed shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Lender under this Trust Deed are distinct and cumulative and not exclusive to all other rights or remedies under this Trust Deed or Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively in any order whatsoever, an election to make expenditures or take action to perform an obligation of Borrower shall not affect Lender's right to declare a default and exercise its remedies under this Trust Deed.

23.6 Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by the Trust Deed, Borrower shall have the right to have any proceedings begun by Lender to enforce this Trust Deed discontinued at any time prior to the earlier to occur of (a) the fifth day before sale of the Property pursuant to the power of sale contained in the Trust Deed or (b) entry of a judgement enforcing this Trust Deed if: (i) Borrower pays Lender all sums which would be then due under this Trust Deed, the Note and notes securing Future Advances, if any, had no acceleration occurred; (ii) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Trust Deed; (iii) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing covenants and agreements of Borrower contained in this Trust Deed and in enforcing Lender's and Trustee's remedies as provided in this Trust Deed, 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 Trust Deed, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Trust Deed shall continue unimpaired. Upon such payment and cure by Borrower, this Trust Deed and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

24. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreement contained in this Trust Deed shall bind, and the rights under this Trust Deed shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 20 of this Trust Deed. This Trust Deed may be assigned in whole or in part to any person by Lender and without notice to or affecting Borrower's liability hereunder, and Lender, in connection with such assignment, participation, or similar arrangement, may make all credit and financial data furnished and to be furnished by Borrower available to such existing or prospective assignee, participant or person. If Lender assigns to any assignees, participants or other persons all of Lender's interest in this Trust Deed, then Lender shall be and is released from any obligations under this Trust Deed. All covenants and agreements of Borrower shall be joint and several. In exercising any rights under this Trust Deed or taking any actions provided for in this Trust Deed, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and heading of the sections of this Trust Deed are for convenience only and are not to be used to interpret or define the provisions of this Trust Deed.

25. NOTICE. Except as specified to the contrary in the Loan Documents and except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Trust Deed or in the Loan Documents shall be given by mailing such notice by certified mail, return receipt requested, addressed to Borrower at Borrower's addresses stated above or at such other address as Borrower may designate by notice to Lender as provided in this Trust Deed, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated in this Trust Deed or such other address as Lender may designate by notice to Borrower as provided in this Trust Deed. Any notice provided for in this Trust Deed or in the Note or other Loan Documents shall be deemed given to Borrower or Lender on the date mailed when given in the manner designated in this Trust Deed.

26. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Trust Deed or to any action brought to enforce the Note, the other Loan Documents or any other obligation secured by this Trust Deed.

27. RECONVEYANCE. Upon payment of the Indebtedness secured by this Trust Deed, Lender shall request Trustee to reconvey the Property and shall surrender this Trust Deed and all notes evidencing Indebtedness secured by this Trust Deed to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to the Property. Such person or persons shall pay Trustee's fee and other costs incurred in so reconveying the Property.

28. SUBSTITUTE TRUSTEE. In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed under this Trust Deed. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Trust Deed and by applicable law.

29. IMPOSITION OF TAX BY STATE. If any state tax to which this Section applies is enacted subsequent to the date of this Trust Deed, this shall have the same effect as a default, and Lender may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met:

(a) Borrower may lawfully pay the tax or charge imposed by the state tax without causing any resulting economic disadvantage or increase of tax to Lender, and

(b) Borrower pays or provided Lender immediately available funds to pay the tax or charge within thirty (30) days after notice from Lender that the tax law has been enacted. The following constitute state taxes to which this Section applies:

(i) a specific tax upon trust deeds or upon all or any part of the indebtedness secured by a

trust deed;

(ii) a specific tax on a grantor which the taxpayer is authorized or required to deduct from payments on the indebtedness secured by a trust deed;

(iii) a tax on a trust deed chargeable against the beneficiary or the holder of the note secured;

(iv) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by a grantor.

30. **FEDERAL TAX REGULATIONS.**

30.1 **Report of Real Estate Transaction.** Borrower has made or provided for making, or will make or provide for making, on a timely basis, any reports or returns required under Section 6045 (e) of the Internal Revenue Code of 1986 (and any similar reports or returns required by state or local law) relating to the Property, notwithstanding the fact that the primary reporting responsibility may fall on Lender, counsel for Lender, or other party. Borrower's obligations under this paragraph will be deemed to be satisfied if proper and timely reports and returns required under this paragraph are filed by a title company or real estate broker involved in the real estate transaction relating to the Property, but nothing contained herein shall be construed to require such returns or reports to be filed by Lender or counsel for Lender.

30.2 **Nonforeign Certification.** Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") provides that a transferee of a U. S. real property interest must withhold tax if the transferor is a foreign person. To inform Lender that the withholding of tax will not be required in the event of the disposition of the Property or improvements pursuant to the terms of this Trust Deed, Borrower hereby certifies, under penalty of perjury, that:

(a) Borrower is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder;

(b) Borrower's U. S. taxpayer identification number is in file ;

(c) Borrower's principal place of business is in file .

Lender may disclose the contents of this certification to the Internal Revenue Service. Borrower acknowledges that any false statement could be punished by fine, imprisonment or both. Borrower covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Lender shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Trust Deed or acceptance of a deed in lieu thereof.

31. **ATTORNEY FEES.** In the event suit or action is instituted to enforce or interpret any of the terms of this Trust Deed, including, but not limited to any action or participation by Borrower or Lender in, or in connection with, a case or proceeding under the Bankruptcy Code or any successor statute, the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, including, without limitation, attorney fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including, but not limited to, the costs of searching records, obtaining title reports or appraisals, surveyor reports, title insurance, trustee fees, and attorney fees, incurred by Lender that are necessary or advisable at any time in Lender's opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until paid at the interest rate provided in the Note, as adjusted pursuant to the provisions of the Note.

32. **GOVERNING LAW; SEVERABILITY.** This Trust Deed shall be governed by the law of the State of Oregon. In the event that any provision or clause of this Trust Deed, or the Note, or Loan Agreement or other Loan Documents conflicts with applicable law, such conflict shall not affect other provisions of this Trust Deed, the Note, the Loan Agreement or other Loan Documents which can be given effect without the conflicting provision, and to this end, the provisions of this Trust Deed, the Note, the Loan Agreement and other Loan Documents are declared to severable.

33. **TIME OF ESSENCE.** Time is of the essence in the payment and performance of the obligations under and secured by this Trust Deed and the other Loan Documents.

34. **CHANGES IN WRITING.** Any term of this Trust Deed and any addendum to the Trust Deed may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or Lender relating to this Trust Deed shall be superior to the rights of the holder of any intervening lien or encumbrance.

IN WITNESS WHEREOF, Borrower has executed this Trust Deed or has caused it to be executed by its duly authorized representative(s).

David H McDonald

David H McDonald

Yvonne M McDonald

Yvonne M McDonald

STATE OF OREGON
COUNTY OF JOSEPHINE

On the 26th day of May, 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared David H McDonald and Yvonne M McDonald and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Billie Bergrud
NOTARY PUBLIC
My commission expires: June 01/2012



EXHIBIT A

Lot 9, Block 2, Tract No. 1201, Williamson River Pines, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon.