

**2022-000250**

**Klamath County, Oregon**

01/07/2022 11:08:01 AM

Fee: \$127.00

## DEED OF TRUST

<b>Grantor Name and Address:</b>  Benjamin Gavin 522 S 5 <sup>th</sup> Street Klamath Falls, OR 97601	<b>Trustee Name and Address</b>  Eric R. Stark, Attorney at Law 100 E. Main Street, Suite M Medford, OR. 97501
<b>Beneficiary Name and Address:</b>  Cathy Jensen PO Box 131 North Bend, OR 97459	<b>Tax Statements shall be sent to:</b>  No Change

### After Recording Return To:

Stark and Hammack, PC  
100 E Main Street Suite M  
Medford, OR 97501

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THIS DEED OF TRUST, made this 6<sup>th</sup> day of JANUARY, 2022,  
between Benjamin Gavin, as Grantor, Eric R. Stark, as Trustee, and Cathy  
Jensen as Beneficiary.

### WITNESSETH:

Grantors irrevocably grant, bargain, sell and convey to Trustee in  
trust, with power of sale, the property in Klamath County, Oregon, located at 522  
S 5<sup>th</sup> Street, Klamath Falls, OR. 97601, and legally described as Exhibit A and by  
this reference incorporated herein.

together with all tenements, hereditaments and appurtenances and all other rights  
thereunto belonging or in any way now or hereafter appertaining, and the rents,  
issues and profits thereof and all fixtures now or hereafter attached to or used in  
connection with the property (**collectively, the "Trust Estate"**).

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of **Seventy Five Thousand Dollars (\$75,000.00)**, according to the terms of a Promissory Note dated January\_\_, 2022, payable to Beneficiary or order and made by Grantor, the final payment of principal hereof, if not sooner paid, to be due and payable upon the sale of the property located at 522 S 5<sup>th</sup> Street, Klamath Falls, OR 97601.

To protect the security of this Trust Deed, Grantor agrees:

1. To protect, preserve and maintain the **Trust Estate** in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of the Trust Estate.

2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Trust Estate; if the Beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the Beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the Beneficiary.

4. To provide and continuously maintain insurance on the buildings which are or may be hereafter erected on the Trust Estate against loss or damage by fire and such other hazards as the Beneficiary may from time to time require, in an amount not less than its full insurable value, written in companies acceptable to the Beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the Beneficiary as soon as insured. If the Grantor fails to procure such insurance and to deliver the policies to the Beneficiary at least fifteen (15) days prior to the expiration of any policy of insurance now or hereafter placed on the buildings, the Beneficiary may procure the same at Grantor's expense. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine or at the option of Beneficiary the entire amount so collected, or any part thereof, may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. To keep the Trust Estate free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the Trust Estate before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to Beneficiary; should the Grantor fail to make payment of any taxes, 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 described in paragraphs 6 and 7 of this Trust Deed, 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 Trust Estate hereinbefore 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 the Beneficiary, render all sums secured by this Trust Deed immediately due and payable and constitute a breach of this Trust Deed.

6. 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 and Trustee's and attorney's fees actually incurred.

7. To appear in 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 any suit for the foreclosure of this deed or any suit or action related to this instrument, including but not limited to its validity and/or enforceability, to pay all costs and expenses, including evidence of title and the Beneficiary's or Trustee's attorney fees; the amount of attorney fees mentioned in this paragraph 7 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 attorney fees on such appeal.

8. Not to require, permit or accept any advance payment of rental or other charge for the use of the Trust Estate, in excess of the charge or charges which are properly allocable to a period not in excess of 90-days, nor shall Grantor waive, forgive, excuse, discount, set off, compromise or in any manner release or discharge any tenant under any lease of the Trust Estate or any portion thereof having a term in excess of one (1) year of or from any obligations, covenants, conditions and agreements by such tenant to be kept, observed and performed, including the obligation to pay the rental thereunder in the manner and at the place and time specified therein.

9. To provide written notice to Beneficiary immediately upon Grantor becoming aware that the Trust Estate or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause or permit any activities on the Trust Estate which directly or indirectly could result in the Trust Estate or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Trust Deed, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect. Grantor shall indemnify and hold Beneficiary harmless from and against any and all claims, demands, damages, expenses, losses, liens, liabilities, penalties, fines and lawsuits and other proceedings (including attorney's fees) arising directly or indirectly from or out of, or in any way connected with any activities on the Trust Estate during Grantor's ownership, possession or control of the Trust Estate which directly or indirectly result in the Trust Estate or any other property becoming contaminated with hazardous or toxic waste or substances together with the discovery of hazardous or toxic waste or substances on the Trust Estate, or the discovery of hazardous or toxic waste or substances on any other property caused by activities on the Trust Estate as well as the clean up of hazardous or toxic waste or substances from the Trust Estate or from any other property caused by activities on the Trust Estate.

10. To strictly comply with the applicable requirements of the Americans with Disabilities Act of 1990; the Fair Housing Amendments Act of 1988; all other federal, state and local laws and ordinances related to disabled access; and all rules, regulations, and orders issued pursuant thereto; all as amended from time to time (collectively "the access laws") as to any construction or alterations placed upon or conducted upon the Trust Estate by the Grantor. At any time the Beneficiary may require Grantor to provide a certificate of compliance with the access laws and indemnification in any form reasonably acceptable to Beneficiary as to all construction or remodeling undertaken by Grantor. Grantor shall not alter or permit any tenant or other person to alter the Trust Estate in any manner which would increase the Grantor's responsibilities for compliance with the access laws without the prior written approval of Beneficiary. Grantor agrees to give prompt notice to Beneficiary of any claims of violations of any access laws and of the commencement of any proceedings or investigations which relate to compliance with any of the access laws. Grantor shall indemnify and hold harmless Beneficiary from and against any and all claims, demands, damages, costs, penalties, and other proceedings, including without limitation reasonable attorney fees and expenses arising directly or indirectly from or out of or in any way connected with any failure of the Trust Estate to comply with any of the access laws due to construction upon, remodeling or other activities undertaken by Grantor or any tenant of Grantor. The obligations and liabilities of Grantor under this section shall survive any termination, satisfaction, assignment, judicial or nonjudicial foreclosure, or delivery of a deed in lieu of foreclosure.

IT IS MUTUALLY AGREED THAT:

11. In the event that any portion or all of the property shall be 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 attorney's fees necessarily paid or incurred by Grantor in such proceedings, shall be paid to Beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, and the balance 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.

12. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyance, for cancellation), without affecting the liability of any person for the payment of indebtedness, Trustee may (a) consent to the making of any map or plat of the Trust Estate or portion thereof; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; and (d) reconvey, without warranty, all or any part of the Trust Estate. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.00.

13. 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 Trust Estate or any part thereof, in its own name sue or otherwise enforce any executory contract of sale or earnest money agreements, and 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 attorney's fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine. Grantor expressly agrees that Beneficiary shall have the right to have a receiver appointed to take possession of any or all of the Trust Estate, with the power to protect and preserve the property and to sell lots to third party customers in the ordinary course of business and to operate the Trust Estate before foreclosure or sale and to apply the proceeds, over and above the cost of the receivership, against the indebtedness secured hereby. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not apparent value of the Trust Estate exceeds the indebtedness by a substantial amount. Grantor hereby irrevocably consents to the appointment of a receiver on the terms set forth herein. Employment by Beneficiary shall not

disqualify a person from serving as receiver. Upon taking possession of all or any part of the Trust Estate, the receiver may:

(a) Use, operate, manage, control, and conduct business on the Trust Estate;

(b) Make expenditure for all maintenance, renewals, replacements, alterations, additions, and improvements to the Trust Estate as in its judgment are proper;

(c) Insure and reinsure the property and all risks incidental to its possession, operation, and management of the Trust Estate;

(d) Collect any and all rents and any other revenues and income from the property and apply such sums to the expenses of use, operation, and management in such priority as the receiver deems appropriate. Grantor shall promptly turn over to the receiver all documents, books, records, and accounts, together with the amount of any deposits, rentals, and use fees from any tenant or other user. The receiver may appear in any proceeding or bring suit on Grantor's behalf, as necessary to enforce obligations of any tenant or other user, including actions for the recovery of rent and actions enforceable detainer;

(e) Cancel or terminate any lease or agreement for any cause for which Grantor would be entitled to cancel the same;

(f) Enforce any contract of sale, earnest money agreement or other such agreement for the sale of lot(s) and/or lots(s) and constructed dwelling(s) in accordance with their terms. Grantor agrees to execute and deliver its deed or deeds to an escrow agent designated by Beneficiary transferring the lot(s) to the purchaser named in such agreement and the proceeds of such sale shall be applied first to satisfy any prior permitted lien, and second, in reduction of the Promissory Note secured by this Trust Deed.

(g) Complete any construction in progress on the Trust Estate, and in that connection, pay bills, borrow funds, employ contractors, and make any changes in plans or specifications as the receiver deems appropriate.

If the revenues and income are insufficient to pay expenses, the receiver may borrow such sums as the receiver deems necessary for the purposes stated in this paragraph. The amounts borrowed shall bear interest from the date of expenditure until repaid at the same rate per annum as is accruing on such borrowing. Such sums shall become a part of the balance secured by this Trust Deed and shall be payable by Grantor on demand.

14. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits, the completion of executory sales contracts, or the collection of 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.

15. Upon default by Grantor in payment of any indebtedness secured hereby or in Grantor's performance of any agreement hereunder, or in Grantor's failure to keep current any indebtedness against and secured by the Trust Estate, whether prior or after this Trust Deed, 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 an event the Beneficiary may elect to proceed to foreclose this Trust Deed in equity as a mortgage or direct the Trustee 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 Trust Estate or a portion thereof 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 86.752 to 86.815.

16. After the Trustee has commenced foreclosure by advertisement and sale, and at any time prior to five (5) days before the date the Trustee conducts the sale, the Grantor or any other person so privileged by ORS 86.778, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the Trust Deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or Trust Deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the Beneficiary all costs and expenses actually incurred in enforcing the obligation of the Trust Deed together with Trustee's and attorney's fees not exceeding the amounts provided by law.

17. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The Trustee may sell the Trust Estate either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the Trustee, but including the Grantor and Beneficiary, may purchase at the sale.

18. 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) to all persons having recorded liens to which Beneficiary has subordinated the lien of this Trust Deed in accordance with the terms of the subordination, (3) to the obligation secured by the Trust Deed, (4) 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 (5) the surplus, if any, to the Grantor or to any successor in interest entitled to such surplus.

19. 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 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.

20. Trustee accepts this trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless such action or proceeding is brought by Trustee.

**WARNING:** Unless Grantor provides Beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the collateral becomes damaged, the coverage purchased by Beneficiary may not pay any claim made by or against Grantor. Grantor may later cancel the coverage by providing evidence that Grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by Beneficiary, which cost may be added to Grantor's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage. The coverage Beneficiary purchases may be considerably more expensive than insurance Grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

The Grantor warrants that the proceeds of the loan represented by the above described note and this Trust Deed are primarily for Grantor's personal, family or household purposes.



This Trust 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 Trust Deed, it is understood that the Grantor or Beneficiary may be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

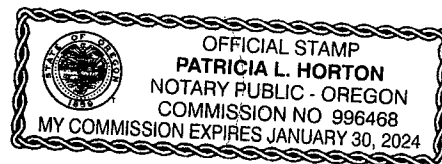
IN WITNESS WHEREOF, the Grantor has executed this instrument the day and year first above written.

By:   
**Benjamin Gavin**

STATE OF OREGON       )  
                                      ) ss  
County of ~~Jackson~~ Klamath       )

This instrument was acknowledged before me this 6 day of January, 2022, by **Benjamin Gavin**, and he acknowledged the above instrument to be his voluntary act and deed.

  
Notary Public for Oregon



## Exhibit "A"

**Lots 1 through 10, inclusive, in Block 98 of KLAMATH ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.**

**TOGETHER WITH the alley vacated by Ordinance No. 5599, recorded February 9, 1968 in Volume M68, page 1069, Microfilm Records of Klamath County, Oregon, which inured thereto by operation of law.**