

2011-012993

Klamath County, Oregon



11/21/2011 03:05:48 PM

Fee: \$77.00

WTC 91851-DS

SECOND TRUST DEED WITH ASSIGNMENT OF RENTS

Grantor's Name and Address:

SPACE RESERVED FOR RECORDER'S USE

Michael L. Ward
his successors and/or assigns
56887 Buckmaster Street
Bly, OR 97622

Beneficiary's Name and Address:

Charles and Dianna Smart,
their successors and/or assigns
13 South N Street
Lakeview, OR 97630

After recording, return to (Name and Address):

Amerititle
PO Box 5017
Klamath Falls, OR 97601

THIS SECOND TRUST DEED, made this 18th day of November, 2011, between Michael L. Ward, as Grantor, Amerititle, as Trustee, and Charles and Dianna Smart, with right of survivorship, as Beneficiary

WITNESSETH:

Grantor irrevocably grants, bargains, sells, assigns, and conveys to trustee in trust, its successors and assigns, with power of sale, all of the property located in Klamath County, Oregon, described as:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

Commonly known as 56887 Buckmaster Street, Bly, OR 97622

Tax Account Number: R364714

Together with all and singular tenements, hereditaments, and appurtenances, including easements and all other rights thereunto belonging or in anywise now or hereafter appertaining, including but not limited to improvements now or hereafter erected on or attached to or used in connection with the property, all replacements, all additions, and all the rents, issues and profits thereof and all buildings and fixtures; to have and to hold the same, unto the Trustee, and the successors in interest of the Trustee, in leasehold estate.

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 in this 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.

THANF

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantors herein contained and the payment of the sum of **Thirty Nine Thousand Four Hundred and no/100ths Dollars (\$39,400.00)**, 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 in 15 years from date of recording or when paid in full.

DUE ON SALE PROVISION: In the event the within described property, or any part thereof, or any interest therein is 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. The execution by grantor of an earnest money agreement does not constitute a sale, conveyance or assignment.

TO PROTECT THE SECURITY OF THIS TRUST DEED, THE GRANTOR AGREES TO DO THE FOLLOWING:

1. **PROPERTY PROTECTION:** To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building therein; not to commit or permit any waste of the property.
2. **COMPLETION AND RESTORATION OF IMPROVEMENTS:** 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 to accomplish the same.
3. **LEGAL AND UCC COMPLIANCE:** To comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or search agencies as may be deemed desirable by the beneficiary.
4. **PROPERTY INSURANCE:** To provide and continuously maintain insurance on the buildings now or hereafter erected on the property against loss or damage by fire and other hazards as the beneficiary may require, in an amount not less than **Full Replacement Value**, written by companies acceptable to the beneficiary, with loss payable to the beneficiary; proof of insurance shall be delivered to the beneficiary as soon as issued.
5. **PAYMENT OF LIENS, TAXES, ASSESSMENTS, AND OTHER CHARGES:** To keep the property free from construction liens and to pay all taxes, assessments, insurance premiums, liens and 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 described in paragraphs 6 and 7 of this trust deed, 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 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.

6. **PAYMENT OF TRUST'S EXPENSES:** 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 and trustee's and attorney's fees actually incurred.
7. **APPEARANCE AND DEFENSE AND PAYMENT OF RELATED COSTS:** 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 attorney's fees; the amount of attorney fees mentioned in this paragraph 7 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 that the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney fees on such appeal.

THE PARTIES MUTUALLY AGREE:

8. **EMINENT DOMAIN/CONDEMNATION PROVISIONS:** In the event that any portion or all 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 attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by grantor or beneficiary in such proceedings, shall 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.
9. **ACKNOWLEDGEMENT OF SECOND LIEN POSITION:** Grantor and Beneficiaries are aware that there is a first Trust Deed and Promissory Note in the amount of \$54,175 in priority lien position ahead of this second Trust Deed and second Promissory Note. As such the holder of the first lien shall be paid first in the event of a default, foreclosure and sale, and shall receive preferential treatment with regard to insurance settlements and assignments of rents.
10. **ASSIGNMENT OF RENTS:** The first Trust Deed holder has the first right to the assignment of rents. If the first Trust Deed holder decides not to take assignment of the rents, or if the holder of the first and second sign a written agreement to share the rents, then the holder of this second may take an assignment of the rents. Subject to the decisions and actions by the holder of the first Trust Deed, 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, royalties, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as beneficiary may determine. Said rents, royalties, issues, and profits are hereby assigned to the beneficiary as further security for the payment of such indebtedness.
11. **WHAT DOES NOT CURE, WAIVE, OR INVALIDATE DEFAULT:** The entering upon and taking possession of the property, the collection of such rents, royalties, 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.

12. **DEFAULT AND NOTICE:** Upon default (See definition of default in the subject Promissory Note.) by grantor in payment of any indebtedness secured hereby or in grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the beneficiary may send a written notice to the grantor stating that if the grantor does not pay the past due amount by a certain date, the beneficiary may declare all sums secured hereby immediately due and payable. The deadline for paying the past due amount must be no sooner than 15 days from the mailing or delivering of a written notice to the grantor. Such notice must be mailed or delivered not sooner than 16 days after the due date of the payments. In such an event the beneficiary may elect to proceed to foreclose this trust deed by advertisement and sale, or direct the trustee to foreclose this trust deed, 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 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.
13. **HOW DEFAULT MAY BE CURED:** The Grantor and those persons authorized by ORS 86.753 may cure any default at any time prior to 5 days before the date the trustee has designated for sale. Any cure of default(s) shall require payment of or tendering performance of all costs and expenses actually incurred in enforcing the obligations of this trust deed, including, but not limited to, trustee's and attorney's fees as authorized by law. In absence of any such cure, the Trustee will enforce the obligations of this Trust Deed in accordance with Paragraph 11 herein and as authorized and required by applicable law.
14. **FORECLOSURE SALE PROVISIONS:** Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The trustee may sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, expressed or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.
15. **APPLICATION OF FORECLOSURE SALE PROCEEDS:** When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of (a) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney, (b) to the obligation secured by the trust deed, (c) to all persons or entities having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority, and (d) the surplus, if any, to the grantor or to any successor in interest entitled to such surplus.
16. **APPOINTMENT OF SUCCESSOR TRUSTEES:** 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 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.

17. **GRANTOR'S AFFIRMATION OF OWNERSHIP AND CLEAR TITLE:** The grantor covenants to and agrees with the beneficiary and the beneficiary's successor in interest that the grantor has lawful possession in fee simple of the real property and has a valid and unencumbered title thereto, except as may be set forth in an addendum or exhibit attached hereto, and that the grantor will warrant and always defend the same against all persons whomsoever.
18. **FORCED PLACEMENT INSURANCE WARNING:** Unless grantor provides beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, beneficiary may purchase insurance at grantor's expense to protect beneficiary's interest. This insurance may, but need not, also protect grantor's interest. If the collateral becomes damaged, the coverage purchased by beneficiary may not pay any claim made by or against grantor. Grantor may later cancel the coverage by providing evidence that grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by beneficiary, which cost may be added to grantor's contract or loan balance. If it is so added, the interest on the underlying contract or loan will apply to it. The effective date of coverage may be the date grantor's prior coverage lapsed or the date grantor failed to provide proof of coverage. The coverage beneficiary purchases may be considerably more expensive than insurance grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.
19. **USE OF PROCEEDS STATEMENT:** The grantor warrants that the loan proceeds of the above-described note and this trust deed are for personal purposes.
20. **NO VIOLATION OF LAND USE LAWS:** This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Any person holding or acquiring fee title to the subject property should check with the appropriate city or county planning department to verify approved uses and to determine any limits on lawsuits.
21. **NO SUBORDINATE LIENS:** No subordinate mortgages, trust deeds, or loans shall be placed on the subject collateral for this loan without the written permission of the beneficiary.
22. **COLLATERAL DESCRIPTION:** The property securing this loan includes not only the land described in the attached legal description, but also the manufactured home and all the buildings presently located on the subject land.
23. **OTHER LEGAL EXPLANATIONS:** 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 trust deed, it is understood that the grantor, trustee and/or beneficiary may each be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed, and implied to make the provisions hereof apply equally to corporations or other entities as well as to individuals. It is also understood that the titles of the paragraphs in this trust deed have been inserted as a convenience to the reader and in no way or degree limit or exceed the provisions in the paragraphs themselves. Only the detailed statements in each paragraph are binding, not the titles of the paragraphs.

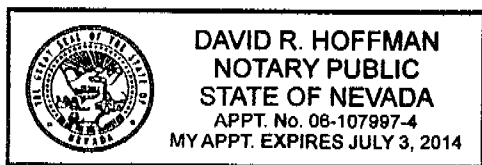
IN WITNESS WHEREOF, the grantors have executed this instrument the day and year first above written.

Grantor: [Signature] Date: 11/17/2011
Michael L. Ward

STATE OF Nevada, COUNTY OF Church & N ss.

On this 17 day of Nov, 2011, before me personally appeared Michael L. Ward, personally verified to me to be the person whose name is subscribed to this instrument and acknowledged to me that he executed the same as his voluntary act and deed in his authorized capacity, and that by his signature on the instrument the person or entity upon behalf of which the person acted, executed the instrument. WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY SEAL OR STAMP



[Signature]
Notary Public
My commission expires: 7/3/14

Do not lose or destroy this Trust Deed OR THE NOTE, which it secures. Both should be delivered to the trustee for cancellation before reconveyance is made.

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

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 evidence 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 documents to Borrower(s): Michael L. Ward
c/o Access G T Mortgage, Inc.
945 Alder Drive NE
Keizer, OR 97303

Beneficiary: _____ Dated: _____, 20____

Beneficiary: _____ Dated: _____, 20____

Exhibit "A"

LEGAL DESCRIPTION

Lot 14, Block 4, TRACT NO. 1093, PINECREST, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.