

2013-006762

Klamath County, Oregon



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06/14/2013 03:30:04 PM

Fee: \$57.00

Recordation Requested by:

Douglas V. Osborne
439 Pine Street
Klamath Falls, OR 97601

After Recording Return to:

Douglas V. Osborne
439 Pine Street
Klamath Falls, OR 97601

File No.:**Date:** April ____, 2013

Map/Tax Lot #:

Tax Account #:

Grantor:

John Joshua Day
4225 Onyx Avenue
Klamath Falls, OR 97603

Trustee:

First American Title Insurance Company of Oregon
404 Main Street, Suite #1
Klamath Falls, Oregon 97601

Beneficiary:

Shirlene Carlton
c/o Angela Day
2942 Front Street
Klamath Falls, OR 97601

TRUST DEED

(Assignment Restricted*)

THIS DEED OF TRUST, made this 11/7 day of June, 2013, between JOHN JOSHUA DAY, as GRANTOR, and FIRST AMERICAN TITLE INSURANCE COMPANY OF OREGON as TRUSTEE, and SHIRLENE CARLTON, as BENEFICIARY.

WITNESSETH: Grantor irrevocably grants, bargains, sells and conveys to Trustee, in trust, with power of sale, certain real property in Klamath County, Oregon, described as follows:

Note: The Trust Deed Act provides that the Trustee hereunder must be either an attorney who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of the state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 896.505 to 896.585.

*WARNING: 12 USC 1701/-S regulates and may prohibit exercise of this option.

A portion of the S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Commencing at the Southwest corner of said S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 11; thence North 0° 13½' West, along the West line of said S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, 189.0 feet and thence South 89° 55½' East, 120.0 feet, more or less, to the true point of beginning; thence South 89° 55½' East, 100.5 feet; thence North 0° 13½' West, 128.7 feet, more or less, to the South right of way boundary of the U.S.B.R. No. 1-C-9 drain; thence North 89° 55½' West along said right of way boundary, 100.5 feet; thence South 0° 13½' East, 128.7 feet, more or less, to the point of the beginning; also known as Lot 2 of Summers Lane Homes, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

More commonly known as 4225 Onyx, Klamath Falls, OR.

Together with all and singular the tenements, hereditaments, appurtenances, including easements, and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, together with all fixtures now or hereafter attached to or used in connection with the real property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of \$17,136 (**Seventeen Thousand One Hundred Thirty-Six Dollars**), with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable **at maturity of note**.

In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the Grantor without first having contained the written consent or approval of the Beneficiary, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

Grantor agrees:

1. To protect, preserve and maintain the property in good condition or repair; not to remove or demolish any building or improvement therein; not commit or permit any waste of said property.
2. To complete or restore promptly and in good workmanlike manner any building or improvement, which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefore.
3. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said property against loss or damage by fire and other hazards as

the Beneficiary may require, in an amount not less than **\$17,136 (Seventeen Thousand One Hundred Thirty-Six Dollars)**, written by companies acceptable to the Beneficiary, with loss payable to Beneficiary; proof of insurance shall be delivered to the Beneficiary as soon as issued.

4. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property.
5. To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipt of payment to Beneficiary.
6. Should the Grantor fail to make payment of any taxes (not including the tax debt associated with deferred income for previous tax years associated with Access Conversions, and income taxes owing to the IRS and Oregon Department of Revenue for the 2010 joint tax return filed on behalf of Wife and Husband, previously disclosed and acknowledged in the Stipulated General Judgment of Dissolution, Custody and Parenting Time, Klamath County Circuit Court, Case No. 11-03959CV), assessments, insurance premiums, liens or other charges payable by Grantor, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations of Grantor, described in paragraphs 7 and 8 of this Trust Deed section, shall be added to and become a part of the debt secured by this Trust Deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property herein before described, as well as the Grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of Beneficiary, render all sums secured by this Trust Deed immediately due and payable and constitute a breach of this Trust Deed.
7. To pay all costs, fees and expenses of this trust including the cost of title search, as well as the other costs and expenses of the Trustee incurred in connection with or in enforcing this obligation together with trustees' and attorneys' fees actually incurred.
8. To appear and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee; and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including evidence of title and the Beneficiary's or Trustee's attorneys' fees. The amount of attorneys' fees mentioned in this paragraph 7 above in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, Grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's attorneys' fees on such appeal.

The parties mutually agree:

1. In the event that any portion of the property is taken under the right of eminent domain or condemnation, Beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses

and attorneys' fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, be applied upon the indebtedness secured hereby; and Grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation promptly upon Beneficiary's request.

2. Upon any default by Grantor hereunder, Beneficiary may, at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name, sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees upon any indebtedness secured hereby, in such order as Beneficiary may determine.
3. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder, or invalidate any act done pursuant to such notice.
4. Upon default by Grantor in payment of any indebtedness secured hereby or in Grantor's performance of any agreement contained hereunder, time being of the essence with respect to such payment and/or performance, the Beneficiary may declare all sums secured hereby immediately due and payable. In such event Beneficiary, at its election, may proceed to foreclose this Trust Deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded a written notice of default and election to sell the said described real property to satisfy the obligation secured hereby whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this Trust Deed in the manner provided in ORS 86.735 to 86.795.
5. The Grantor and those persons authorized by ORS 86.753 may cure any default(s) five (5) days before the date the Trustee has designated for sale. Any cure of default(s) shall require payment of or tendering performance and the payment of all costs and expenses actually incurred in enforcing the obligations of this Trust Deed, including, but not limited to, trustees' and attorneys' fees as authorized by law.

In the absence of any such cure, the Trustee will enforce the obligations of this Trust Deed in accordance with paragraph 4 herein and as authorized and required by applicable law.


6. When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (2) the obligation secured by the Trust Deed, (3) to all persons having recorded liens subsequent to the interest of the Trustee in the Trust Deed as their interest may appear in the order of their priority and (4) the surplus, if any, to the Grantor or to his successor in interest entitled to such surplus.

7. Beneficiary may from time to time appoint a successor or successors to any Trustee named herein or to any successor trustee appointed hereunder. Upon such an appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

The Grantor covenants to and agrees with the Beneficiary and the Beneficiary's successors in interest that the Grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto, except as may be set forth in any addendum or exhibit attached hereto, and that the Grantor will warrant and forever defend the same against all persons whomsoever.

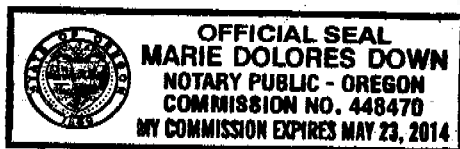
This deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term Beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a Beneficiary herein. In construing this deed and whenever the context so requires the singular number includes the plural.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand the day and year first above written.


John Joshua Day

STATE OF Oregon)
)ss.
County of Klamath)

This instrument was acknowledged before me on this 11th day of June, 2013 by John Joshua Day.



Marie Dolores Brown
Notary Public for Oregon

My commission expires: 5-23-2014