

2010-001531

Klamath County, Oregon



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01/29/2010 03:06:03 PM

Fee: \$67.00

After recording return to:
First American Collection Escrow
Service
PO Box 599
Coos Bay, OR 97420

File No.: 7021-1474318 (DMC)
Date: January 27, 2010

Map/Tax Lot # **R-3809-033BC-09500**
Tax Account # **R478398**

TRUST DEED

(Assignment Restricted)

Junior and Subordinate to Previous Trust Deed dated January 27, 2010

THIS DEED OF TRUST, made this **Twenty-seventh day of January, 2010**, between **Skate Warehouse, LLC**, as GRANTOR, and **First American Title Insurance Company**, as TRUSTEE, and **Michael L. Potts and Carolynne Potts, P. O. Box 1619, Paso Robles, CA 93447**, as BENEFICIARY. ✓

WITNESSETH: Grantor irrevocably conveys to Trustee in trust, with power of sale, certain real property in **Klamath County, Oregon**, described as:

LEGAL DESCRIPTION: Real property in the County of Klamath, State of Oregon, described as follows:

LOTS 7, 8 AND 9, BLOCK 18, SECOND RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON. ✓

Note: The Trust Deed Act provides that the Trustee hereunder must be either an attorney who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of the state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 896.505 to 896.585.

*WARNING: 12 USC 1701/-S regulates and may prohibit exercise of this option.

FLP-

Together with all tenements, hereditaments and appurtenances, including easements, and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues, and profits thereof, together with all fixtures now or hereafter attached to or used in connection with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of **One Hundred Sixty Five Thousand dollars (\$165,000.00)**, with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable **March 01, 2015**.

In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the Grantor without first having obtained the written consent or approval of the Beneficiary, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

Grantor agrees:

1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement therein; not to commit or permit any waste of said property.

2. To complete or restore promptly and in good and workmanlike manner any building or improvement, which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefore.

3. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said property against loss or damage by fire and other hazards as the Beneficiary may require, in an amount not less than **\$165,000.00**, written by companies acceptable to the Beneficiary, with loss payable to Beneficiary; proof of insurance shall be delivered to the Beneficiary as soon as issued.

4. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property.

5. To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipt of payment to Beneficiary.

6. Should the Grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantor, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations of Grantor, described in paragraphs 7 and 8 of this Trust Deed section, shall be added to and become a part of the debt secured by this Trust Deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property herein before described, as well as the Grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the Beneficiary, render all sums secured by this Trust Deed immediately due and payable and constitute a breach of this Trust Deed.

7. To pay all costs, fees and expenses of this trust including the cost of title search, as well as the other costs and expenses of the Trustee incurred in connection with or in enforcing this obligation together with trustees' and attorneys' fees actually incurred.

8. To appear in and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee; and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including evidence of title and the Beneficiary's or Trustee's attorneys' fees. The amount of attorneys' fees mentioned in this paragraph 7 above in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, Grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's attorneys' fees on such appeal.

The parties mutually agree:

1. In the event that any portion of the property is taken under the right of eminent domain or condemnation, Beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorneys' fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, be applied upon the indebtedness secured hereby; and Grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation promptly upon Beneficiary's request.

2. Upon any default by Grantor hereunder, Beneficiary may, at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name, sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees upon any indebtedness secured hereby, in such order as Beneficiary may determine.

3. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder, or invalidate any act done pursuant to such notice.

4. Upon default by Grantor in payment of any indebtedness secured hereby or in Grantor's performance of any agreement contained hereunder, time being of the essence with respect to such payment and/or performance, the Beneficiary may declare all sums secured hereby immediately due and payable. In such event Beneficiary, at its election, may proceed to foreclose this trust deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded a written notice of default and election to sell the said described real property to satisfy the obligation secured hereby whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

5. The Grantor and those persons authorized by ORS 86.753 may cure any default(s) 5 days before the date the Trustee has designated for sale. Any cure of default(s) shall require payment of or tendering performance and the payment of all costs and expenses actually incurred in enforcing the obligations of this Trust Deed, including, but not limited to, trustees' and attorneys' fees as authorized by law.

In the absence of any such cure, the Trustee will enforce the obligations of this Trust Deed in accordance with paragraph 4 herein and as authorized and required by applicable law.

6. When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (2) the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the Trustee in the trust deed as their interest may appear in the order of their priority and (4) the surplus, if any, to the Grantor or to his successor in interest entitled to such surplus.

7. Beneficiary may from time to time appoint a successor or successors to any Trustee named herein or to any successor trustee appointed hereunder. Upon such an appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

The Grantor covenants to and agrees with the Beneficiary and the Beneficiary's successors in interest that the Grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto, except as may be set forth in any addendum or exhibit attached hereto, and that the Grantor will warrant and forever defend the same against all persons whomsoever.

This deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term Beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a Beneficiary herein. In construing this deed and whenever the context so requires the singular number includes the plural.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand the day and year first above written.

Skate Warehouse, LLC

A handwritten signature in black ink, appearing to be 'EC', is written over a horizontal line.

By: Erin Carter, President

STATE OF Oregon)
)ss.
 County of Klamath)

This instrument was acknowledged before me on this 21 day of January, 2010
 by **Erin Carter as President of Skate Warehouse, LLC.**



 Dori Crain Notary Public for Oregon

My commission expires: November 7, 2013

REQUEST FOR FULL RECONVEYANCE (To be used only when obligations have been paid.)

TO: **First American Title Insurance Company**, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed, the estate now held by you under the same.

Mail Reconveyance to:

Dated: _____

By _____

By _____

By _____

Beneficiary

**Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
 Both must be delivered to the Trustee before cancellation before reconveyance is made.**

EXHIBIT__

PERSONAL GUARANTEE

For valuable consideration, ERIN CARTER herein called "Guarantor" jointly and severally unconditionally guarantee to: MICHAEL L. POTTS AND CAROLYNNE POTTS (SELLERS) herein called "Obligee" all of the payment obligations and performance of all terms of the contract for sale for 800 Spring Street, Klamath Falls, Oregon (BUYER) herein called "Obligor", under that certain contract dated AUGUST 21, 2009 wherein Obligee is the BENEFICIARY of the PROMISORY NOTE AND TRUST DEED dated September 22, 2009 Obligor is the GRANTOR a copy of which is attached to the Personal Guarantee.

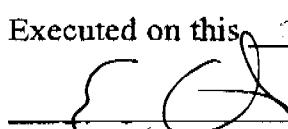
Guarantor hereby guarantees to Obligee the payment of all sums due under and the performance of all of the terms and conditions contained in the PROMISORY NOTE AND TRUST DEED described above, herein called "the obligation".

The obligations of Guarantors hereunder are joint and several and independent of the obligations of the Obligor and a separate action or actions may be brought against Guarantors, or any of them, whether action is brought against Obligor or whether Obligor is joined in any such action or actions.

Guarantors authorize Obligee, without notice or demand, and without affecting or impairing their liability hereunder from time to time to renew, extend, compromise, accelerate or otherwise change the time for performance of, or otherwise change the terms of the obligation or any part thereof.

In addition to the amounts guaranteed under this agreement, Guarantors jointly and severally agree to pay reasonable attorney's fees and all other costs and expenses incurred by Obligee in enforcing this guarantee in any action or proceeding arising out of, or relating to, this guarantee.

Executed on this 27 day of Jun ²⁰⁰⁹ ~~2009~~ at Klamath Falls, Oregon

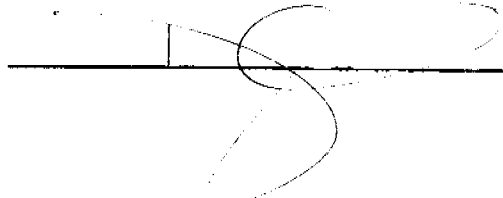

ERIN CARTER

STATE OF OREGON
KLAMATH COUNTY

)
ss.

On 1/27/2010, 2009, before me, Dori Crain, a
Notary Public for the State of Oregon, personally appeared ERIN CARTER,
personally known to me (or proved to me on the basis of satisfactory evidence) to
be the person whose name is subscribed to the within instrument and
acknowledged to me that, he executed the same in his authorized capacity, and
that by his signature on the instrument the person or the entity upon behalf of
which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public

