

2012-011302

Klamath County, Oregon

10/11/2012 10:35:54 AM

Fee: \$132.00

WTC 94921-KR  
WHEN RECORDED RETURN TO:

Jerry Menestrina, Trustee

~~Jerry Menestrina Revocable Trust~~ \*see below

2528 Burgdorf Road

Bonanza, Oregon 97623

\*The Jerry M. Menestrina and Nancy K. Menestrina  
Joint Revocable Trust dated May 11, 1995

OTHER INTERESTED PARTIES:

Showcase Rose LLC,

an Oregon Limited Liability Company

3130 South Sixth Street

Klamath Falls, Oregon 97603

### COMMERCIAL TRUST DEED

Showcase Rose LLC, an Oregon Limited Liability Company, 3130 South Sixth Street, Klamath Falls, Oregon 97603, Grantor.

AmeriTitle whose address is 300 Klamath Avenue, Oregon 97601, Trustee.

Jerry M. Menestrina and Nancy K. Menestrina joint  
Revocable Trust dated May 11, 1995  
Jerry Menestrina, Trustee of the ~~Jerry Menestrina Revocable Trust~~, whose address is 2528 Burgdorf Road, Bonanza, Oregon 97623, Beneficiary.

The tax account number for the real property subject to this instrument is R896739.

THIS TRUST DEED (this "Trust Deed") is made effective October 8, 2012, by Showcase Rose, LLC, an Oregon Limited Liability Company, having an office at 3130 South Sixth Street, Klamath Falls, Oregon 97603 ("Grantor"), to AmeriTitle, having an office at 300 Klamath Avenue, Klamath Falls, Oregon 97601 ("Trustee"), for the benefit of Jerry Menestrina, Trustee of the Jerry Menestrina Revocable Trust, 2528 Burgdorf Road, Bonanza, Oregon 97623 ("Beneficiary").

Beneficiary has loaned \$150,000 to Grantor, evidenced by a Promissory Note of even date with this Trust Deed. The Promissory Note, if not sooner paid, is due and payable in full on April 23, 2037. (The Promissory Note as modified, supplemented, extended, renewed, or replaced from time to time is referred to below as the "Note" or "Obligations").

WHEREAS, as a condition to the issuing of the Note or Obligations to Grantor, Beneficiary has required, and Grantor has agreed to execute and deliver, this Trust Deed.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Note or Obligations described in Section 1.1 below, Grantor irrevocably grants, bargains, sells, conveys, assigns, and transfers to Trustee in trust for the benefit and security of the Beneficiary, with power of sale and right of entry and possession, all of Grantor's right, title, and interest in and to the real property located in Klamath County, and more particularly described below (the "Property"):

Parcel 2 of Land Partition 12-10 located in the NW1/4 and the SW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and duly recorded on December 22, 2010 in Volume 2010-014507, Microfilm Records of Klamath County, Oregon.

TOGETHER WITH all rights, interests, and claims that Grantor now has or may acquire with respect to any damage to or taking of all or any part of the Property, including any insurance herein, but specifically excluding any improvements thereon and insurance related to said improvements, but including any awards made for taking by eminent domain which relate to the real property, but not improvements, or by any proceeding or purchase in lieu thereof, of the whole or part of the real property, but not improvements and any and all awards resulting from any other damage to the real property but not the improvements.

The above is sometimes referred to below as the "Trust Property."

TO HAVE AND TO HOLD the Trust Property to Trustee and its successors and assigns for the benefit of Beneficiary and its successors and assigns, forever.

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.1 below) are paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed will be reconveyed.

This Trust Deed and the Note or Obligations, and all other agreements or instruments executed at any time in connection with them, as they may be amended or supplemented from time to time, are sometimes collectively referred to below as the "Loan Documents."

TO PROTECT THE SECURITY OF THIS TRUST DEED, GRANTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

## **ARTICLE I**

### **Particular Covenants and Warranties of Grantor**

**1.1 Obligations Secured.** This Trust Deed secures the following, referred to as the "Note" or "Obligations":

(1) The payment of all indebtedness, including but not limited to principal and interest, and the performance of all covenants and obligations of Grantor, under the following listed documents whether such payment and performance is now due or becomes due in the future:

Promissory Note whereby Showcase Rose LLC, an Oregon Limited Liability Company agrees to pay Jerry Menestrina, Trustee of the Jerry Menestrina Revocable Trust \$150,000.

(2) The payment and performance of all covenants and obligations in this Trust Deed, in the other Loan Documents, and in all other security agreements, notes, agreements, and undertakings now existing or hereafter executed by Grantor with or for the benefit of Beneficiary; and

(3) The payment and performance of any and all other indebtedness and obligations of Grantor to Beneficiary of any nature whatsoever, whether direct or indirect, primary or secondary, joint or several, liquidated or unliquidated, whenever and however arising, and whether or not reflected in a written agreement or instrument.

**1.2 Payment of Indebtedness; Performance of Covenants.** Grantor shall duly and punctually pay and perform all of the Obligations.

**1.3 Property.** Grantor warrants that it holds good and merchantable title to the Property, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in Exhibit B (only applies if Exhibit B is attached). Grantor covenants that it will forever defend Beneficiary's and Trustee's rights under this Trust Deed against the adverse claims and demands of all persons.

**1.4 Further Assurances; Filing; Refiling; Etc.**

(1) Grantor will execute, acknowledge, and deliver, from time to time, any further instruments as Beneficiary or Trustee may require to accomplish the purposes of this Trust Deed.

(2) Immediately on the execution and delivery of this Trust Deed, and thereafter from time to time, Grantor will cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and rerecorded in the manner and in the places that may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.

(3) Grantor shall pay all filing and recording fees, and all expenses incident to the execution, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental to this Trust Deed and any instrument of further

assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the execution, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

**1.5 Compliance with Laws.** Grantor further represents, warrants, and covenants that:

(1) The Property, to the extent it is developed, and all Improvements, if any, have been constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments (collectively “Laws”), and all covenants, conditions, easements, and restrictions affecting the Property (collectively “Covenants”); and

(2) Grantor will cause the Property and its operations on the Property to comply at all times hereafter, in all material respects, with all applicable Laws and Covenants.

**1.6 Definitions; Environmental Covenants; Warranties and Compliance**

(1) For purposes of this section, “Environmental Law” means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 USC §§9601–9675, and the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC §§6901–6992.

(2) For the purposes of this section, “Hazardous Substance” includes without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.

(3) Grantor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property’s groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for any Hazardous Substances that may be used in the ordinary course of Grantor’s business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and recordkeeping.

(4) Grantor will keep and maintain the Property in compliance with, and will not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.

(5) Grantor shall give prompt written notice to Beneficiary of:

(a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;

(b) All known claims made or threatened by any person against Grantor or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;

(c) The existence of any Hazardous Substance on or about all or any portion of the Property; or

(d) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Grantor's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.

(6) Grantor shall promptly provide to Beneficiary copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. Beneficiary shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by Grantor, if Beneficiary determines that such participation is reasonably necessary to protect its interest in the Trust Property.

(7) If, at any time, Beneficiary has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements has occurred or is threatened, or if Beneficiary has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, Beneficiary may require Grantor to obtain or may itself obtain, at Grantor's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Grantor will promptly provide to Beneficiary a complete copy of any environmental assessment obtained by Grantor.

(8) If any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, by any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether currently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on

or under any other property as a result of Hazardous Substances emanating from the Property, Grantor will, within 30 days after written demand by Beneficiary for Grantor's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work. Grantor will pay all costs and expenses of that Remedial Work including, without limitation, Beneficiary's reasonable attorney fees and costs incurred in connection with monitoring or reviewing the legal aspects of the Remedial Work. If Grantor fails to timely commence, or cause to be commenced, the Remedial Work, Beneficiary may, but will not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work will become part of the Obligations secured by this Trust Deed and will bear interest until paid at the rate provided in the Note.

(9) Grantor will hold Beneficiary and its directors, officers, employees, agents, successors, and assigns, harmless from, will indemnify them for, and will defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Grantor's warranties in this Section 1.6, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

(10) Grantor represents and warrants to Beneficiary that:

(a) Neither the Property nor Grantor is in violation of or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.

(b) Grantor has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.

(c) To the best of Grantor's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.

(11) All representations, warranties, and covenants in this Section 1.6 shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

**1.7 Maintenance and Improvements.** Grantor shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without Beneficiary's prior

written consent; except for those Improvements that become obsolete in the usual conduct of Grantor's business, and as long as the removal or material alteration of the obsolete Improvements does not materially detract from the operation of Grantor's business and as long as all obsolete Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Grantor will maintain every portion of the Property and Improvements in good repair, working order, and condition, except for reasonable wear and tear, and will at Beneficiary's election restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 1.12 below). Grantor will not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property.

**1.8 Liens.** Grantor shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Grantor will not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance on the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in Exhibit B.

### **1.9 Impositions**

(1) Grantor will pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges of every nature now or hereafter assessed or levied against any part of the Trust Property (including, without limitation, levies or charges resulting from Covenants), or on the lien or estate of Beneficiary or Trustee (collectively, the "Impositions"); however, if by law any such Imposition may be paid in installments, whether or not interest will accrue on the unpaid balance, Grantor may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, interest, or cost attaches.

(2) Grantor may, at its expense and after prior notice to Beneficiary, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application, in whole or in part, of any Imposition or lien on the Trust Property or any claim of any laborer, materialman, supplier, or vendor or lien, and may withhold payment of the same pending completion of the proceedings if permitted by law, provided that (a) such proceedings will suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Grantor pays the amount or satisfies the condition being contested, and Grantor would have the opportunity to do so in the event of Grantor's failure to prevail in the contest; (c) neither Beneficiary nor Trustee will, by virtue of the permitted contest, be exposed to any risk of liability for which Grantor has not furnished additional security as provided in clause (d) below; and (d) Grantor furnishes to Beneficiary cash, corporate surety bond, or other additional security in respect of the claim being contested or the loss or damage that may result from Grantor's failure to prevail in the contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other

charges that may accrue in connection with the Imposition. Grantor will promptly satisfy any final judgment.

(3) Grantor will furnish to Beneficiary, promptly on request, satisfactory evidence of the payment of all Impositions. Beneficiary is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

**1.10 Books and Records and Inspection of the Property.** Grantor will keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied. Grantor will permit Trustee, Beneficiary, and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Grantor with respect to the Property and the Improvements, all at any reasonable times that Beneficiary or Trustee may choose.

**1.11 Limitations on Use.** Grantor will not initiate, join in, or consent to any rezoning or replatting of the Property or any change in any covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of Beneficiary.

#### **1.12 Insurance**

(1) **Property and Other Insurance.** Grantor will obtain and maintain in full force and effect during the term of this Trust Deed: (a) commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to Beneficiary, and in no event less than \$1 million combined single-limit coverage; and (b) unless Beneficiary otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property. In addition, Grantor will obtain and maintain all other insurance coverages designated by Beneficiary, which at the time are commonly carried for similar property, in any amounts that Beneficiary may require.

(2) **Insurance Companies and Policies.** All insurance must (a) be written by a company or companies reasonably acceptable to Beneficiary with a rating of A VIII, or better as provided in Best's Key Rating Guide—Property/Casualty (A.M. Best & Co., 2007); (b) contain a long-form mortgagee clause in favor of Beneficiary with loss proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary or as provided in Section 5.10 below; (c) require 30 days' prior written notice to Beneficiary of cancellation or reduction in coverage; (d) contain waivers of subrogation and endorsements that no act or negligence of Grantor or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy, will affect the validity or enforceability of such insurance as against Beneficiary; (e) be in full force and



effect on the date of this Trust Deed; and (f) be accompanied by proof of premiums paid for the current policy year. Beneficiary must be named as an additional insured on all liability policies. Grantor will forward to Beneficiary, on request, certificates executed by the insurer or its agent evidencing the coverages required under this Trust Deed and copies of all policies. If a blanket policy is issued, a certified copy of the policy must be furnished together with a certificate indicating that the Trust Property and Beneficiary are insured under that policy in the proper designated amount.

(3) **Assignments of Policies on Foreclosure.** In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Grantor in and to all policies of insurance procured under Section 1.12 will inure to the benefit of and pass to the successors in interest of Grantor or the purchaser or grantee of all or any part of the Trust Property.

### **1.13 Actions to Protect Trust Property; Reserves**

(1) If Grantor fails to obtain the insurance required by Section 1.12, fails to make the payments required by Section 1.9 (other than payments that Grantor is contesting in accordance with Section 1.9(2)), or fails to perform or observe any of its other covenants or agreements under this Trust Deed, Beneficiary may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of Beneficiary's rights, or to recover any indebtedness secured by this Trust Deed, will be a lien on the Trust Property, will be secured by this Trust Deed, and will be paid by Grantor on demand, together with interest at the rate provided in the Note. No payment or other action by Beneficiary under this section will impair any other right or remedy available to Beneficiary or constitute a waiver of any default. The following notice is provided pursuant to ORS 746.201(1):

#### **WARNING:**

Unless Grantor provides Beneficiary with evidence of the insurance coverage required by the Note, 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 Trust Property becomes damaged, the coverage Beneficiary purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.

Grantor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to Grantor's loan balance. If the cost is added to Grantor's loan balance, the interest rate on the underlying loan will apply to this added amount. 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 can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

(2) If Grantor fails to promptly perform any of its obligations under Section 1.9 or 1.12 of this Trust Deed, Beneficiary may require Grantor thereafter to pay and maintain with Beneficiary reserves for payment of such obligations. In that event, Grantor will pay to Beneficiary each month a sum estimated by Beneficiary to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Grantor will pay any deficiency to Beneficiary on demand. The reserves may be commingled with Beneficiary's other funds, and Beneficiary will not be required to pay interest to Grantor on those reserves. Beneficiary will not hold the reserve in trust for Grantor, and Beneficiary will not be the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

**1.14 Estoppel Certificates.** Within five days of Beneficiary's request, Grantor will give Trustee and Beneficiary a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against the Obligations. If Grantor fails to provide this statement within the time allowed, Beneficiary will be authorized, as Grantor's attorney-in-fact, to execute and deliver the statement. On request, Grantor will also use its best efforts to obtain and deliver to Beneficiary a written certificate from each lessee of all or any portion of the Property that its lease is in effect, that there are no defaults by the lessor under the lease, and that rent is not paid more than 30 days in advance.

**1.15 ~~Financial Information.~~** ~~Within 90 days after the end of each of Grantor's fiscal years, Grantor will give Beneficiary a complete copy of Grantor's financial statement for the year, audited or reviewed by a certified public accountant (including balance sheet, income statement, and statement of changes in financial position). Grantor will promptly provide to Beneficiary any and all other financial information that Beneficiary may reasonably request from time to time.~~

RJM

**1.16 Condemnation.**

(1) If any part of or interest in the Trust Property is taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or if Grantor receives any notice or other information regarding such action, Grantor will give immediate notice of the action to Beneficiary.

(2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 3.10 below, Beneficiary will be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and will be entitled, at its option, to commence, appear in, and prosecute any Condemnation

proceeding in its own or Grantor's name and make any compromise or settlement in connection with such Condemnation. If the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at Beneficiary's election, will become immediately due and collectible.

(3) Beneficiary may, at its sole option, apply the Condemnation Proceeds to the reduction of the Obligations in any order that Beneficiary may determine, or apply all or any portion of the Condemnation Proceeds to the cost of restoring and improving the remaining Trust Property. If Beneficiary elects to apply the Condemnation Proceeds to restoration and improvement, the proceeds will be held by Beneficiary and will be released only on any terms and conditions that Beneficiary may require in its sole discretion, including but not limited to prior approval of plans and release or waiver of liens. No Condemnation Proceeds will be released if Grantor is in default under this Trust Deed.

## **ARTICLE II EVENTS OF DEFAULT AND REMEDIES**

**2.1 Events of Default.** Each of the following events will constitute an event of default under this Trust Deed and under each of the other Obligations:

(1) **Nonpayment.** Grantor's failure to pay any of the Obligations within six (6) months after said obligation is due.

(2) **Breach of Other Covenants.** Grantor's failure to perform or abide by any other covenant included in the Obligations, including without limitation those covenants in the Note, this Trust Deed, or any other Obligations.

(3) **Misinformation.** Falsity when made in any material respect of any representation, warranty, or information furnished by Grantor or its agents to Beneficiary in or in connection with any of the Obligations.

(4) **Other Default.** The occurrence of any other event of default under the Note or any of the other Obligations.

(5) **Other Indebtedness, Secondary Financing.** Grantor's default beyond the applicable grace periods in the payment of any other indebtedness owed by Grantor to any person, if the indebtedness is secured by all or any portion of the Trust Property.

(6) **Bankruptcy.** The occurrence of any of the following with respect to Grantor, any guarantor of the Obligations, or the then-owner of the Trust Property: (a) the appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) the filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium, or insolvency law; (d) the

institution of any proceeding for dissolution or liquidation; (e) the inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.

(7) **Transfer; Due-on-Sale; Due-on-Encumbrance.** Any sale, gift, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Trust Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without Beneficiary's prior written consent, will constitute an event of default. For the purpose of clarification, and without limiting the generality of the foregoing, the occurrence at any time of any sale, conveyance, assignment, or other transfer of, or the grant of a pledge of or security interest in, any shares of the capital stock, membership or partnership or other beneficial interest in or of Grantor will be deemed to be a Transfer in violation of this paragraph. The provisions of this subsection (7) will apply to each and every Transfer, regardless of whether or not Beneficiary has consented or waived its rights in connection with any previous Transfer. Beneficiary may attach any conditions to its consent under this subsection (7) that Beneficiary may determine in its sole discretion, including without limitation an increase in the interest rate or the payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by Beneficiary.

**2.2 Remedies in Case of Default.** If an Event of Default occurs, Beneficiary or Trustee may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

(1) **Acceleration.** Beneficiary may declare all or any portion of the Obligations immediately due and payable.

(2) **Receiver.** Beneficiary may have a receiver appointed for the Trust Property. Beneficiary will be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or Beneficiary will not disqualify a person from serving as a receiver. Grantor consents to the appointment of a receiver at Beneficiary's option and waives any and all defenses to such an appointment.

(3) **Possession.** Beneficiary may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as Beneficiary deems appropriate in its sole discretion. On request after an Event of Default, Grantor will peacefully relinquish possession and control of the Trust Property to Beneficiary or any receiver appointed under this Trust Deed.

(4) **Rents.** Beneficiary may revoke Grantor's right to collect the Rents, and may, either itself or through a receiver, collect the Rents. Beneficiary will not be deemed to be in possession of the Property solely by reason of its exercise of the rights contained in this subsection (4). If Beneficiary collects the Rents under this subsection, Grantor hereby irrevocably

appoints Beneficiary as Grantor's attorney-in-fact, with power of substitution, to endorse instruments received in payment of the Rents in the name of Grantor and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts will be paid to Grantor and this power will terminate.

(5) **Power of Sale.** Beneficiary may direct Trustee, and Trustee will be empowered, to foreclose this Trust Deed by advertisement and sale under applicable law.

(6) **Foreclosure.** Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Property and giving Beneficiary the right to collect any deficiency remaining due after disposition of the Trust Property.

(7) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

(8) **Abandonment.** Beneficiary may abandon all or any portion of the Trust Property by written notice to Grantor.

**2.3 Sale.** In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in any order that Beneficiary may choose, without regard to the right of Grantor, any person claiming under Grantor, or any guarantor or surety to the marshaling of assets. The purchaser at any such sale will take title to the Trust Property or the part of it so sold, free and clear of Grantor's estate, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Beneficiary and its officers, agents, and employees, may purchase at any such sale. Beneficiary and each of its officers are irrevocably appointed Grantor's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions of it so sold and, for that purpose, Beneficiary and its officers may execute all appropriate instruments of transfer. Nevertheless, Grantor will ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Beneficiary or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Beneficiary, for that purpose.

**2.4 Cumulative Remedies.** All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy will not preclude the exercise of any other remedy. An election by Beneficiary to cure under Section 1.13 will not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy will impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

**2.5 Receiver or Trustee-in-Possession.** On taking possession of all or any part of the Trust Property, Trustee, Beneficiary, or a receiver may:

(1) **Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for any purpose and for any maintenance and improvements that it deems reasonably necessary.

(2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply those sums to the reasonable expenses of use, operation, management, maintenance, and improvements.

(3) **Construction.** At its 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 and specifications as it deems appropriate.

(4) **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, Beneficiary, Trustee, or the receiver may borrow or advance such sums on any terms that it deems reasonably necessary for the purposes stated in this section. All advances will bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of those sums will be secured by this Trust Deed.

**2.6 Application of Proceeds.** All proceeds realized from the exercise of the rights and remedies under Section 2.2 will be applied as follows:

(1) **Costs and Expenses.** To pay all costs of exercising the rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 3.7 below.

(2) **Indebtedness.** To pay all Obligations, in any order that Beneficiary may determine in its sole discretion.

(3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations will be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

**2.7 Deficiency.** No sale or other disposition of all or any part of the Trust Property pursuant to Section 2.2 will be deemed to relieve Grantor of any of the Obligations, except to the extent that the proceeds are applied to the payment of the Obligations. If the proceeds of a sale, a collection, or other realization of or on the Trust Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, Grantor will remain liable for any deficiency to the fullest extent permitted by law.

**2.8 Waiver of Stay, Extension, Moratorium, and Valuation Laws.** To the fullest extent permitted by law, Grantor waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property before any sale.

### **ARTICLE III GENERAL PROVISIONS**

**3.1 Time Is of the Essence.** Time is of the essence with respect to all covenants and obligations of Grantor under this Trust Deed.

**3.2 Reconveyance by Trustee.** At any time on the request of Beneficiary, payment of Trustee's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Trustee may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts will be conclusive proof of the truthfulness of them.

**3.3 Notice.** Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed must be in writing and may be delivered by hand, or mailed by first-class, registered, or certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for receiving notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph will be deemed to have been given on the date of mailing; notices given by hand will be deemed to have been given when actually received.

**3.4 Substitute Trustee.** Beneficiary may at any time substitute one or more trustees to execute the trust hereby created, and the new trustee or trustees will succeed to all the powers and duties of the prior trustee or trustees.

**3.5 Trust Deed Binding on Successors and Assigns.** This Trust Deed is binding on and inures to the benefit of the successors and assigns of Grantor, Trustee, and Beneficiary. If the Trust Property or any portion of it becomes vested in any person other than Grantor, Beneficiary will have the right to deal with the successor regarding this Trust Deed, the Trust Property, and the Obligations in any manner that Beneficiary deems appropriate in its sole discretion, without notice to or approval by Grantor and without impairing Grantor's liability for the Obligations.

**3.6 Indemnity.** Grantor will hold Beneficiary and Trustee and their respective directors, officers, employees, agents, and lawyers, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Trustee's or Beneficiary's interest under

this Trust Deed, except that Grantor will not be liable for acts performed by Beneficiary or Trustee in violation of applicable law.

**3.7 Expenses and Attorney Fees.** If Beneficiary refers any of the Obligations to a lawyer for collection or seeks legal advice after a default, if Beneficiary is the prevailing party in any litigation instituted in connection with any of the Obligations, or if Beneficiary or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and Beneficiary employs a lawyer to appear in any such action, suit, or proceeding or to reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce Beneficiary's interests, then in any such event Grantor must pay reasonable attorney fees, costs, and expenses incurred by Beneficiary or its lawyer in connection with the above-mentioned events or any appeals related to them, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Those amounts will be secured by this Trust Deed and, if not paid on demand, will bear interest at the rate specified in the Note.

**3.8 Applicable Law.** The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed will be governed by Oregon law.

**3.9 Captions.** The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and do not define, diminish, or enlarge the rights of the parties or affect the construction or interpretation of any portion of this Trust Deed.

**3.10 Rights of Prior Mortgagee.** If all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted in Exhibit B, the rights of Beneficiary with respect to insurance and condemnation proceeds as provided in Sections 1.12 and 1.16, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed beneficiary, will be subject to the rights of the superior mortgagee or trust deed beneficiary. Grantor hereby authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to Beneficiary to be applied in accordance with this Trust Deed.

**3.11 Person Defined.** As used in this Trust Deed, the word *person* means any natural person, partnership, trust, corporation, or other legal entity of any nature.

**3.12 Severability.** If any provision of this Trust Deed is held to be invalid, illegal, or unenforceable, that invalidity, illegality, or unenforceability will not affect any other provisions of this Trust Deed, and the other provisions will be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.



**3.13 Entire Agreement.** This Trust Deed contains the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained in this Trust Deed will be binding or valid.

**3.14 Commercial Property.** Grantor covenants and warrants that the Property and Improvements are used by Grantor exclusively for business and commercial purposes. Grantor also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Grantor, Grantor's spouse, or Grantor's minor or dependent child.

**3.15 Standard for Discretion.** If this Trust Deed is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard will be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

GRANTOR

Showcase Rose LLC,  
an Oregon Limited Liability Company

By: Rosemary Whitaker, Manager  
Rosemary Whitaker  
Manager

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

On Oct. 8, 2012, before me personally appeared Rosemary Whitaker, who being duly sworn, stated that she is the Manager of Showcase Rose LLC, an Oregon Limited Liability Company, and acknowledged the foregoing instrument to be the voluntary act and deed of the limited liability company, executed by authority of its member.



Kristi L. Redd  
Notary Public for Oregon  
My commission expires: 11/16/2015



1010574005

6470605  
2/9/2004 11:58:58 AM  
OR Sec. of State

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME &amp; PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

AmeriTitle  
300 Klamath Avenue  
Klamath falls, OR 97601  
Attn: Margie Stuart / 63947-MS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME

Whitaker

FIRST NAME

donald

MIDDLE NAME

R

SUFFIX

1c. MAILING ADDRESS

2640 Nile street

CITY

Klamath Falls

STATE

OR

POSTAL CODE

97603

COUNTRY

USA

1d.

 ADD'L INFO RE  
ORGANIZATION  
DEBTOR

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID #, if any

☐ NONE2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

Whitaker

FIRST NAME

Rosemary

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

2640 Nile Street

CITY

Klamath Falls

STATE

OR

POSTAL CODE

97603

COUNTRY

USA

2d.

 ADD'L INFO RE  
ORGANIZATION  
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE OF ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME

KONO, Inc., an Oregon Corporation

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

P.O. box 1103

CITY

Shady Cove

STATE

OR

POSTAL CODE

97539

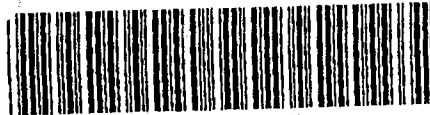
COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral:

The building (only) located at 3130 so. 6th Street, Klamath Falls, OR 97603  
(this is for the structure only and does not include any other real or  
personal property)





1010574105

6470611  
2/9/2004 11:58:58 AM  
OR Sec. of State

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME &amp; PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Amerititle  
300 Klamath Avenue  
Klamath Falls, OR 97601  
Attn: margie Stuart / 63947-MS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME

Whitaker

FIRST NAME

donald

MIDDLE NAME

R

SUFFIX

1c. MAILING ADDRESS

2640 Nile Street

CITY

Klamath Falls

STATE

OR

POSTAL CODE

97603

COUNTRY

USA

1d.

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID #, if any

☐ NONE2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

Whitaker

FIRST NAME

Rosemary

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

2640 Nile Street

CITY

Klamath Falls

STATE

OR

POSTAL CODE

97603

COUNTRY

USA

2d.

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE OF ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME

Gamache

FIRST NAME

Robert

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

209 E. Main Street, #A

CITY

Klamath Falls

STATE

OR

POSTAL CODE

97601

COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral:

The building (only) located at 3130 So. 6th Street, Klamath Falls, OR 97603  
(this is for the structure only and does not include any other real or  
personal property)

5. ALTERNATIVE DESIGNATION (if applicable):



LESSEE/LESSOR



CONSIGNEE/CONSIGNOR



BAILEE/BAILOR



SELLER/BUYER



AG. LIEN



NON-UCC FILING



1006475409

6470611-1  
02/09/09 03:30 PM  
OR Sec. of State**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME &amp; PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

AmeriTitle  
ATT: Collection Escrow Dept.  
300 Klamath Avenue  
Klamath Falls, OR 97601

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

6470611

1b. This FINANCING STATEMENT AMENDMENT is  
to be filed [for record] (or record) in the  
REAL ESTATE RECORDS.  
☐2. ☐ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.3. ☒ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.4. ☐ **ASSIGNMENT:** (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.  
Also check one of the following three boxes and provide appropriate information in item 6 and/or 7.☐ **CHANGE name and/or address:** Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c.☐ **DELETE name:** Give record name to be deleted in item 6a or 6b.☐ **ADD name:** Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME

OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
	WHITAKER	DOANLD & ROSEMARY		

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

7d.	ADD'L. INFO RE ORGANIZATION	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
	DEBTOR			

  
☐ NONE8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral: ☐ assigned.9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
	GAMACHE	ROBERT		

10. **OPTIONAL FILER REFERENCE DATA**