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Klamath County, Oregon
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Daniel O. Benson
3518 Collier Lane
Klamath Falls, OR 97603

TRUST DEED

THIS TRUST DEED (this "**Trust Deed**") is made as of the 29th day of April, 2013, by FAY FAMILY LLC, an Oregon limited liability company ("**Grantor**"), whose address is 1662 Cove Point Road, Klamath Falls, Oregon 97601, to AMERITITLE ("**Trustee**"), whose address is 300 Klamath Avenue, Klamath Falls, Oregon 97607, for the benefit of DANIEL ORVILLE BENSON, an individual ("**Benson**"), and DANIEL O. BENSON M.D., P.C., an Oregon professional corporation ("**Benson PC**") (Benson and Benson PC are sometimes collectively referred to herein as "**Grantee**" or "**Beneficiary**"), whose address is 3518 Collier Lane, Klamath Falls, OR 97603.

NOW, THEREFORE, for the purpose of securing the payment and performance of the Obligations (as defined 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 commonly known as 2615 Almond Street, Klamath Falls, Oregon 97601 and legally described as (the "**Property**"):

Lot 2 and Lot 3, Block 5, Tract No. 1163, Campus View, in the County of Klamath, State of Oregon.

The term Property shall include all interests, estates, and rights that Grantor now has or may acquire in the Property, all tenements, hereditaments, and appurtenances in any manner belonging, relating, or appertaining to the Property; and all rights, titles, and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings, fixtures and other improvements of every nature now or hereafter located on the Property.

TO HAVE AND TO HOLD the 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) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be reconveyed.

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

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ARTICLE 1
Particular Covenants and Warranties of Grantor

1.1 **Obligations Secured.** This Trust Deed secures the payment and performance of the obligations under the following instruments: (a) that certain Nonnegotiable Promissory Note from Grantor to Benson dated April 29, 2013 in the principal amount of Two Hundred Eighty-Three Thousand Five Hundred Dollars (\$283,500); (b) that certain Nonnegotiable Promissory Note from Grantor to Benson PC dated April 29, 2013 in the principal amount of Thirty-One Thousand Five Hundred Dollars (\$31,500); (c) that certain Nonnegotiable Promissory Note from Klamath Ophthalmology, P.C. to Benson PC dated April 29, 2013 in the principal amount of Sixty-Six Thousand One Hundred Dollars (\$66,100); and (d) that certain Nonnegotiable Promissory Note from Klamath Ophthalmology, P.C. to Benson dated April 29, 2013 in the principal amount of Two Hundred Seventy-Nine Thousand Nine Hundred Dollars (\$279,900) (collectively, the "**Notes**"), together with the payment of, and reimbursement to, Beneficiary of all Enforcement Costs (the Notes and Enforcement Costs are collectively referred to herein as the "**Obligations**"). "**Enforcement Costs**" shall mean any and all costs and expenses (including, without limitation, attorneys' fees and disbursements) which are incurred by Trustee or Beneficiary in connection with the exercise and enforcement of their respective rights under this Trust Deed, whether or not suit is initiated.

1.2 **Compliance with Laws.** Grantor will comply, and shall cause the Property to comply, with all legal requirements affecting the Property.

1.3 **Maintenance.** Grantor shall maintain every portion of the Property in good repair, working order, and condition, except for reasonable wear and tear.

1.4 **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 Property. Without the prior written consent of Beneficiary, Grantor shall not (a) create or grant any mortgage, deed of trust or security interest upon the Property or (b) otherwise permit or suffer to exist any other encumbrance upon the Property, in each case, other than those existing on the date hereof.

1.5 **Impositions.** Grantor shall 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 Property (the "**Impositions**"). Grantor shall furnish to Beneficiary, promptly upon 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.

1.6 **Insurance.**

1.6.1 Grantor shall maintain commercial general liability insurance on the Property with limits of loss of at least \$1,000,000 combined single limit for personal injury and property damages per occurrence. Such insurance shall name Beneficiary as an additional insured. Grantor shall provide Beneficiary with evidence of insurance coverage upon request.

1.6.2 Grantor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and hazards included within the term "extended coverage" for the full insurable value of the Property and with a deductible not to exceed \$50,000. Such insurance policy shall name Beneficiary as a mortgagee and loss payee. Prior to the date hereof and from time to time upon reasonable request of Beneficiary, Grantor shall provide Beneficiary with reasonable evidence of insurance coverage.

1.7 **Additional Covenants.** Grantor shall: (i) restore any improvement which may be damaged or destroyed so that the same shall be at least substantially equal to the value, condition and character immediately prior to the damage or destruction, subject to receipt of the proceeds of the insurance policy required under Section 1.6.2 above; (ii) not commit or permit any waste or deterioration (normal wear and tear excepted) of the Property; and (iii) not cause or permit the improvements on the Property to be demolished or altered in any manner, or any work to be done, that could or might decrease the value thereof.

1.8 **Inspections.** Grantor hereby authorizes the Beneficiary, its agents, employees and representatives to visit and inspect the Property or any portion thereof all at reasonable times.

1.9 **Casualty; Condemnation.** Unless Beneficiary and Grantor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Trust Deed is not thereby impaired. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary to pay the Obligations.

1.10 **Property.** Grantor warrants that Grantor holds good and marketable fee title to the Property and covenants that the Grantor shall forever defend Beneficiary's and Trustee's rights under this Trust Deed against all adverse claims and demands, and that Grantor will not take any action (or fail to take any action) that would impair the lien of this Trust Deed or adversely affect the rights of Beneficiary or its assigns in the Property. Grantor warrants that that Grantor has the power and authority execute and delivery this Trust Deed and to encumber title to the Property pursuant to this Trust Deed and that no consents or approvals are required for Grantor to enter into this Trust Deed.

ARTICLE 2

Events of Default; Remedies

2.1 **Events of Default.** Each of the following shall constitute an event of default under this Trust Deed:

2.1.1 **Nonpayment.** Failure of Grantor to pay and/or perform any of the Obligations as and when due.

2.1.2 **Breach of Other Covenants.** Failure of Grantor to perform or abide by any other terms of this Trust Deed (excluding those identified in Section 2.1.1 above) within sixty (60) days after written notice from Beneficiary specifying the nature of the failure.

2.1.3 **Bankruptcy.** The occurrence of any of the following with respect to Grantor: (a) appointment of a receiver, liquidator, or trustee for Grantor or any of his or its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against Grantor under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Property.

2.1.4 **Transfer; Due-on-Sale; Due-on-Encumbrance.** Any sale, conveyance or transfer of all or any part of the Property, or any interest therein, either voluntarily, involuntarily, or by operation of law (each, a "**Transfer**") without Beneficiary's prior written consent; provided, however, that Grantor may, without first obtaining Beneficiary's consent, Transfer the Property to an entity owned or controlled by Grantor, lease and sublease all or any part of the Property, and grant security interests in the Property to secure the payment of money so long as such security interests are subordinate to the lien of this Trust Deed. The provisions of this subsection shall 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 such conditions to its consent under this subsection 2.1.4 as Beneficiary may determine in its sole discretion.

2.2 **Remedies in Case of Default.** If an event of default occurs, Beneficiary or Trustee may exercise any one or more of the rights and remedies available at law, in equity, or otherwise. Beneficiary may declare all or any portion of the Obligations immediately due and payable. Beneficiary may direct Trustee, and Trustee shall be empowered, to exercise the power of sale to cause the Property to be sold under applicable law. Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Property. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

ARTICLE 3

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.**

3.2.1 Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Deed to Trustee for cancellation and retention, and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder.

3.2.2 The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

3.3 **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Grantor provided for in this Trust Deed shall be given by mailing such notice by certified mail, return receipt requested, to the address of Grantor set forth above or at such other address as Grantor may designate by notice to Beneficiary as provided herein, and (b) any notice to Beneficiary provided for in this Trust Deed shall be given by certified mail, return receipt requested, to the address of Beneficiary set forth above or to such other address as Beneficiary may designate by notice to Grantor as provided herein. Any notice provided for in this Trust Deed shall be deemed to have been given to Grantor or Beneficiary two (2) days after mailing in the manner designated herein.

3.4 **Substitute Trustee.** In the event Trustee ceases to act under this Trust Deed, Beneficiary may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

3.5 **Trust Deed Binding on Successors and Assigns.** This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Grantor, Trustee, and Beneficiary. If the Property or any portion thereof shall at any time be vested in any person other than Grantor, Beneficiary shall have the right to deal with such successor regarding this Trust Deed, the Property, and the Obligations in such manner as 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.**

3.6.1 Grantor agrees to: (i) indemnify and hold harmless the Trustee and Beneficiary and their respective successors, assigns, employees, agents and affiliates from and against any and all claims, demands, losses, judgments and liabilities (including for penalties) of whatsoever kind or nature; and (ii) to reimburse the Trustee and Beneficiary for all reasonable costs and expenses, including reasonable attorneys' fees, in each case growing out of or resulting from this Trust Deed or the exercise by the Trustee or Beneficiary of any right or remedy granted to it hereunder (but excluding, in each case, any claims, demands, losses, judgments and liabilities or expenses to the extent incurred by reason of negligence or willful misconduct of the Trustee or Beneficiary). In no event shall the Trustee or Beneficiary be liable, in the absence of negligence or willful misconduct on its or their part, for any matter or thing in connection with this Trust Deed.

3.6.2 Without limiting the application of Section 3.6.1 hereof, Grantor agrees to pay and reimburse the Trustee and Beneficiary for all Enforcement Costs.

3.7 **Applicable Law.** The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the State of Oregon.

3.8 **Captions.** The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

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

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

3.11 **Indemnity Obligations Secured by Property; Survival.** Any amounts paid by the Trustee or Beneficiary as to which such party has the right to reimbursement shall constitute Obligations secured by the Property. The indemnity obligations of the Grantor contained in this Trust Deed shall continue in full force and effect notwithstanding the full payment or satisfaction of all of the other Obligations and notwithstanding the discharge thereof.

3.12 **Amendment.** None of the terms and conditions of this Trust Deed may be changed, waived, modified or varied in any manner whatsoever except with the prior written approval of the Grantor, Trustee and Beneficiary.

3.13 **Obligations Absolute.** The obligations of the Grantor hereunder shall remain in full force and effect without regard to, and shall not be impaired by, (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Grantor; (b) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Trust Deed; or (c) any amendment to or modification of any security for any of the Obligations; whether or not the Grantor shall have notice or knowledge of any of the foregoing.

3.14 **Priority.** This Trust Deed is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

3.15 **Covenants Running with the Land.** All Obligations are intended by the Grantor, the Trustee and Beneficiary to be, and shall be construed as, covenants running with the Property. As used herein, the "Grantor" shall refer to the party named in the first paragraph of this Trust Deed and to any subsequent owner of all or any portion of the Property. All persons who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of this Trust Deed; provided, however, that no such party shall be entitled to any rights thereunder without prior written consent of Beneficiary.

3.16 **Use of Property.** The Property will be used for commercial or business purposes and not for agricultural, timber or grazing purposes. Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Grantor shall not allow changes in the use for which all or any part of the Property was intended at the time this instrument was executed.

[Signature appears on the following page]

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW. RCW 19.36.140

IN WITNESS WHEREOF, Grantor has executed and delivered this Trust Deed as of the date first above written.

GRANTOR:

FAY FAMILY LLC, an Oregon limited liability company

By: Mark Fay
Name: Mark Fay
Title: Manager

ACKNOWLEDGEMENT

STATE OF OREGON)
) ss.
COUNTY OF KLAMATH)

sw This instrument was acknowledged before me this 29 day of April, 2013, by Mark Fay the Manager of FAY FAMILY LLC, an Oregon limited liability company, on behalf of the company.



Lisa Weatherby
Notary Public in and for the State of Oregon
My commission expires: 11/20/2015