

AMERITITLE  
39885AM

2015-006426  
Klamath County, Oregon  
06/18/2015 11:12:10 AM  
Fee: \$92.00

After recording return to:

AMERITITLE  
300 KLAMATH AVENUE  
KLAMATH FALLS, OR 97601

Until a change is requested, all tax statements  
shall be sent to the following address:

MDLN of Oregon, LLC  
P.O. Box 417  
Malin, OR 97632

### TRUST DEED

This Trust Deed ("Trust Deed") is dated June 16, 2015, and is made by MDLN of Oregon, LLC, an Oregon limited liability company, whose address is PO Box 417, Malin, OR 97632 ("Grantor") in favor of AmeriTitle, whose address is 300 Klamath Avenue, Klamath Falls, OR 97601 ("Trustee") for the benefit of Robert S. Berman, whose address is 1803 El Camino Real, Burlingame, CA 94010 ("Beneficiary").

#### SECTION 1. DEFINITIONS

- 1.1 **Capitalized Terms.** Unless defined elsewhere in this Trust Deed, capitalized terms used in this Trust Deed will have the meanings ascribed to them in the attached Exhibit A.
- 1.2 **ORS Chapter 86.** Unless the context clearly indicates otherwise, terms used in this Trust Deed that are defined in ORS Chapter 86 will have the meanings ascribed to them in the ORS Chapter 86.

#### SECTION 2. TRUST DEED

- 2.1 **Transfer.** As security for the full and prompt payment and performance of the Obligations, Grantor transfers and assigns to Trustee in trust for the benefit of Beneficiary, with power of sale, all of Grantor's right, title, and interest in and to the Real Property, subject to the provisions of this Trust Deed.
- 2.2 **Recording and Perfection.**
- (a) Beneficiary may record this Trust Deed in the mortgage records in Klamath County, Oregon.
  - (b) Upon Trustee's or Beneficiary's request, Grantor will take any actions that Trustee or Beneficiary deems reasonably necessary to perfect and continue Trustee's and Beneficiary's rights under this Trust Deed.

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- (c) Grantor will pay all of the fees, costs, and expenses of recording this Trust Deed and any other document that Trustee or Beneficiary deems reasonably necessary to perfect and continue Trustee's and Beneficiary's rights under this Trust Deed.

**2.3 Reconveyance.** Within 30 days after the full payment and performance of the Obligations, Beneficiary must deliver a written request to Trustee to reconvey the Real Property to Grantor. Within 30 days after Beneficiary delivers the written request to reconvey to Trustee, Trustee must reconvey the Real Property to Grantor.

### **SECTION 3. REPRESENTATIONS AND WARRANTIES OF GRANTOR**

Grantor represents and warrants to Beneficiary as follows:

- 3.1 Organization.** Grantor is a limited liability company duly organized and validly existing under the laws of the State of Oregon.
- 3.2 Authority.** Grantor has full power and authority to sign and deliver this Trust Deed and to perform all of Grantor's obligations under this Trust Deed.
- 3.3 Binding Obligation.** This Trust Deed is the legal, valid, and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.
- 3.4 No Conflicts.** The signing and delivery of this Trust Deed by Grantor and the performance by Grantor of all of Grantor's obligations under this Trust Deed will not:
  - (a) conflict with Grantor's articles of organization or operating agreement;
  - (b) breach any agreement to which Grantor is a party, or give any person the right to accelerate any obligation of Grantor;
  - (c) violate any law, judgment, or order to which Grantor is subject; or
  - (d) require the consent, authorization, or approval of any person, including but not limited to any governmental body.
- 3.5 Real Property.** Exhibit B contains a correct legal description of the Real Property and the tax parcel identification number of the Real Property.
- 3.6 Nonforeign Person.** Grantor is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

### **SECTION 4. COVENANTS OF GRANTOR**

Grantor covenants to Beneficiary that Grantor will perform the following obligations and observe the following conditions until the Obligations are fully paid and performed:

- 4.1 Obligations.** Grantor will fully and promptly pay and perform the Obligations and Prior Lien when due.
- 4.2 Ownership.** Grantor will keep the Real Property free from all Encumbrances except Permitted Encumbrances.
- 4.3 Condition of Real Property.** Grantor will keep the Real Property in good repair and condition, reasonable wear and tear excepted, and will not commit or permit any waste of the Real Property.
- 4.4 Notification.** Grantor will promptly notify Beneficiary if any of the following occurs:
- (a) any material loss or damage with respect to the Real Property, whether or not the loss or damage is covered by insurance; or
  - (b) an Event of Default under Section 8.1(d) through (h).
- 4.5 Inspection.** Upon Beneficiary's request, Grantor will permit Beneficiary to inspect the Real Property.
- 4.6 Insurance.**
- (a) Grantor will obtain and maintain insurance policies that provide coverage for the Real Property, in form and substance reasonably satisfactory to Beneficiary.
  - (b) Grantor will obtain and maintain such additional insurance coverage for the Real Property for all risks normally insured against by a person owning similar real property in a similar location, and for any other risks to which the Real Property is normally exposed.
  - (c) Each insurance policy that covers the Real Property will name Beneficiary as a loss payee and will provide that it may not be amended or cancelled without 30 days' prior written notice to Beneficiary. Upon Beneficiary's request, Grantor will deliver a copy of each policy to Beneficiary.

## **SECTION 5. DAMAGE OR DESTRUCTION**

- 5.1 Assignment of Proceeds.** Grantor assigns and transfers to Beneficiary all of Grantor's rights to receive insurance proceeds under all insurance policies that provide coverage to Grantor for the Real Property.
- 5.2 Application of Proceeds.** If any damage or destruction occurs with respect to the Real Property, and if Beneficiary receives any insurance proceeds under any insurance policy that provides coverage to Grantor for the Real Property:
- (a) Beneficiary may hold the proceeds as additional security for the full and prompt payment and performance of the Obligations, subject to the provisions of this Section 5.2;

- (b) if an Event of Default has not occurred, Grantor may, within 10 days after Beneficiary notifies Grantor that Beneficiary has received the proceeds, notify Beneficiary that Grantor elects to have the proceeds apply:
  - (1) to the Obligations; or
  - (2) to the cost and expense of restoring the portion of the Real Property that was damaged or destroyed;
- (c) except as otherwise provided in this Section 5.2, Beneficiary must apply the proceeds in accordance with Grantor's election.

## **SECTION 6. PAYMENT OF TAXES AND OTHER CHARGES BY BENEFICIARY**

Whenever Grantor fails to pay when due any taxes, assessments, interest on prior mortgages, or other charges necessary to be paid for the protection of Trustee's and Beneficiary's rights under this Trust Deed, Beneficiary may pay the same. Such payments will be added to the Obligations, and will bear interest at the same rate as specified in the Promissory Note dated May 6, 2015 in the principal amount of \$784,180.69 made by Grantor in favor of Beneficiary.

## **SECTION 7. DEFAULTS AND REMEDIES**

### **7.1 Events of Default.** Each of the following events is an Event of Default:

- (a) Grantor fails to make any payment on the Promissory Note within 10 days written notice and opportunity to cure;
- (b) Grantor fails to perform any non-payment Obligation within 20 days after Beneficiary notifies Grantor of the failure to perform the Obligation when due;
- (c) any representation or warranty made by Grantor in this Trust Deed is found to have been untrue or misleading in any material respect as of the date of this Trust Deed;
- (d) an Encumbrance other than a Permitted Encumbrance attaches to the Real Property;
- (e) any material loss or damage with respect to the Real Property occurs that is not covered by insurance;
- (f) Grantor voluntarily dissolves or ceases to exist, or any final and nonappealable order or judgment is entered against Grantor decreeing its dissolution;
- (g) a proceeding with respect to Grantor is commenced under any applicable law for the benefit of creditors, including but not limited to any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Grantor or the Real Property is entered; or
- (h) Any default occurs under the Prior Lien.

### **7.2 Remedies.** On and after an Event of Default, Beneficiary may exercise the following remedies, which are cumulative and which may be exercised singularly or concurrently:

- (a) upon notice to Grantor, the right to accelerate the due dates of the Obligations so that the Obligations are immediately due, payable, and performable in their entirety;
  - (b) any remedy available to Beneficiary under ORS Chapter 86, including but not limited to the foreclosure of this Trust Deed by advertisement and sale in the manner provided in ORS 86.705 to ORS 86.795; and
  - (c) any other remedy available to Beneficiary at law or in equity.
- 7.3 Sale of Real Property.** After an Event of Default, Trustee may sell the Real Property in one parcel or in separate parcels and will sell the parcel or parcels at auction to the highest bidder for cash. Any person, including Beneficiary, but excluding Trustee, may bid at the sale. The attorney for Trustee, or any agent designated by Trustee or the attorney, may conduct the sale and act in the sale as the auctioneer of Trustee.
- 7.4 Disposition of Proceeds of Sale.** After an Event of Default and a sale of one or more parcels of the Real Property by Trustee, Trustee must apply the proceeds of the sale as follows:
- (a) to the expenses of the sale, including the compensation of Trustee, and a reasonable charge by the attorney for Trustee;
  - (b) to the Obligations in their order of priority;
  - (c) to all persons having recorded liens subsequent to the interest of Trustee in this Trust Deed as their interests may appear in the order of their priority; and
  - (d) the surplus, if any, to Grantor or to the successor in interest of Grantor entitled to such surplus.

## **SECTION 8. WARNING**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

## **SECTION 9. SUCCESSOR TRUSTEE**

At any time, Beneficiary may appoint in writing a successor Trustee. If the appointment of the successor Trustee is recorded in the mortgage records in Klamath County, Oregon, the successor Trustee will be vested with all the powers of the original Trustee.

## SECTION 10. NONFOREIGN AFFIDAVIT

Contemporaneously with the signing and delivery of this Trust Deed, Grantor will deliver to Beneficiary a nonforeign affidavit signed by Grantor for purposes of Section 1445 of the Internal Revenue Code, in form and substance reasonably satisfactory to Beneficiary.

## SECTION 11. GENERAL

- 11.1 Time of Essence.** Time is of the essence with respect to all dates and time periods in this Trust Deed.
- 11.2 Binding Effect.** This Trust Deed will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 11.3 Amendment.** This Trust Deed may be amended only by a written document signed by the party against whom enforcement is sought.
- 11.4 Notices.** All notices or other communications required or permitted by this Trust Deed:
- (a) must be in writing;
  - (b) must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties; and
  - (c) are considered delivered:
    - (1) upon actual receipt if delivered personally or an overnight delivery service; and
    - (2) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

To Grantor:

MDLN of Oregon, LLC  
Attn: Lon E. Baley  
PO Box 417  
Malin, OR 97632

To Trustee:

AmeriTitle  
300 Klamath Avenue  
Klamath Falls, OR 97601

With a copy to:

Jason M. Ayers  
Farleigh Wada Witt  
121 SW Morrison, Ste. 600  
Portland, OR 97204  
Fax: (503) 228-1741

To Beneficiary:

Robert S. Berman  
1803 El Camino Real  
Burlingame, CA 94010

- 11.5 Severability.** If a provision of this Trust Deed is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Trust Deed will not be impaired.
- 11.6 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Trust Deed.
- 11.7 Attachments.** Any exhibits, schedules, and other attachments referenced in this Trust Deed are part of this Trust Deed.
- 11.8 Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 11.9 Governing Law.** This Trust Deed is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Trust Deed.
- 11.10 Venue.** Any action or proceeding arising out of this Trust Deed will be litigated in courts located in Klamath County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Klamath County, Oregon.
- 11.11 Attorney's Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Trust Deed, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
- 11.12 Entire Agreement.** This Trust Deed contains the entire understanding of the parties regarding the subject matter of this Trust Deed and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Trust Deed.

*[Signature Page to Follow]*

Dated effective: the first date written above.

**Grantor:**

MDLN of Oregon, LLC, an Oregon limited liability company

By: *Lon E. Baley*  
Lon E. Baley, Member

By: *Nancy Baley*  
Nancy Baley, Member

By: *Dawn M. Trotman*  
Dawn Trotman, Member

By: *Mark R. Trotman*  
Mark Trotman, Member

State of Oregon )  
County of Klamath )ss.  
)

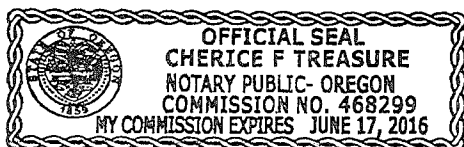
This instrument was acknowledged before me on June 16, 2015, by Lon Baley as member of MDLN of Oregon, LLC.



*Cherice F. Treasure*  
Notary Public for Oregon  
Commission No.: 468299  
My Commission Expires: 6/17/2016

County of Klamath )ss.  
)

This instrument was acknowledged before me on June 16, 2015, by Nancy Baley as member of MDLN of Oregon, LLC.



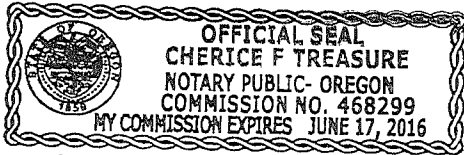
*Cherice F. Treasure*  
Notary Public for Oregon  
Commission No.: 468299



My Commission Expires: 6/17/2016

State of Oregon )  
County of Klamath )ss.  
)

This instrument was acknowledged before me on June 16, 2015, Dawn Trotman as member of MDLN of Oregon, LLC.



Cherice F. Treasure  
Notary Public for Oregon  
Commission No.: 468299  
My Commission Expires: 6/17/2016

State of Oregon )  
County of Klamath )ss.  
)

This instrument was acknowledged before me on June 16, 2015, Mark Trotman as member of MDLN of Oregon, LLC.



Cherice F. Treasure  
Notary Public for Oregon  
Commission No.: 468299  
My Commission Expires: 6/17/2016

## **EXHIBIT A**

### **Definitions**

**"Encumbrance"** means any lien, mortgage, pledge, security interest, or other encumbrance.

**"Event of Default"** means any event specified in Section 7.1.

**"Obligations"** means all present and future obligations owed by Grantor to Beneficiary arising out of:

- (a) the Promissory Note dated the same date in the principal amount of \$784,180.69 made by Grantor in favor of Beneficiary, and due in full on June 10, 2020; and
- (b) this Trust Deed.

**"Permitted Encumbrances"** means:

- (c) Encumbrances in favor of Trustee or Beneficiary;
- (d) Encumbrances arising by operation of law for taxes, assessments, or government charges not yet due;
- (e) statutory Encumbrances for services or materials arising in the ordinary course of Grantor's business for which payment is not yet due;
- (f) nonconsensual Encumbrances incurred or deposits made in the ordinary course of Grantor's business for workers' compensation and unemployment insurance and other types of social security; and
- (g) the Prior Lien.

**"Prior Lien"** means that (i) certain Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing dated March 17, 2010, and recorded March 24, 2010, as Instrument No. 2010-003658 in the recording of Klamath County, Oregon, executed by Beneficiary to Harvest Capital Company, as assigned to U.S. Bank National Association, and assumed by Grantor, and (ii) that certain note in the amount of \$1,050,000.00 described in the Prior Lien.

**"Real Property"** means the real property located at 3300 Bly Mountain Cutoff Road, Klamath County, Oregon, as more particularly described on Exhibit B, together with all fixtures and improvements.

## **EXHIBIT B**

### **Legal Description**

#### **PARCEL 1:**

The following described real property situate in Klamath County, Oregon, to wit:

Township 38 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Section 21: E1/2 E1/2

Section 22: NW1/4 NW1/4, S1/2 NW1/4, SW1/4, SW1/4 SE1/4

Section 27: E1/2, N1/2 NW1/4, SE1/4NW1/4

Section 28: NE1/4 NE1/4

Section 34: N1/2 NE1/4

EXCEPTING THEREFROM all of the following parcel lying East of the Bly/Bonanza Cut Off Road:

Township 38 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Section 22: SW1/4 SE1/4

Section 27: E1/2

Section 34: N1/2 NE1/4

#### **PARCEL2:**

All of the following parcel lying East of the Bly/Bonanza Cut Off Road:

Township 38 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Section 22: SW1/4 SE1/4

Section 27: E1/2

Section 34: N1/2 NE1/4