

2013-004627

Klamath County, Oregon



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05/01/2013 09:59:32 AM

Fee: \$107.00

Mail to after recording:

Daniel C. Scheall Sr.

Name

P.O.Box 1204

Address

Port Townsend WA 98368

City/ State/ Zip Code

Deed of Trust

THIS DEED OF TRUST (the "Trust") dated this 1<sup>st</sup> day of May,  
2013

BETWEEN:

Returned to Counter

W.  
John Clayton of Meridian, ID 83642, and  
Lisa S. Clayton of Meridian, ID 83642

3313 W. Cherry Ln. # 38

(collectively the "Trustor")

OF THE FIRST PART

- AND -

Daniel C. Scheall TTEE Scheall Fam Trust, dtd 06/02.1992 of P.O.Box 1204 / 583 Lane de  
Chantel, Port Townsend, WA. 98368

(the "Beneficiary")

Initials:

DS JS

OF THE SECOND PART

- AND -

Daniel C. Scholl Sr of P.O. Box 1204 / Port Townsend, WA  
98368  
(the "Trustee")

OF THE THIRD PART

Background

A. The Trustor, being registered as owner of the estate in the following described property (the "Property") located at Parcel APN000R86490, Klamath Cty, OR in Klamath County, State of Oregon, United States with the following legal description:

Land: APN 000R86490

The Southwest 1/4 of the Southeast 1/4 of the Southeast 1/4 and the South 1/2 of the Southwest 1/4 of the Southeast 1/4. of Section 6, Township 41 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, Acres 28.83.

B. Any buildings or structures on the Property and anything now or later attached or fixed to the buildings or the Property including additions, alterations and improvements located on, above or below the surface of the Property are covered by this Trust. However, no additions, alterations or improvements will be made by the Trustor without the Beneficiary's prior written consent. Any addition, alteration or improvement will be subject to all recorded easements, rights of way, conditions, encumbrances and limitations, and to all applicable building and use restrictions, zoning laws and ordinances, if any, affecting the Property.

IN CONSIDERATION OF the sum lent to the Trustor by the Beneficiary, in the amount of \$49,000.00 U.S. DOLLARS (the "Principal Amount") the receipt of which the Trustor

Initials: Daniel C. Scholl Sr

does hereby acknowledges itself indebted, the parties to this Trust agree as follows:

**U.C.C. Security Agreement**

1. It is agreed that if any of the Property herein trusted is of a nature so that a security interest in the Property can be perfected under the Uniform Commercial Code, this instrument will constitute a Security Agreement and Trustor agrees to join with the Beneficiary in the execution of any financing statements and to execute any and all other instruments that will be required for the perfection or renewal of such security interest under the Uniform Commercial Code.

**Governing Law**

2. This Trust will be governed by both the law of Oregon and any applicable federal law ("Applicable Law"). All rights and obligations contained in this Trust are subject to any requirements and limitations of Applicable Law.

**MATTERS RELATING TO PAYMENT**

**Promise to Pay**

3. The Trustor, for value received, promises to pay to the Beneficiary, on demand, the Principal Amount, interest and all fees and costs on the terms set out in this Trust or in any amendment, extension or renewal of the Trust and any additional amounts secured by this Trust on the terms elsewhere provided for such debts and liabilities.

**Interest**

4. The Trustor agrees to pay the Principal Amount with interest before and after maturity and before and after default at the rate of 3.00 percent calculated per annum and compounding monthly, (the "Interest Rate"). The Interest Rate will be calculated from the date this Trust begins (the "Interest Adjustment Date") and accrues until the whole of the Principal Amount is paid. The Loan will be repaid on the following terms:
  - a. The Principal and interest will be repaid in consecutive monthly installments of \$473.15 each on the 15th of each month;
  - b. The Interest Adjustment Date for this Trust is May 1, 2013;

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- c. The balance, if any, of the Principal Amount and any interest thereon and any other moneys owing under this Trust will be due and payable on ~~April 29,~~ <sup>May 15,</sup> ~~2013~~ (the "Maturity Date"). 06/15/2023

**Place of Payment**

5. The Trustor will make monthly payments at P.O.Box 1204, Port Townsend, WA. 98368 or at a location later specified by the Beneficiary. or Bank as directed

**Funds for Escrow Items**

6. The Trustor will pay to the Beneficiary, on the day periodic payments are due under this Trust, a sum (the "Funds") to provide for payment of (a) all taxes, assessments and other charges against the Property; (b) ground rents or other lease payments on the Property; and (c) premiums for any and all insurance required by Beneficiary.
7. If there is a surplus of Funds held in escrow, the Beneficiary will provide the Trustor with the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, the Beneficiary will notify the Trustor as required by the RESPA, and the Trustor will pay to the Beneficiary the amount necessary to make up the shortage in accordance with the RESPA.
8. The Trustor will notify the Beneficiary of all of amounts to be paid under this Section. At the Beneficiary's discretion, the Trustor will provide receipts of such payments to the Beneficiary. If the Trustor fails to make timely payments the Beneficiary can, at its discretion, make any payments for past due Escrow Items and the Trustor will be obligated to repay to the Beneficiary any such amount. The Beneficiary may waive the Trustor's obligation to pay for any or all Escrow items to the Beneficiary through written notice. If such waiver occurs, the Trustor is responsible to pay the amounts due for any Escrow Items. The Beneficiary can at any time revoke the waiver of any or all Escrow Item payments by written notice to the Trustor, and upon such revocation, the Trustor will pay to the Beneficiary all Funds, and in such amounts, that are then required under this Section.
9. The Beneficiary will collect and hold the Funds in accordance with the Real Estate Settlement Procedures Act (the "RESPA"). The Beneficiary will reasonably estimate the amount of Funds due in accordance with Applicable Law.

Initials: Deb J / LC

10. If there is a surplus of Funds held in escrow, the Beneficiary will provide the Trustor with the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, the Beneficiary will notify the Trustor as required by the RESPA, and the Trustor will pay to the Beneficiary the amount necessary to make up the shortage in accordance with the RESPA.

**Obligation to Pay without Set-off or Delay**

11. The Trustor agrees to pay all amounts payable pursuant to this Trust and all additional amounts secured by this Trust without abatement, set-off or counterclaim. Should the Trustor make any claim against the Beneficiary either initially or by way of abatement, set-off or counterclaim, the Trustor agrees that any such claim will not diminish or delay his obligations to make the payments as provided in this Trust.

**Application of Payments and Interest after Default**

12. All monthly payments received by the Beneficiary will first be applied in payment of the interest calculated at the Interest Rate, and second in payment of the Principal Amount. However, if the Trustor is in default, then the Beneficiary will apply any payments received during this period as the Beneficiary chooses. If the Trustor is in default in payment of any amount including interest, interest will be payable on the interest and other arrears at the Interest Rate compounded monthly.

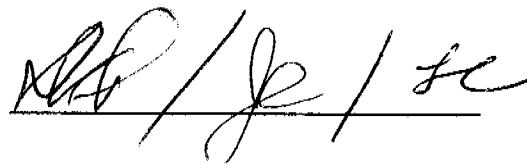
**Discharge**

13. When the Trustor pays the Principal Amount, interest and all the other amounts secured by this Trust in full and notifies the Beneficiary in writing, the Beneficiary will execute a Deed or Reconveyance and record it to clear the title to the Property. The Trustor will give the Beneficiary a reasonable time after payment in which to prepare and issue the Deed of Reconveyance.

**Covenants and Warranties**

14. The Trustor warrants and agrees that:
- a. the Trustor has good title to the Property;
  - b. the Trustor has the authority to trust the Property;

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- c. on default, the Beneficiary will have quiet possession of the Property;
  - d. the Property is free from all encumbrances;
  - e. the Trustor will execute further assurance of the Property as will be required;  
and
  - f. the Trustor has not done any act to encumber the Property.
15. The Trustee warrants and agrees that:
- a. Trustee will preserve the title to the Property and the validity and priority of this Trust and will forever warrant and defend the same for the Beneficiary against the claims of all persons.

**Fixtures and Additions**

16. The Trustor agrees that the Property includes all property of any kind that is now or at any time in the future attached or fixed to the land or buildings or placed on and used in connection with them, as well as all alterations, additions and improvements to the buildings.

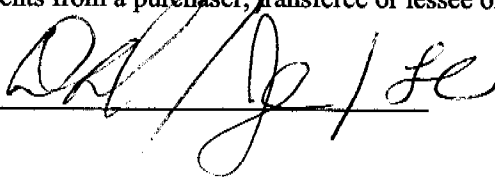
**Payment of Taxes and Other Encumbrances**

17. The Trustor will pay all taxes and other rates levied on the Property and all accounts for utilities supplied to the Property and all charges, trusts, liens and other encumbrances on the Property when they are due and comply with his other obligations under them. Upon the Beneficiary's request, the Trustor will immediately give receipts showing that the taxes and other accounts have been paid.

**No Sale Without Consent**

18. The Trustee will not sell, transfer, lease or otherwise dispose of all or any part of the Property or any interest in the Property, or if a corporation, permit a change in control, without the Trustor's and Beneficiary's prior written approval and if approved, without such approved purchaser, transferee or lessee entering an assumption agreement in form satisfactory to the Beneficiary. Acceptance of any payments from a purchaser, transferee or lessee or after a change in control not

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approved in writing, will not constitute an approval or waiver by the Beneficiary.

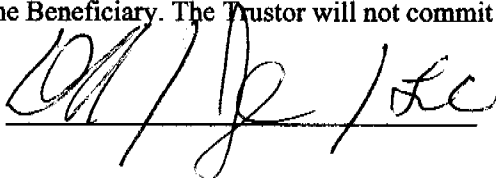
**Property Insurance**

19. Trustor will insure in the Beneficiary's favor all buildings on the Property that are the subject of the Trust. The insurance will include protection against damage by fire and other perils including "extended peril coverage" and any other perils that the Beneficiary requests. The insurance must cover replacement costs of any buildings on the Property in US dollars. The Trustor will choose the insurance company subject to the Beneficiary's right to disapprove. The insurance policies will include a standard trust clause stating that any loss is payable to the Beneficiary. This Trust will be enough proof for any insurance company to pay any claims to the Beneficiary and to accept instructions from the Beneficiary regarding any insurance claims.
20. The Trustor will provide the following at the request of the Beneficiary:
  - a. a copy of the insurance policy;
  - b. receipts of all paid insurance premiums; and
  - c. renewal notices and evidence of renewal completion.
21. In the event of loss, the Trustor will provide prompt notice to the Beneficiary and the insurance carrier. The Trustor will provide the Beneficiary with proof of all claims at the Trustor's own expense and do all necessary acts to enable the Trustor to obtain all insurance proceeds from the claim. The insurance proceeds, in whole or in part, will be applied to the restoration and repair of the Property, if the restoration and repair is economically feasible. If the restoration and repair is not economically feasible, the insurance proceeds will be applied to the remainder of the Trust, whether or not the balance of the Trust is then due. Any remaining funds from the insurance claim will be paid to the Trustor.

**Repair, Vacancy and Maintenance of the Property**

22. The Trustor will maintain the Property in good order, condition and repair and will promptly make all necessary repairs, replacements, and improvements. The Trustor will not allow the Property to become or remain vacant without the written consent of the Beneficiary. The Trustor will not commit waste and will not remove, demolish or

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materially alter the Property or any part of it without prior written consent from the Beneficiary. The Beneficiary may, whenever necessary, enter upon and inspect the Property. If the Trustor, or anyone claiming under the Trustor, neglect to keep the Property in good condition and repair, or commit any act of waste on the Property, or do anything by which the value of the Property is diminished, as to all of which the Beneficiary will be sole judge, the Beneficiary may (but is not obliged to) enter the Property and effect such repairs or work as it considers necessary.

#### **Environmental Hazards**

23. The Trustor will not use, store, release, deposit, recycle, or permit the presence of hazardous substances on the Property, generally accepted items for residential use excepted, which includes but not limited to asbestos, PCBs, radioactive materials, gasoline, kerosene, or other flammable petroleum products (the "Hazardous Substances"). The Trustor is also prohibited from performing any acts on the Property involving any Hazardous Substances that would materially affect the value of the Property or would require clean-up or remedial action under federal, state, or local laws and codes.

#### **DEFAULT AND REMEDIES**

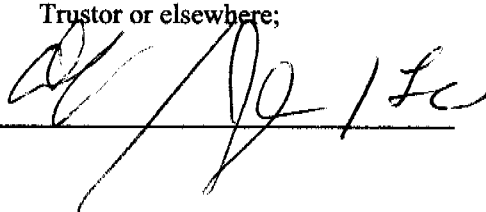
##### **Trustor Right to Quiet Possession**

24. Until default by the Trustor under this Trust, the Trustor will have quiet possession and receive the rents and profits from the Property.

##### **Events of Default**

25. The Trustor will be in default under this Trust upon the happening of any of the following events:
- a. if the Trustor defaults in the payment of the Principal Amount, interest or any other amount secured by this Trust, when payment of such amount becomes due under the terms of this Trust or as elsewhere provided for any other amount secured by this Trust;
  - b. if the Trustor defaults in the observance or performance of any term or covenant which the Trustor has agreed to observe or perform under this Trust or elsewhere;

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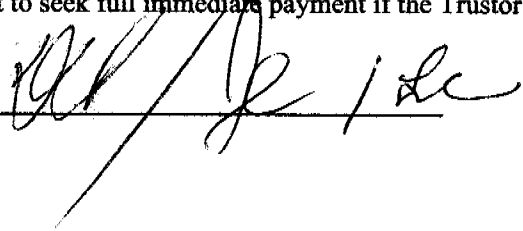


- c. if any information or statement the Trustor has given or made before, at or after signing the Trust, in respect of the Property or the Trustor's affairs is incorrect or untrue at the time it was given or made;
- d. if the Trustor ceases or threatens to cease to carry on in a sound businesslike manner, the business in which the Trustor ordinarily conducts on, or with respect to all or any part of, the Property;
- e. if the Property is a condominium unit or units, a vote authorizes termination of the condominium or the sale of all or substantially all of the condominium corporation's assets or its common elements or the condominium corporation fails to insure the unit and common elements;
- f. if a petition in bankruptcy is filed against the Trustor, if the Trustor make a general assignment for the benefit of the creditors, if a receiver, interim receiver, monitor or similar person is placed or is threatened to be placed in control of or for the overview of the Trustor's affairs or Property, or in the opinion of the Beneficiary, the Trustor becomes insolvent;
- g. if a construction or similar lien is registered against the Property or if default occurs under any other lien, trust or other encumbrance existing against the Property;
- h. if the Trustor abandons or does not visibly and consistently occupy the Property; or
- i. if the Property or a material part of the Property is expropriated.

**Acceleration on Default**

- 26. If at any time the Trustor should be in default under this Trust, then the Principal Amount, interest and all amounts secured by this Trust will, at the option of the Beneficiary, become due and payable immediately.
- 27. If at any time the Trustor is in default and the Beneficiary does not require the Trustor to pay immediately in full as described above, the Beneficiary will retain the right to seek full immediate payment if the Trustor is in default at a later time. Any

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forbearance on the part of the Beneficiary upon default, which includes but not limited to acceptance of late payment, acceptance of payment from third parties, or acceptance of payments less than the amount then due, will not constitute as waiver to enforce acceleration on default.

28. In the event that the Beneficiary elects to accelerate the Trust, the Beneficiary will provide notice to the Trustor in accordance with Applicable Law.

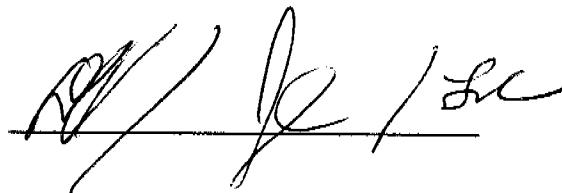
**Additional Charges**

29. The Trustor may be charged with fees in association with the default of this Trust or for the protection of the Beneficiary's interest for this Trust, which may include, but is not limited to attorneys' fees and property inspections (the "Additional Fees"). The absence of specific charges which may be levied against the Trustor in this Trust does not preclude the Beneficiary from charging such costs as Additional Fees. However, the Beneficiary will not charge any fees which are prohibited by Applicable Law and the Beneficiary will not charge any fees above and beyond the amount or percentage allowed under the Applicable Law. Any amount disbursed by the Beneficiary in relation to the protection of the Beneficiary's security will become Additional Fees payable by the Trustor. The Additional Fees will carry an interest rate of 3.00 percent per annum, compounding monthly. The Additional Fees' total including interest will become due upon written request by the Beneficiary.

**Protection of Beneficiary's Security**

30. If at any time the Trustor should fail to uphold the covenants in this Trust, or if a legal proceeding commences which materially affects the Beneficiary's interest in the Property, the Beneficiary may pay or perform any reasonable action as necessary to protect the Beneficiary's interest, which includes, but is not limited to:
- a. payment of insurance premiums and taxes, levies, accruing against the Property;
  - b. payment of sums due secured by a prior lien which has priority over this Trust;

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- c. payment of legal fees in relations to any legal proceedings or legal costs arising from the Property; and
  - d. payment of reasonable costs in repairing and maintaining the Property.
31. Any action referred to in this section is optional for the Beneficiary and the Beneficiary has no duty or obligation to carry out any of the remedies listed in this section and will not incur any liability in the failure to perform such tasks.
32. Any amount disbursed by the Beneficiary in relation to the protection of the Beneficiary's security will become Additional Fees payable by the Trustor.

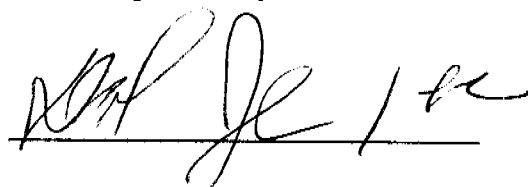
**Power of Sale**

33. If at any time the Trustor should be in default under this Trust, the Beneficiary will have the right to foreclose and force the sale of the Property without any judicial proceeding. Any delay in the exercising of this right will not constitute as waiver on the part of the Beneficiary to exercise this option at a subsequent time should the Trustor remains in default or if the Trustor becomes default again in the future.

**Remedies on Default**

34. The Beneficiary will have the right to pursue all remedies for the collection of the amounts owing on this Trust that are provided for by Applicable Law (both federal and state), whether or not such remedies are expressly granted in this Trust, including but without limitation foreclosure proceedings.
35. If the Beneficiary invokes the power of sale, the Beneficiary will cause the Trustee to execute a written notice of the event of default and the Beneficiary's election to sell the Property. The Beneficiary or the Trustee will mail copies of the notice as prescribed by Applicable Law to Trustor and other persons as required by Applicable Law. The Trustee will give public notice of sale to the Trustor in the manner provided for by Applicable Law. After the time required by Applicable Law, the Trustee, without demand on the Trustor, will sell the Property at public auction to the highest bidder, at the time and place and subject to the terms indicated in the notice of sale. The Trustee may postpone sale of the Property by public announcement at the time and place of any scheduled sale.

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## MISCELLANEOUS MATTERS

### Interpretation and Headings

36. Headings are inserted for the convenience of the parties to the Trust and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender mean and include the feminine gender and vice versa. Words importing persons include firms and corporations and vice versa.

### Severability

37. If any provision of this Trust will be held invalid or be prohibited by the Applicable Law, such provision will not invalidate the remaining provisions of this Trust and such provisions of the Trust will be amended or deleted as necessary to comply with the Applicable Law.
38. Nothing contained in this Trust will require the Trustor to pay or for the Beneficiary to accept interest in an amount greater than that allowed by Applicable Law. If the payment of interest or other amounts under this Trust would otherwise exceed the maximum amount allowed under Applicable Law or violate any law as to disclosure or calculation of interest charges, then the Trustor's obligations to pay interest or other charges will be reduced or amended to the maximum rate or amount permitted under Applicable Law.

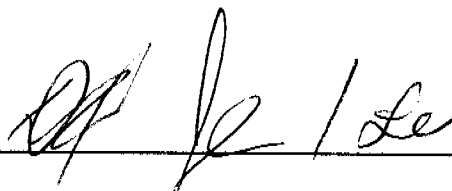
### Joint Signatures

39. If the Trustor is more than one person or legal entity, each person or legal entity who signs it will be jointly and severally bound to comply with all covenants and obligations of the Trustor and the said covenants and obligations will bind all of the Trustor's successors and permitted assigns. The Trust will enure to the benefit of the Beneficiary and the Beneficiary's successors and assigns.

### Statutory Covenants

40. The covenants contained in this Trust are additional and supplemental, to the extent permitted by law, the covenants set out in the Applicable Law regarding trusts.

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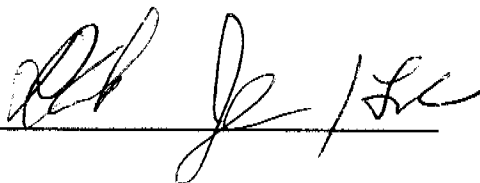
**Substitute Trustee**

41. The Beneficiary may, at its option, from time to time appoint a new Trustee by an instrument executed and acknowledged by the Trustor and recorded in the office of the Recorder of the county in which the Property is located. The instrument will contain the name of the original Beneficiary, Trustee, and Trustor, the book and page where the Trust is recorded and the name and address of successor trustee. The successor trustee will succeed to all the title, powers, and duties conferred upon the Trustee.

**Demands and Notices**

42. Any notice given by either party in this Trust must be in writing. Unless otherwise provided in this Trust or prohibited by law, where this Trust allows or requires the Beneficiary to make a demand on or give a notice to any person (including the Trustor), the Trustor will make the demand or give the notice by:
- a. delivering it to the person at the Property or person's last known address;
  - b. by mailing it by prepaid registered mail addressed to the person at the Property or the person's last known address;
  - c. by sending it by facsimile to the person's last known number; or
  - d. where the person is a corporation, by so delivering or sending it to the last known address or number of a director, officer, employee or attorney of the corporation.
43. Any party in this instrument whose address has changed are responsible for notifying the other respective parties of the change in address.
44. Any notice or demand delivered as described will constitute as sufficient delivery. Any notice, demand, mail and facsimile (the "Notice") made will constitute as being effective on the same day that it was sent, unless the day in which the Notice was sent falls on a national holiday, Saturday or Sunday, in which case, the next business day would be considered as the day of receipt.

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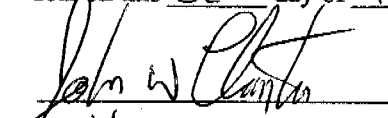
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**Additional Clauses**

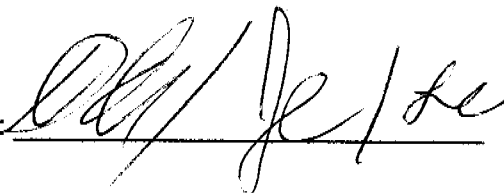
45. No live timber shall be cut or removed from property other than reasonable amount of trimming required for fire prevention safety area or for construction placement of a trailer, motor home, outbuilding.
46. This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses.
47. The Grantor expressly reserves all mineral, including oil, coal, gas, metals, mineable rock products, sand, gravel, peat, and any and all other mineral rights, whether or not appearing in the public record in on and under the above described land to the extent provided by applicable state law.

Pursuant to ORS 93.850, this conveyance is made subject to all valid restrictive covenants, easements, and rights of way, if any, of record, or which may be apparent from an inspection of the property.

**IN WITNESS WHEREOF** the Trustors, have duly affixed their signatures under hand and seal on this 30 day of April, 2013.

  
John W Clayton  
(Trustor)

  
Lisa G Clayton  
(Trustor)

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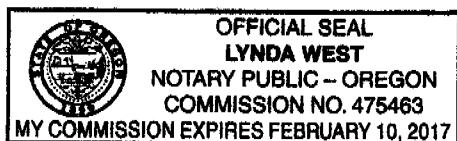
**Trustor Acknowledgment**

State of Oregon)

County of Klamath

The foregoing instrument was acknowledged before me this 30 day of  
April, 2013, by John W Clayton, Lisa C Clayton.

Seal:



Lynda West

Notary Public

My commission expires: February 10, 2017

Initials: John W Clayton / Lisa C Clayton