



2020-009499

Klamath County, Oregon

08/03/2020 03:04:14 PM

Fee: \$142.00

When recorded return to:

**KLAMATH TRIBES HOUSING DEPARTMENT
P.O. BOX 436
CHILOQUIN, OR 97624**

**SECOND
DEED OF TRUST**

THIS DEED OF TRUST, made this 3 day of August, 2020 between

Derek H. Barnes and Elizabeth S. Barnes as GRANTOR(S),
whose address is: **11128 Merganser Rd, Klamath Falls, OR 97601**

and: **Amerititle** As TRUSTEE,
whose address is **300 Klamath Avenue, Klamath Falls, OR 97601**

and **Klamath Tribes Housing Department** as BENEFICIARY,
whose address is **510 Chiloquin Blvd, P.O. Box 436, Chiloquin, OR 97624.**

WITNESSETH: Grantor(s) hereby bargain(s), sell(s), and convey(s) to Trustee in trust, with power of sale, the following described real property in Klamath County, Oregon:

Abbreviated Legal: See Attached Exhibit "C"

Tax Parcel Number(s): 881259

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues, and profits thereof.

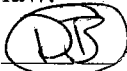
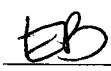
This Deed of Trust is for the purpose of securing performance of each agreement of Grantor(s) contained in this Deed of Trust, and payment of the sum of **Thirty Thousand Dollars (\$30,000)** with interest, in accordance with the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor(s), and all renewals, modifications, and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor(s), or any of Grantor(s)' successors or assigns, together with interest thereon at such rate as shall be agreed upon.

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DUE DATE: The entire balance of the promissory note secured by this Deed of Trust, together with any and all interest accrued thereon, shall be due and payable in full five (5) years from the date hereof unless earlier paid in full in accordance with the payment schedule set out in Exhibit A.

To protect the security of this Deed of Trust, Grantor(s) covenant(s) and agree(s):

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure, or improvement being built or about to be built thereon; to restore promptly any building, structure, or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the property.
2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens, or encumbrances impairing the security of this Deed of Trust.
3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor(s). The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor(s) in insurance policies then in force shall pass to the purchaser at the foreclosure sale.
4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
5. To pay all costs, fees, and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.
6. Should Grantor(s) fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances, or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.
7. **DUE ON SALE:** (OPTIONAL – *Not applicable unless initialed by Grantor and Beneficiary.*) The property described in this security instrument may not be sold or transferred without the Beneficiary's consent. Upon breach of this provision, Beneficiary may declare all sums due under the note and Deed of Trust immediately due and payable, unless prohibited by applicable law.

Grantor initials

IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured by this Deed of Trust shall be paid to Beneficiary to be applied to said obligation.
2. By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.
3. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor(s) and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.
4. Upon default by Grantor(s) in the payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement contained in this Deed of Trust, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary subject to any cure period provided in the note secured by this Deed of Trust. . In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Oregon Revised Statutes, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority; and (4) the surplus, if any, shall be distributed to the persons entitled thereto.
5. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser all right, title and interest in the real and personal property which Grantor(s) had or had the power to convey at the time of the execution of this Deed of Trust, and such as Grantor(s) may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrances for value.
6. The power of sale conferred by this Deed of Trust and by the Oregon Revised Statutes is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.
7. In the event of the death, incapacity, disability, or resignation of Trustee, or at the discretion of the Beneficiary, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of an action or proceeding in which Grantor(s), Trustee, or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.
8. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

9.

10. ADDITIONAL TERMS AND CONDITIONS: (check one)

Klamath Tribes Housing Department
Downpayment Assistance Program
Second Deed of Trust

- a. ☐ None
- b. ☒ As set forth on the attached Exhibits A and B which are incorporated by this reference.

(Note: If neither “a” nor “b” is checked, then option “a” applies.)

[Acknowledgements on following pages]

I hereby acknowledge and execute the foregoing instrument as my free and voluntary act
for the uses and purposes set out herein:

 8/3/20
Derek H. Barnes (Date)

STATE OF OREGON

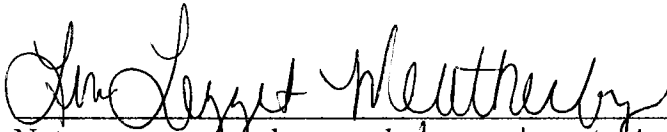
ss.

COUNTY OF KLAMATH

I certify that I know or have satisfactory evidence that Derek H. Barnes is the person who
appeared before me, and said person acknowledged that she signed this instrument and
acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this
instrument.

Dated:

8/3/2020


Notary name printed or typed: Lisa Legget Weatherby
Notary Public in and for the State of Oregon
Residing at Klamath County
My appointment expires: 10/1/2023



I hereby acknowledge and execute the foregoing instrument as my free and voluntary act
for the uses and purposes set out herein:

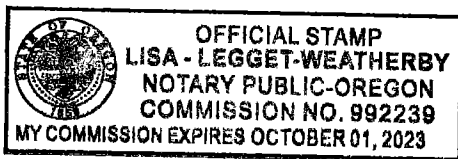

Elizabeth S. Barnes (Date) 8/3/20

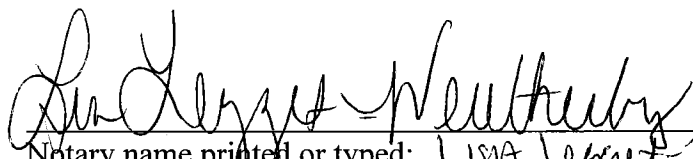
STATE OF OREGON
COUNTY OF KLAMATH

ss.

I certify that I know or have satisfactory evidence that Elizabeth S. Barnes is the person who
appeared before me, and said person acknowledged that she signed this instrument and
acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this
instrument.

Dated: 8/3/2020




Notary name printed or typed: LISA Legget-Weatherby
Notary Public in and for the State of Oregon
Residing at Klamath County
My appointment expires: 10/1/2023

REQUEST FOR FULL RECONVEYANCE - *Do not record. To be used only when note has been paid.*

TO: TRUSTEE

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

Dated: _____

Exhibit A

Upon sale or other conveyance of the real estate which is the subject of this Deed of Trust, the full debt secured by this Deed of Trust, if not paid earlier, shall be due and payable in accordance with the following schedule as more fully set forth in the promissory note of even date to secure the payment of which this Deed of Trust is executed:

Upon sale or other conveyance of the real estate which is the subject of the Deed of Trust which secures this promissory note, the full debt under this promissory note shall be due and payable in accordance with the following schedule:

If the sale or other conveyance of such real estate is:

Before or within one (1) year of the date of the promissory note	100% of the debt
After one (1) year but within two (2) years of the date of the promissory note	80% of the debt
After two (2) years but within three (3) years of the date of the promissory note	60% of the debt
After three (3) years but within four (4) years of the date of the promissory note	40% of the debt
After four (4) years but within five (5) years of the date of the promissory note	20% of the debt
After five (5) years of the date of the promissory note	0% of the debt

Exhibit B

Addendum re Subordination

Subordination. Lender and Borrower acknowledge and agree that this Security Instrument [or other document, as appropriate] is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the Borrower under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the property. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, or in the case of any HUD-insured or –guaranteed loan upon its assignment to the Secretary of the United States Housing and Urban Development (HUD), any provisions herein or any provisions in any other collateral agreement restricting the use of the property to low or moderate income households or otherwise restricting the Borrower’s ability to sell the property shall have no effect on subsequent owners or purchasers of the property. Any person, including his successors or assigns (other than the Borrower or a related entity of the Borrower), receiving title to the property through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the property free and clear from such restrictions.

As used in this Exhibit, the term “First Deed of Trust” also means “First Mortgage” if the prior security instrument took that form.

DEED OF TRUST RIDER – RIGHT OF FIRST PURCHASE OPTION

This Deed of Trust Rider Right of First Purchase Option by the undersigned grantors, Derek H. Barnes and Elizabeth S. Barnes("Grantor[s]"), the owner of the Property described in the foregoing Deed of Trust ("Property"), in favor of Klamath Tribes Housing Department, for good and valuable consideration, receipt of which is hereby acknowledged. Grantor acknowledges that this Right of First Purchase Option was bargained for and an integral part of the Downpayment Assistance Agreement by which Grantor received funding, and that economic detriment to the Klamath Tribes Housing Department would result if this Right of First Purchase Option was not upheld, because Grantor's purchase of the House and Lease of the Property was subsidized with Klamath Tribes Housing Department funds intended for the purpose of providing affordable housing to low-income Indians. This Deed of Trust Rider modifies the rights of Lender as set out in the foregoing Deed of Trust.

1. **LEGAL DESCRIPTION.** The undersigned Grantor owns the House located on and has a Leasehold Interest the following real property (hereafter "Property"):
See Attached Exhibit "C"

2. **COVENANTS.** Grantor hereby irrevocably grants to the Klamath Tribes Housing Department the following Right of First Purchase Option:

(a) If Lender or Trustee intends to foreclose on the Property due to Grantor's default, Lender or Trustee shall notify the Klamath Tribes Housing Department and give the Klamath Tribes Housing Department sixty (60) days to exercise its Right of First Purchase Option under this Rider.

(b) The Klamath Tribes Housing Department shall have a Right of First Purchase Option to purchase the Property for the amount of \$454,000.00 (hereafter "Purchase Price"), on the terms and conditions set forth in this section.

(c) **Notice of Default and Intent to Foreclose.** If Lender or Trustee intends to foreclose on the Property due to Grantor's default, Lender or Trustee shall first deliver to the Klamath Tribes Housing Department a written notice (the "Notice") stating Lender's or Trustee's bona fide intention to foreclose.

(c) **Exercise of Right of First Purchase Option.** At any time within 60 days after receipt of the Notice, the Klamath Tribes Housing Department may exercise its Right of First Purchase Option by giving written notice to Grantor and Lender/Trustee of its intention to purchase the Property.

(d) **Payment and Transfer.** The Klamath Tribes Housing Department shall make payment of the Purchase Price in cash or by check within 30 days of giving Grantor and Lender/Trustee written notice of its election to exercise its Right of First Purchase Option. At closing, Lender or Trustee shall be paid any outstanding sum owed to it under the Note, with the remaining proceeds, if any, disbursed to Grantor. Lender, Trustee, and Grantor shall convey all their right and title in the Property to the Klamath Tribes Housing Department upon such payment, the Deed of Trust shall be cancelled, and shall be void and of no further force and effect.

(e) Lender's/Trustee's Right to Foreclose. If the Klamath Tribes Housing Department does not give written notice of its intent to purchase within the 60 days required, or, if the Klamath Tribes Housing Department gives such notice but fails to make payment within 30 days of giving such notice, Lender or Trustee may proceed with foreclosure under the Deed of Trust.

(f) Assignment of Right of First Purchase Option. The Right of First Purchase Option may be assigned by the Klamath Tribes Housing Department to the Klamath Tribes, to another entity or instrumentality of the Klamath Tribes, to a successor entity of the Klamath Tribes Housing Department, or to the United States.

3. GENERAL PROVISIONS.

(a) Any notice, demand or request required or permitted to be given by either the Klamath Tribes Housing Department, Lender, Trustee, or Grantor pursuant to the terms of this Right of First Purchase Option shall be in writing and shall be deemed given (i) when delivered personally, (ii) five days after it is deposited in the U.S. mail, First Class with postage prepaid, or (iii) one day after deposit (prepaid) with a nationally recognized overnight courier.

(b) The Klamath Tribes Housing Department's failure to enforce any provision or provisions of this Right of First Purchase Option shall not in any way be construed as a waiver of any such provision or provisions, nor prevent the Klamath Tribes Housing Department thereafter from enforcing each and every other provision of this Right of First Purchase Option. The rights granted to the Klamath Tribes Housing Department herein are cumulative and shall not constitute a waiver of the Klamath Tribes Housing Department's right to assert all other legal remedies available to it under the circumstances.

(c) The parties acknowledge that money damages may not be an adequate remedy for violations of this Right of First Purchase Option and that the Klamath Tribes Housing Department may, in its sole discretion, apply to a court of competent jurisdiction for specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Right of First Purchase Option or to prevent any violation hereof and, to the extent permitted by applicable law, Grantor waives any objection to the imposition of such relief in appropriate circumstances.

(d) This Right of First Purchase Option may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

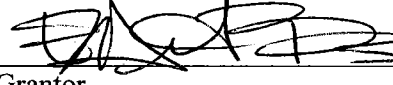
(e) Each party to this Right of First Purchase Option represents that such party has duly authorized, executed and delivered this Right of First Purchase Option and that this Right of First Purchase Option is a valid and binding obligation of such party, enforceable against such party in accordance with its terms and conditions.

[Signatures and Acknowledgment on the Following Page]

IN WITNESS WHEREOF, Grantor executes this Deed of Trust Rider - Right of First Purchase Option as of the date first above written.



Grantor



Grantor

8/3/20

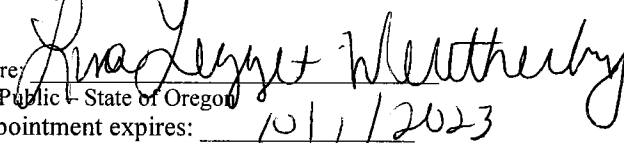
Date

ACKNOWLEDGMENT

STATE OF OREGON
COUNTY OF KLAMATH

On ~~July~~ ^{August} 3, 2020 before me, Lisa Legget-Weatherby, personally appeared Derek H. Barnes and Elizabeth S. Barnes personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: 
Notary Public - State of Oregon
My appointment expires: 10/1/2023

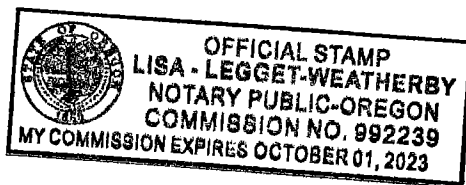


EXHIBIT "C"

Lot 59, RUNNING Y RESORT, PHASE I, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.