

Nancy Young
Returned at Counter

2017-000197

Klamath County, Oregon



00197459201700001970100105

01/09/2017 12:25:41 PM

Fee: \$87.00

AFTER RECORDING, RETURN TO:

William M. Ganong
Attorney at Law
514 Walnut Avenue
Klamath Falls OR 97601

SEND TAX STATEMENTS TO:

Jani K. McPherson
Post Office Box 1
Midland OR 97634

TENANCY IN COMMON AGREEMENT

THIS AGREEMENT is made as of the 15 day of December 2016, by and among Dale C. Carland; Jani K. McPherson, as Trustee of the John L. McPherson Trust; Joshua J. McPherson; Katrina M. McPherson; and Gwynhwyfer Mhuireach, hereinafter referred to as the "Owners." The parties agree as follows:

1. THE PROPERTY.

The Owners, as tenants in common, own the fixtures and improvements located on the real property in Klamath County, Oregon described as follows, and hereinafter referred to as the "Property."

Lot 7, Block D, United States Forest Service, LAKE OF THE WOODS SUMMER HOMESITES, Klamath County, Oregon, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon, together with the Special Use Permit and any fixtures and personal property located on said home site as of the date of this instrument.

Klamath County Tax Lot No. R-3705-0000-00101-B05

2. DECLARATION OF OWNERSHIP.

The Owners intend that their relationship with respect to the Property shall remain a tenancy in common with each Owner owning an undivided one-fifth (1/5) interest in the property. The Owners intend that no provision of this Agreement shall be construed as establishing a partnership, joint venture, or other entity.

No individual Owner has any right or authority to bind any other Owner. No Owner shall be liable or responsible for any debt, promise, agreement, or liability incurred or caused by any other Owner, or by any employee, agent, officer, guest, or invitee of any other Owner.

//
//

3. REVENUE, EXPENSES, DEDUCTIONS, AND DISBURSEMENTS.

3.1 Revenue, Expenses, and Deductions. Subject to the provisions of section 3.4, below, the revenues, expenses, and deductions from the ownership, improvements, maintenance, and any sale of the Property shall be shared by the Owners in proportion to their respective undivided interests in the Property.

3.2 Expenses. The expenses incurred, with respect to the Property, shall be the obligation of the Owners. The anticipated expenses include, but are not limited to, costs of repairs, maintenance, taxes, assessments, insurance, and legal, accounting, and property management expenses. Periodically, the Owners shall determine the additional funds necessary to provide for the expenses. Each Owner shall pay an amount proportionate to the Owner's undivided interest in the Property. Payment shall be made within thirty (30) days of receipt by the Owner of notice of the amount due.

3.3 Improvements. With the prior approval of all Owners, an Owner may make capital improvements to the Property. Funds contributed by Owners for capital improvements shall be deemed to be non-interest bearing loans. Owners desiring to make capital improvements shall provide a written description to the other Owners detailing the proposed improvements and the budget for the improvements. The other Owners shall have thirty (30) days following mailing of the description and budget to provide written notice of his or her objection to the improvements and/or budget. If no written objection is made, the Owners are deemed to have consented to the proposed improvements and budget. All approved improvements shall be completed with due diligence and in a good workmanlike manner. Within thirty (30) days following completion of the improvement, the Owner making the improvements shall provide an accounting of the actual cost, supported by invoices and vouchers, to the Owners.

3.4 Proceeds. Proceeds received from any sale or refinancing of the Property, or from the condemnation or destruction of any of the Property, to the extent that the proceeds are not needed for debt service, anticipated expenses and reasonable reserves for contingencies as determined by the Owners, shall be used first to repay the cost of approved improvement loans, and then disbursed to the Owners in proportion to their respective undivided interests.

3.5 Default. In the event an Owner shall fail to pay, within the time limits set forth above, an amount due under the terms of this section 3, the undivided interest of the nonpaying Owner shall be subject to a lien in the amount of the deficiency. The provisions of section 6, below, shall be applicable with respect to the lien.

4. MANAGEMENT.

4.1 Owners' Right to Manage. The Owners shall have the right and obligation to manage the Property.

4.2 Use of Property Manager.

4.2.1 The Owners may determine to engage a Property Manager, and the selection of a Property Manager, the compensation to be paid, and the other terms and conditions of service shall be determined in accordance with the terms of this Agreement.

4.2.2 A Property Manager selected by the Owners may be an individual or a firm, and may be, but need not be, one or more of the Owners. In general, the duties of a Property Manager shall be to perform all services ordinarily performed by those engaged in the property management field, subject at all times to the direction and control of the Owners. A Property Manager shall have no authority to direct or make improvements or alterations to the Property without obtaining the prior written consent of the Owners.

4.2.3 None of the Owners, their agents, or representatives shall be entitled to any compensation for management or other services rendered in connection with the Property unless such compensation is expressly authorized by the Owners.

4.3 Designated Permittee. Dale Carland is designated as the initial representative / contact for the USDA Forest Service Permit.

4.4 Bookkeeper. Jani K. McPherson is designated as the initial bookkeeper and shall hold the checkbook and receive and pay normal and ordinary expenses of the Property.

5. BOOKS, REPORTS, AND ACCOUNTING.

5.1 Maintenance of Books and Records. Full and complete books and records shall be maintained for the Property on a calendar-year basis. The Owners may select an accountant to assist in maintaining the books and records and in preparing any reports desired by the Owners or required herein. The accountant's fee shall be paid by the Owners as an expense of the co-tenancy. The books and records shall be available for examination by any Owner and the Owner's attorneys, accountants, or other agents or representatives at reasonable times upon reasonable notice. Any expenses incurred for the examination shall be paid by the Owner.

5.2 Reports. Annually, and at any other times desired by the Owners, detailed statements shall be prepared for the co-tenancy that shall show all income, receipts, expenses, and costs in connection with the Property. The annual statement shall include all information necessary for tax purposes for the Owners and shall be delivered to each Owner within 60 days of the end of each calendar year.

6. LIENS AND ENCUMBRANCES.

6.1 Removal by Owner. No Owner shall allow any lien or encumbrance to attach to an Owner's undivided interest in the Property. Any lien or encumbrance on an Owner's undivided interest, including, but not limited to, any judicial attachment, any judgment lien, any lien arising out of the order or judgment of any court, any lien in connection with taxes claimed due any governmental unit, and any lien arising under federal or state bankruptcy or insolvency laws, shall

be discharged by the Owner, and the undivided interest released, within 10 days after the lien is filed or otherwise becomes effective. The failure to discharge the lien and obtain the release of the undivided interest within the stated time shall constitute a default. During the term of the default, the remaining Owners may agree to revoke the right of the defaulting Owner to vote and manage the affairs of the co-tenancy.

6.2 Bond. The Owner may deposit with the remaining Owners within 10 days after the lien is filed or otherwise becomes effective, cash, a corporate surety bond, or other security satisfactory to the remaining Owners. The deposit shall be an amount sufficient to discharge the lien, costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien. Upon making the deposit, the Owner shall not be considered in default.

6.3 Offer to Sell Interest in Property. In the event that a defaulting Owner fails to cure the default or to post a bond, then said defaulting Owner is deemed to have offered to sell the Owner's undivided interest in the subject Property to the remaining Owners for a sum equal to the Klamath County Assessor's real market value of the Property, as of the date of the default, reduced by all outstanding debts, loans, and expenses, multiplied by the defaulting Owner's fractional interest in the Property. The terms of sale shall be:

6.3.1 The non-defaulting Owners shall have 45 days from the date they discover the default to provide Notice to the defaulting Owner that they are accepting the offer to sell the interest in the subject Property. The parties shall establish an escrow at the office of an escrow company in Klamath County, Oregon for closing the purchase and collecting the payments provided below. Each party shall pay one-half of the escrow closing fee and the escrow collection fee. The sale of the Property shall be closed within 30 days after the down payment provided below is tendered to the escrow agent. The parties shall execute the escrow agent's standard Escrow Instructions.

6.3.2 The non-defaulting Owners shall have 10 days from the date the escrow is established to deliver a down payment equal to ten percent (10%) of the sales price to the escrow agent. The balance of the sales price shall earn interest at the rate of 4.0 percent per annum and shall be paid in ten (10) equal annual installments. The first installment shall be due one year from the date the sale is closed, and subsequent installments shall be due and payable on the same day of each year thereafter until the sales price and interest have been paid in full. The defaulting Owner shall have no right to possess or use the Property and shall deliver a Bill of Sale conveying his or her interest in the Property, free and clear of all liens and encumbrances, to the escrow agent prior to the closing of the sale. In the event that the defaulting Owner cannot deliver clear title to the purchasing Owners, the Purchasing Owners may initiate a suit to enforce the terms of this Agreement, to quiet title to the defaulting Owner's interest in the Property and for interpleader to determine who is entitled to receive the proceeds of the sale. In the event of such suit, the purchasing Owners shall deposit the purchase price with the court as it becomes due.

6.3.3 This Agreement shall constitute a restriction on each undivided interest in the Property, which, when recorded in the records of the Clerk of Klamath County, Oregon, shall be superior to any liens or encumbrances that attach to any interest in the Property after the date of

this Agreement.

7. RIGHT OF PARTITION.

Each Owner irrevocably waives the right to directly or indirectly maintain an action or petition in any court for a partition of the Property or of the undivided interests in the Property.

8. SALE OF OWNERSHIP INTEREST.

8.1 Restrictions on Sale. An Owner may sell, convey, or transfer the Owner's undivided interest in the Property during life or upon death or disability only in compliance with the terms of this section 8. In any event, however, upon the death or disability, the legal representative of the Owner shall have authority to act on behalf of the Owner.

8.2 Right of First Refusal. No Owner shall sell or transfer the Owner's undivided interest in the Property without first giving written notice to the other Owners. The notice shall set forth the purchase price, the terms of payment, the other terms of the sale, and the identity of the proposed purchaser (the Third Party). In no event shall the "selling" Owner offer to sell less than all of the undivided interest. The other Owners shall have a period of 90 days after mailing of the notice to acquire such interest at the price designated in the notice, but upon the terms specified in section 6.3.1, above. If the other Owners elect to purchase the interest, they must purchase all and not part of the interest.

8.3 Sale to Third Party. In the event the other Owners do not elect to purchase the offered interest, the Owner giving the notice to sell shall have the right to sell the interest to the Third Party on the same terms as set forth in the notice for a period of 180 days following mailing of the notice of rejection or the expiration of the 90-day period, whichever is earlier. After the expiration of the period to complete the sale to the Third Party, the Owner giving the notice shall not sell or transfer the interest without again complying with the terms of this section 8. Any sale to the Third Party designated in the notice shall be subject to all of the terms of this Agreement and the Third Party shall, thereafter, be bound by all of the provisions of this Agreement.

8.4 Transfer to Relative. Notwithstanding the foregoing restrictions, an Owner may sell, give, devise, or transfer by intestate succession, in trust or otherwise, the Owner's interest in the Property to another owner or to the Owner's lineal descendants, parents, brothers, sisters, nieces, and nephews. Any such person shall, thereafter, be bound by the terms and conditions of this Agreement.

9. TERMINATION OF TENANCY IN COMMON AGREEMENT.

9.1 Events of Termination. This Agreement shall continue until terminated by the occurrence of one of the following events:

9.1.1 The sale of the Property;

9.1.2 The agreement of the Owners to terminate this Agreement; or

9.1.3 The agreement of the Owners to divide and separate the Property among themselves.

10. NOTICES.

All notices shall be in writing and shall be given by personal delivery or by registered or certified mail, postage prepaid, addressed to each Owner at the Owner's permanent address, or at such other address as any Owner may, hereafter, designate in writing delivered to the other Owners.

11. ATTORNEY FEES.

In the event of suit, action, or arbitration to enforce any of the terms of this Agreement, the prevailing party or parties shall be awarded such sum as the court or arbitrator may adjudge reasonable as attorney fees in such suit, action, or arbitration and in any appeal therefrom.

12. BINDING EFFECT.

This Agreement shall be binding upon and shall inure to the benefit of each of the Owners, their respective heirs, executors, administrators, legal representatives, successors, and assigns.

13. INTEGRATION.

This Agreement contains the entire agreement of the Owners and supersedes all prior and contemporaneous agreements between them with respect to the co-tenancy. Except as fully set forth herein, there are no representations, agreements, or understandings, oral or written, among the Owners relating to the co-tenancy.

14. SEVERABILITY.

If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. GOVERNING LAW.

This Agreement shall be subject to, and governed by, the laws of the state of Oregon.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set

//
//
//

forth above.

Dale C Carland

Dale C. Carland

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on December 15, 2016, by Dale C. Carland.



Vicki Swindler

Notary Public for Oregon

My Commission Expires: 10-8-17

Jani K. McPherson

Jani K. McPherson, Trustee

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on the 15th day of December, 2016, by Jani K. McPherson, as Trustee of the John L. McPherson Trust.



Vicki Swindler

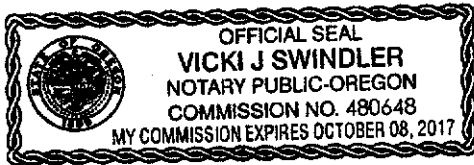
Notary Public for Oregon

My Commission Expires: 10-8-17

Joshua J. McPherson
Joshua J. McPherson

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on December 15, 2016, by
Joshua J. McPherson.



Vicki Swindler
Notary Public for Oregon
My Commission Expires: 10-8-17




Katrina M. McPherson

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on December 29, 2016, by
Katrina M. McPherson.



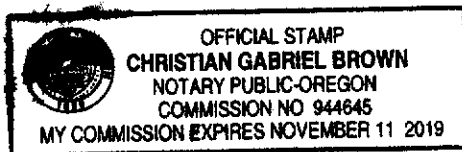


Notary Public for Oregon
My Commission Expires: August 18, 2017

Gwynhwyfer Mhuireach
Gwynhwyfer Mhuireach

STATE OF OREGON, County of Lane ss.

This instrument was acknowledged before me on December 23rd, 2016, by
Gwynhwyfer Mhuireach.



Christian Gabriel Brown
Notary Public for Oregon
My Commission Expires: Nov 11, 2019