



2023-002779

Klamath County, Oregon

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Fee: \$147.00

After recording return to:

Susan B. Bock

Stoel Rives LLP

760 SW Ninth Ave., Suite 3000

Portland, OR 97205

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**RESIDENTIAL TRUST DEED, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS,
AND FIXTURE FILING**

GRANTOR: Phillip Alexander Hays
Madison Tayler Meyer
7814 Donegal Avenue
Klamath Falls, OR 97603

TRUSTEE: AmeriTitle Title Insurance Company
300 Klamath Avenue
Klamath Falls, OR 97601

BENEFICIARY: Shauna McCarty Flanigan
11836 S. Breyman Avenue
Portland, OR 97219

Tax Account No.: R575700
Address: 5442 Gatewood Drive
Klamath Falls, OR 97603

 **THIS RESIDENTIAL TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING** (this "Trust Deed") is made as of April 14, 2023 (and effective as of the date of recordation of this Trust Deed in the Records of Klamath County, Oregon), by Phillip Alexander Hays, whose address is 7814 Donegal Avenue, Klamath Falls, OR 97603, and Madison Tayler Meyer, whose address is 7814 Donegal Avenue, Klamath Falls, OR 97603 ("Grantors"), to AmeriTitle Title Insurance Company, whose address is 300

Klamath Avenue, Klamath Falls, OR 97601 ("**Trustee**"), for the benefit of Shauna McCarty Flanigan, whose address is 11836 S. Breyman Avenue Portland, OR 97219 ("**Beneficiary**").

WHEREAS, Beneficiary has made a loan to Grantors in the amount of \$300,000.00, which loan is evidenced by a promissory note dated as of March 17, 2023 (the "**Loan**"). The Loan, evidenced by such promissory note, if not sooner paid, is due and payable in full on March 17, 2043 (the promissory note, as may be modified, extended, or replaced from time to time, is referred to herein as the "**Note**"); and

WHEREAS, as a condition to making the Loan to Grantors, Beneficiary has required, and Grantors have agreed to provide, this Trust Deed.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations described in Section 1.1 below, Grantors hereby irrevocably grant, bargain, sell, convey, assign, and transfer to Trustee in trust for the benefit and security of Beneficiary, with power of sale, all Grantors' right, title, and interest in and to the real property located in Klamath County, Oregon, and more particularly described in Exhibit A attached hereto and incorporated herein, together with all of the improvements now or hereinafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights, all fixtures now or hereinafter a part of the property, all awards for any taking of all or any portion of it, and all insurance proceeds for any damage to it (collectively, the "**Trust Property**"). All replacements and additions shall also be covered by this Trust Deed. Grantors presently assign the rent, revenue, income, issues and profits to the Trustee, its successors and assigns, upon the terms set forth in this Trust Deed.

TO HAVE AND TO HOLD the Trust Property to Trustee and its successors and assigns for the benefit of Beneficiary and its successors and assigns until all the Obligations are paid, performed, and satisfied in full, at which time the lien and estate hereby granted will be reconveyed.

This Trust Deed, the Note, and all other agreements executed at any time in connection with them, as they may be amended or supplemented from time to time, are sometimes collectively referred to as the "**Loan Documents**."

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

ARTICLE 1

PARTICULAR COVENANTS AND WARRANTIES OF GRANTOR

1.1 Obligations Secured. This Trust Deed secures the payment of all indebtedness, including but not limited to principal and interest, and the performance of all covenants and obligations of Grantors, under the Note, this Trust Deed, and the other Loan Documents, whether payment and performance is now due or becomes due in the future (collectively, the "**Obligations**").

1.2 Payment and Performance. Grantors will pay and perform all the Obligations when due.

1.3 Property. Grantors warrant that they hold good and merchantable title to the Trust Property, free and clear of all monetary liens (except for the lien of real property taxes not yet due and payable) and free and clear of all other encumbrances except covenants, conditions, restrictions and easements of record as of the date of this Trust Deed. Grantors covenant and warrant that they will forever defend Beneficiary's and Trustee's rights hereunder and the priority of this Trust Deed against the adverse claims and demands of all persons.

1.4 Further Assurances. Grantors will execute, acknowledge, and deliver, from time to time, any further instruments that Beneficiary or Trustee may require to accomplish the purposes of this Trust Deed.

1.5 Compliance with Laws. Grantors represent, warrant, and covenant that the Trust Property is currently in material compliance with, and will at all times be maintained in material compliance with, all applicable laws and all covenants, conditions, easements, and restrictions affecting the Trust Property.

1.6 Environmental Compliance

(1) For purposes of this section, "**Environmental Law**" means any federal, state, or local law or regulation now or hereafter at any time pertaining to Hazardous Substances or environmental conditions. For purposes of this section, "**Hazardous Substance**" includes, without limitation, any substance that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local law or regulation.

(2) Grantor will not use, generate, store, release, discharge, or dispose of on, under, or about the Trust Property or the groundwater thereof any Hazardous Substance and will not permit any other person to do so, except for storage and use of Hazardous Substances (and in such quantities) as may commonly be used for household purposes, as long as those substances are stored and used in compliance with all Environmental Laws. Grantors will keep and maintain the Trust Property in compliance with all Environmental Laws.

(3) Beneficiary will have the rights to participate in any legal proceeding initiated with respect to the Trust Property in connection with any Environmental Law and to have its attorney fees paid by Grantors. If, at any time, Beneficiary has reason to believe that any violation of this Section 1.6 has occurred or is threatened, Beneficiary may require Grantors to obtain or may itself obtain, at Grantors' expense, an environmental assessment by a qualified environmental consultant. Grantors will promptly provide to Beneficiary a complete copy of any environmental assessment obtained by Grantors.

(4) If any investigation, monitoring, containment, cleanup, or other remedial work of any kind is required on the Trust Property under any applicable Environmental Law or by

any governmental agency or person in connection with a release of a Hazardous Substance, Grantors will promptly complete all that work at Grantors' expense.

(5) All representations, warranties, and covenants in this Section 1.6 are to survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed.

1.7 Maintenance and Improvements. Grantors will not permit the Trust Property or any part of it to be removed, demolished, or materially altered without Beneficiary's prior written consent. Grantors will maintain the Trust Property, and every portion of it, in good repair and condition, except for reasonable wear and tear, and will at Beneficiary's election restore, replace, or rebuild the Trust Property or any part of it now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Article 2). Grantors will not commit or suffer any waste or strip of the Trust Property.

1.8 Liens. Grantors will pay when due all claims for labor and materials that, if unpaid, might become a lien on the Trust Property. Grantors will not create or suffer any lien, security interest, or encumbrance on the Trust Property that may be prior to, or on a parity with, the lien of this Trust Deed, except as specifically provided in Section 1.3. Grantors acknowledge that Beneficiary shall have no obligation to subordinate the lien of this Trust Deed to any mortgage, trust deed or other lien.

1.9 Impositions. Grantors will pay when due all taxes, assessments, fees, and other governmental and nongovernmental charges of every nature now or hereafter assessed against any part of the Trust Property or on the lien or estate of Beneficiary or Trustee therein (collectively, the "**Impositions**"); however, if by law any such Imposition may be paid in installments, Grantors may pay the same in installments, together with accrued interest on the unpaid balance thereof, as they become due. Grantors will furnish to Beneficiary promptly on 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.

1.10 Limitations of Use. Grantors will not initiate or consent to any replatting, partitioning, or rezoning of the Trust Property or any change in any covenant or other public or private restrictions limiting or defining the uses that may be made of the Trust Property without the prior written consent of Beneficiary.

1.11 Insurance.

(1) **Property and Other Insurance.** Grantors shall procure and maintain policies of insurance against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Beneficiary reasonably requires insurance. The coverage endorsement shall include all buildings and improvements. Loss payable shall be made to Beneficiary. The amount of insurance shall be the replacement cost, or the amount of principal and interest owed on the Note, whichever is greater.

(2) **Insurance Companies and Policies.** All insurance must (a) be written by a company or companies reasonably acceptable to Beneficiary, (b) contain a long-form mortgagee endorsement in favor of Beneficiary with proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed, (c) require 10 days' prior written notice to Beneficiary of cancellation or reduction in coverage, and (d) contain a waiver of subrogation. Grantors will furnish to Beneficiary on request a certificate evidencing the coverage required under this Trust Deed and a copy of each policy.

1.12 Casualty/Loss Restoration.

(1) After the occurrence of any casualty to the Trust Property, whether or not covered by insurance, Grantors will give prompt written notice thereof to Beneficiary. Beneficiary may make proof of loss if Grantors fail to do so promptly and to Beneficiary's satisfaction.

(2) All insurance proceeds with respect to the Trust Property must be payable to Beneficiary. At Beneficiary's discretion, insurance proceeds may be applied to the Obligations or may be released to Grantors, on any terms and conditions that Beneficiary elects, for restoration of the Trust Property.

1.13 Actions to Protect Trust Property; Reserves.

(1) If Grantors fail to pay, perform, or observe any of its covenants hereunder, Beneficiary may, but will not be required to, take any actions it deems appropriate to remedy the failure. All sums, including reasonable attorney fees, so expended, or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of Beneficiary's rights hereunder, will be a lien on the Trust Property, will be secured by this Trust Deed, and will be paid by Grantors on demand, together with interest thereon at the rate provided in the Note. No payment or other action by Beneficiary under this section will impair any other right or remedy available to Beneficiary or constitute a waiver of any Event of Default. The following notice is provided pursuant to ORS 746.201(1):

WARNING:

Unless Grantors provide Beneficiary with evidence of the insurance coverage required by the Note, Beneficiary may purchase insurance at Grantors' expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantors' interest. If the Trust Property becomes damaged, the coverage Beneficiary purchases may not pay any claim Grantors make or any claim made against Grantors. Grantors may later cancel this coverage by providing evidence that Grantors have obtained property coverage elsewhere.

Grantors are responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to Grantors' loan balance. If the cost is added to Grantors' loan balance, the interest rate on the

underlying loan will apply to this added amount. The effective date of coverage may be the date Grantors' prior coverage lapsed or the date Grantors failed to provide proof of coverage.

The coverage Beneficiary purchases may be considerably more expensive than insurance Grantors can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

(2) If Grantors fail to promptly perform any of its obligations under Sections 1.9 or 1.11 of this Trust Deed, Beneficiary may require Grantors thereafter to pay and maintain with Beneficiary reserves for paying those obligations. In that event, Grantors will pay to Beneficiary each month a sum estimated by Beneficiary to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions, insurance premiums, or both. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Grantors will pay any deficiency to Beneficiary on demand. The reserves may be commingled with Beneficiary's other funds. Beneficiary will credit to Grantors interest on those reserves at the minimum rate required from time to time by applicable law. Beneficiary will not hold the reserves in trust for Grantors, and Beneficiary will not be the agent of Grantors for payment of the taxes and assessments required to be paid by Grantors.

1.14 Estoppel Certificates. Grantors, within five days of request therefor, will furnish to Trustee and Beneficiary a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against the Obligations secured hereby. If Grantors fail to furnish this statement within the time allowed, Beneficiary will be authorized, as Grantors' attorney-in-fact, to execute and deliver the statement.

1.15 Subrogation to Prior Lienholders. In the event Beneficiary pays any prior lien, Beneficiary shall be subrogated to the rights of the holder of such prior lien as fully as if such lien had been assigned to Beneficiary. This Trust Deed is not intended to waive, replace or supersede any equitable subrogation or other rights Beneficiary has with respect to any prior lien.

ARTICLE 2 CONDEMNATION

If the Trust Property or any part of it is taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any other manner (a "**Condemnation**"), or if Grantors receives any notice or other information regarding such action, Grantor will give immediate notice thereof to Beneficiary. Beneficiary under this deed will be entitled to all compensation, awards, and other payments or relief therefor ("**Condemnation Proceeds**") up to the full amount of the Obligations due under this deed and may appear in any Condemnation proceeding in its own or Grantors' name and make any settlement in connection therewith in connection with this deed. Beneficiary may, at its option, apply the Condemnation Proceeds to the Obligations under this deed or release the proceeds to Grantors, on any terms and conditions that Beneficiary elects, for restoration of the Trust Property.

ARTICLE 3 LEASES AND RENTS

3.1 Assignment of Leases and Rents. Grantor assigning to Beneficiary all leases, rental contracts, and other agreements now or hereafter relating to the Trust Property or any portion of it (the "**Leases**") and all rents and income derived from them (the "**Rents**"). Beneficiary will have the right, but will not be obligated, after the occurrence of an Event of Default, to notify any and all obligors under any of the Leases that the same have been assigned to Beneficiary; to discount, compromise, enforce, and collect the Leases and Rents; and to exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents. Beneficiary will have the right to use and apply any Rents received (1) for any costs and expenses incurred in connection with enforcing this assignment and collecting Rents, (2) for maintaining the Trust Property, and (3) for reducing the Obligations in any order determined by Beneficiary. Beneficiary hereby gives Grantors a revocable license to collect and receive the Rents. This license may be revoked by Beneficiary, without notice to Grantors, on the occurrence of any Event of Default under this Trust Deed. Grantors agree not to collect any Rents more than 30 days in advance. This assignment will not operate to place responsibility for the care, maintenance, or repair of the Trust Property on Beneficiary.

3.2 Attorney-in-Fact. Grantors irrevocably constitute and appoint Beneficiary as their true and lawful attorney-in-fact, with power of substitution, to exercise any and all of the rights, powers, and authorities described in this Article 3 and to endorse any instruments given in payment of any Rents.

ARTICLE 4 SECURITY AGREEMENT AND FIXTURE FILING

To secure the Obligations, Grantors hereby grant to Beneficiary a security interest in all fixtures or personal property located on the Trust Property. This Trust Deed constitutes a security agreement and fixture filing under the Uniform Commercial Code statutes of the state of Oregon. The mailing address of Grantors and the address of Beneficiary from which information may be obtained are set forth in the cover sheet of this Trust Deed.

ARTICLE 5 EVENTS OF DEFAULT AND REMEDIES

5.1 Events of Default. Each of the following events will constitute an Event of Default under this Trust Deed and under each of the other Loan Documents:

(1) **Nonpayment.** Grantors' failure to pay any of the Obligations on or within 15 days after the due date.

(2) **Breach of Other Covenants.** Grantors' failure to perform or abide by any other covenant obligation in the Note, in this Trust Deed, or in any other Loan Document within 30 days after receipt of written notice from Beneficiary specifying the nature of the default.

(3) **Misinformation.** Falsity when made in any material respect of any representation, warranty, or information furnished by Grantors or their agents to Beneficiary in connection with any of the Obligations.

(4) **Other Indebtedness, Secondary Financing.** Grantors' default beyond applicable grace periods in paying any other indebtedness secured by all or any portion of the Trust Property.

(5) **Bankruptcy.** The occurrence of any of the following with respect to Grantors, any guarantor of the Obligations, or the then-owner of the Trust Property: (a) the appointment of a receiver, liquidator, or trustee for any such party or any of its properties, (b) adjudication as a bankrupt or insolvent, (c) the filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium, or insolvency law, (d) inability to pay debts when due, or (e) any general assignment for the benefit of creditors.

(6) **Transfer; Due-on-Sale.** Any sale, gift, conveyance, contract for conveyance, transfer, or assignment of the Trust Property, or any part of it or any interest in it, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without Beneficiary's prior written consent. Any lease for a term in excess of three years, and any lease containing an option to purchase the Trust Property or any portion of it, will be a Transfer. The provisions of this Section 5.1(6) will 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 any conditions to its consent under this subsection that Beneficiary may determine in its sole discretion, including without limitation an increase in the interest rate or the payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by Beneficiary.

5.2 Remedies in Case of Default. If an Event of Default occurs, Beneficiary or Trustee, as the case may be, may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

(1) **Acceleration.** Beneficiary may declare all or any portion of the Obligations immediately due and payable.

(2) **Rents.** Beneficiary may revoke Grantors' right to collect the Rents and may collect the Rents. Beneficiary will not be deemed to be in possession of the Trust Property solely by reason of exercise of the rights contained in this Section 5.2(2).

(3) **Power of Sale.** Beneficiary may direct Trustee, and Trustee will be empowered, to foreclose this Trust Deed by advertisement and sale under applicable law.

(4) **Foreclosure.** Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantors' interest in all or any part of the Trust Property.

(5) **Fixtures and Personal Property.** With respect to any fixtures or other property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

(6) **Action on Note.** Beneficiary may elect to forgo its rights under this Trust Deed and to bring a legal action to obtain a judgment on the Note.

5.3 Sale. In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in any order elected by Beneficiary. The purchaser at any such sale will take title to the Trust Property or the part of it so sold, free and clear of the estate of Grantors, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Beneficiary, may purchase at any such sale. Beneficiary is hereby irrevocably appointed Grantors' attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions of it so sold. Nevertheless, Grantors will ratify and confirm any such sale or sales by executing and delivering to Beneficiary or to such purchaser or purchasers all such instruments requested by Beneficiary for such purpose.

5.4 Cumulative Remedies. Except as provided by applicable law, all remedies under this Trust Deed are cumulative and any election to pursue one remedy will not preclude the exercise of any other remedy. No delay or omission in exercising any right or remedy will impair the full exercise of that or any other right or remedy or constitute a waiver of any Event of Default.

5.5 Application of Proceeds. All proceeds from the exercise of the rights and remedies under this Article 5 will be applied as follows: (1) to costs of exercising those rights and remedies, (2) to the Obligations, in any order determined by Beneficiary in its sole discretion, and (3) the surplus, if any, will be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to it.

ARTICLE 6 GENERAL PROVISIONS

6.1 Time Is of the Essence. Time is of the essence with respect to all covenants and obligations of Grantors under this Trust Deed.

6.2 Reconveyance by Trustee. At any time on the request of Beneficiary, payment of Trustee's fees, if any, and presentation of this Trust Deed, without affecting the liability of any person for payment of the Obligations, Trustee may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts will be conclusive proof of the truthfulness of them.

6.3 Notice. Except as otherwise provided in this Trust Deed, all notices must be in writing and may be delivered by hand, or mailed by first-class certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for receiving notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph will be deemed to have been given on the date of mailing; notices given by hand will be deemed to have been given when actually received.

6.4 Substitute Trustee. Beneficiary may substitute at any time one or more trustees to execute the trust hereby created, and the new trustee(s) will succeed to all the powers and duties of the prior trustee(s).

6.5 Trust Deed Binding on Successors and Assigns. Subject to the limitations stated in this Trust Deed on Transfer of Grantors' interest and subject to the provisions of applicable law with respect to successor trustees, this Trust Deed is binding on and inures to the benefit of the heirs, legatees, personal representatives, successors, and assigns of Grantors, Trustee, and Beneficiary.

6.6 Indemnity. Grantors will, to the fullest extent allowed by law, hold Beneficiary and Trustee and, if either is a corporation or other legal entity, their respective directors, officers, employees, agents, and lawyers harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Trustee's or Beneficiary's interests and rights under this Trust Deed.

6.7 Expenses and Attorney Fees. Grantors will pay all fees, expenses, taxes, assessments, and charges arising out of or in connection with the execution, delivery, and recording of this Trust Deed. If Beneficiary refers any of the Obligations to a lawyer for collection or seeks legal advice after a default, if Beneficiary is the prevailing party in any litigation instituted in connection with any of the Obligations, or if Beneficiary or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to bankruptcy, eminent domain, or probate proceedings), and Beneficiary employs a lawyer to appear in any such proceeding or to seek relief from a judicial or statutory stay, or otherwise to enforce Beneficiary's interests, then Grantors will pay reasonable attorney fees, costs, and expenses incurred by Beneficiary in connection with the above-mentioned events and any appeals. Those amounts will be secured by this Trust Deed and, if not paid on demand, will bear interest at the rate specified in the Note.

6.8 Applicable Law. This Trust Deed will be governed by the laws of the state of Oregon.

6.9 Person Defined. As used in this Trust Deed, the word "**person**" means any natural person, partnership, trust, corporation, or other legal entity of any nature.

6.10 Severability. If any provision of this Trust Deed is held to be invalid, illegal, or unenforceable, the other provisions of this Trust Deed will not be affected.

EXHIBIT A
(Legal Description)

Lot 9, Block 8 of Tract No. 1064, First Addition to Gatewood, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.