

2009-011487

Klamath County, Oregon



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AFTER RECORDING, RETURN TO:

08/26/2009 03:34:52 PM

Fee: \$36.00

INTERVEST-MORTGAGE INVESTMENT COMPANY

Attn: Amy Brooke

5005 S.W. Meadows Road, Suite 400

Lake Oswego, Oregon 97035

151440322

## DEED OF TRUST

THIS DEED OF TRUST, made this 18<sup>th</sup> day of August, 2009, between RONALD H. COLE and LISA B. COLE, husband and wife (hereinafter "Grantor"), whose address is 61682 Broken Top Drive, Bend, Oregon 97702, FIRST AMERICAN TITLE INSURANCE COMPANY, (hereinafter "Trustee"), whose address is 222 SW Columbia St., Suite 400, Portland, Oregon 97201, and INTERVEST-MORTGAGE INVESTMENT COMPANY (hereinafter "Beneficiary"), whose address is 5005 SW Meadows Road, Suite 400, Lake Oswego, Oregon 97035;

WITNESSETH: Grantor hereby bargains, sells and conveys to Trustee in trust, with power of sale, the following described real property in Klamath County, State of Oregon:

Parcel 1: That portion of the SW  $\frac{1}{4}$  of Section 24, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, lying Northeast of the center thread of the Sprague River.

Parcel 2: The East  $\frac{1}{2}$  of the West  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ; the West  $\frac{1}{2}$  of the East  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ; the North  $\frac{1}{2}$  of the SW  $\frac{1}{4}$  of Section 19, Township 34 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

The North  $\frac{1}{2}$  of the SE  $\frac{1}{4}$ ; the South  $\frac{1}{2}$  of the NE  $\frac{1}{4}$ ; and the South  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of Section 24, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained, and payment of the sum of Four Million Seven Hundred Thousand Six Hundred Seventy-Nine and 46/100 Dollars (\$4,700,679.46) with interest, in accordance with the terms of a promissory note dated August 1, 2009 (hereinafter "Note"), payable to Beneficiary or order, and made by Highland Marketplace, LLC and Gary J. Miller and June W. Miller, as Trustees of the Gary J. and June W. Miller Revocable Trust, and all renewals, modifications and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor or Highland Marketplace, LLC and Gary J. Miller and June W. Miller as Trustees of the Gary J. and June W. Miller Revocable Trust, or any of their successors or assigns, together with interest thereon at the Note rate.

To protect the security of this Deed of Trust, Grantor covenants and agrees:

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1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.
2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.
3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.
4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
5. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.
6. Should Grantor fail to pay when due, any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.
2. If all or any part of the property or any interest in the Property is sold or transferred (or if Grantor is not a natural person and a beneficial interest in Grantor is sold or transferred) without Beneficiary's prior written consent, Beneficiary may require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.  
  
If Beneficiary exercises this option, Beneficiary shall give Grantor notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given within which Grantor must pay all sums secured by this Deed of Trust. If Grantor fails to pay these sums prior to the expiration of this period, Beneficiary may invoke any remedies permitted by this Deed of Trust.
3. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

4. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.
5. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the non judicial foreclosure laws of the State of Oregon.
6. 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 purchaser and encumbrancers for value.
7. The power of sale conferred by this Deed of Trust and by state law is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage or pursue any other remedies available by law.
8. In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.
9. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.
10. The property which is the subject of this Deed of Trust is used for commercial purposes and is not used principally or primarily for agricultural or farming purposes.
11. UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY A LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE GRANTOR'S RESIDENCE, MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.

GRANTOR:

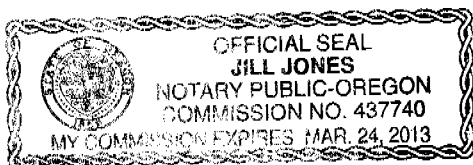
  
RONALD H. COLE

  
LISA B. COLE

State of Oregon )  
County of Deschutes ) ss.

I certify that I know or have satisfactory evidence that Ronald H. Cole is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act, for the uses and purposes mentioned in the instrument.

DATED: Aug 18, 2009.

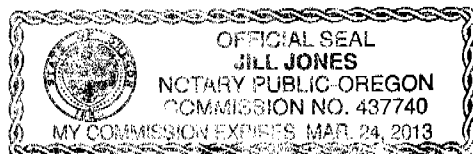


Print Name: Jill Jones  
Notary Public in and for the State  
Of Oregon, residing at Deschutes  
My Commission Expires: 3/24/13

State of Oregon )  
County of Deschutes ) ss.

I certify that I know or have satisfactory evidence that Lisa B. Cole is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act, for the uses and purposes mentioned in the instrument.

DATED: Aug 18, 2009.



Print Name: Jill Jones  
Notary Public in and for the State  
of Oregon, residing at Deschutes  
My Commission Expires: 3/24/13