

2011-005619

Klamath County, Oregon



THIS SPACE



05/06/2011 03:32:35 PM

Fee: \$62.00

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

File No.: 7021-1699512 (ALF)
Date: April 05, 2011

Map/Tax Lot #
Tax Account #

TRUST DEED

(Assignment Restricted)

THIS DEED OF TRUST, made this **Fifth day of April, 2011**, between **David Lee Brown and Susanna Annette Brown, husband and wife**, as GRANTOR, and **First American Title**, as TRUSTEE, and **Richard McAbery and Carol McAbery, husband and wife**, as BENEFICIARY.

26890 E. Henry Creek Rd.
Rhododendron, OR 97049

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:

See attached Exhibit "A"

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 **Fifteen Thousand dollars (\$15,000.00)**, 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 **May 07, 2016**.

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.

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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 **\$15,000.00**, 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.

David Lee Brown
David Lee Brown

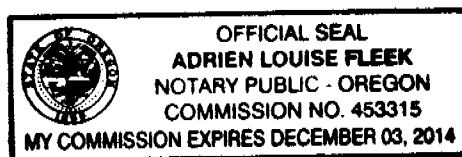
Susanna Annette Brown
Susanna Annette Brown

STATE OF Oregon)
)ss.
County of Klamath)

This instrument was acknowledged before me on this 5 day of May, 2011
by **David Lee Brown and Susanna Annette Brown.**

Adrien Fleek
Notary Public for Oregon

My commission expires: 12-3-14



APN:

Trust Deed - continued

File No.: **7021-1699512 (ALF)**

Date: **04/05/2011**

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

TO: , 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 "A"
LEGAL DESCRIPTION

PARCEL 1:

A tract of land being the Southerly 100 feet of Parcel 3 of "Land Partition 10-96", situated in the NW1/4 SW1/4 of Section 18, Township 39 South, Range 10 East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the Westerly right of way of State Highway 39, being the Southwest corner of said Parcel 3 from which the 1/4 corner common to Section 13, Township 39 South, Range 9 East, Willamette Meridian and said Section 18 bears North 01° 27' 09" West 1,053.06 feet; thence along the West boundary of said Parcel 3 North 00° 03' 01" West 121.17 feet; thence South 55° 40' 10" East 487.60 feet; thence along the East and South boundary of said Parcel 3, South 00° 03' 01" East 121.17 feet and North 55° 40' 10" West 487.60 feet to the point of beginning, as evidenced by Lot Line Adjustment 7-97 on file in the Office of the Klamath County Planning Department.

PARCEL 2:

A tract of land situated in Government Lots 3 and 4 in the SW1/4 of Section 18, Township 39 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point which is North a distance of 1249.0 feet from the Southwest corner of said Section 18, said point being situated on the centerline of the State Highway and also being on the West line of said Section 18; thence North along said centerline and West line of said Section 18 a distance of 375.5 feet; thence South 55° 36' East a distance of 36.36 feet to a 5/8 inch iron pin on the East right of way line of the State Highway; thence continuing South 55° 36' East along the Westerly extension of the centerline of an existing drain ditch a distance of 1298.64 feet, more or less, to a 5/8 inch iron pin on the Westerly line of an irrigation lateral known as the "J" Lateral; thence South 85° 04' West along the Westerly line of said lateral a distance of 293.0 feet to a 5/8 inch iron pin; thence South 36° 30' West along the Westerly line of said lateral 165.0 feet to a 5/8 inch iron pin; thence North 53° 00' West along the Northerly line of an existing drain ditch a distance of 853.44 feet, more or less, to a 5/8 inch iron pin situated on the East right of way line of the State Highway; thence continuing North 53° 00' West a distance of 37.56 feet to the point of beginning.

(Legal description continued)

ALSO a strip of land 30 feet in width adjoining and measured at right angles to the Northerly line of the right of way of the Main Canal of the Government Irrigation System in the SW1/4 SW1/4 of Section 18, Township 39 South, Range 10 East of the Willamette Meridian, and running and extending the entire distance from the thread or centerline of that certain lateral branching from the Northerly side of said Main Canal and known as Lateral "J" in a Northwesterly direction to the West boundary of said SW1/4 SW1/4 of Section 18, and being a strip of land adjoining said right of way saved and excepted in deed dated September 13, 1907, recorded at page 101 in Volume 26, Deed Records of Klamath County, Oregon.

EXCEPTING THEREFROM that portion lying within the boundaries of the Klamath Falls - Merrill Highway State 39.

ALSO EXCEPTING therefrom that portion deeded to the State of Oregon Department of Transportation recorded February 4, 1997 in Volume M97, page 3478, Microfilm Records of Klamath County, Oregon.