

2017-005307

Klamath County, Oregon

05/15/2017 02:51:00 PM

Fee: \$137.00

**After recording, return to:**

Attn: Heather J. Hansen  
Bryant Lovlien & Jarvis, P.C.  
591 SW Mill View Way  
Bend, Oregon 97702

**Beneficiary's name and address:**

Kim D. Ward L.L.C.  
23160 E Hwy 20  
Bend, Oregon 97701

**Return To:**  
**Deschutes County**  
**Title Company**  
**DE 2633**

**TRUST DEED, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING**

This Trust Deed, Assignment of Leases and Rents, and Fixture Filing (this "Trust Deed") is made and entered into effective on May 15, 2017 (the "Effective Date") by Elk Meadows LLC, an Oregon limited liability company ("Grantor"), whose address is 12455 SW 68<sup>th</sup> Avenue, Portland, OR 97223, in favor of Deschutes County Title Company ("Trustee"), whose address is 397 SW Upper Terrace Drive, Bend, Oregon 97702, for the benefit of Kim D. Ward L.L.C., an Oregon limited liability company ("Beneficiary"), whose address is 23160 E Hwy 20, Bend, Oregon 97701.

**RECITALS:**

A. Beneficiary extended to Grantor a certain loan in the principal amount of one hundred forty-seven thousand and five hundred dollars (\$147,500.00), which loan is evidenced by a certain Promissory Note dated effective May 15, 2017 (the "Note"). The Note is due and payable in full on or before June 1, 2027.

B. As a condition to making the loan to Grantor and accepting the Note, Beneficiary has required, and Grantor has agreed to execute and deliver, this Trust Deed.

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of securing the Obligations, the parties hereto hereby agree as follows:

1. Definitions.

1.1 Capitalized Terms. Unless defined elsewhere in this Trust Deed, capitalized terms used in this Trust Deed have the meanings assigned to them in the attached Appendix 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 have the meanings assigned to them in ORS Chapter 86.

1.3 UCC Terms. Unless the context clearly indicates otherwise, terms used in this Trust Deed that are defined in the Uniform Commercial Code have the meanings assigned to them in the Uniform Commercial Code. The term “instrument” has the meaning assigned to it in ORS Chapter 79 rather than ORS Chapter 73.

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 Trust Property, subject to the provisions of this Trust Deed.

2.2 Recording and Perfection. Beneficiary may record this Trust Deed in the mortgage records in Klamath County, Oregon. Upon Trustee’s or Beneficiary’s request, Grantor will take any actions that Trustee or Beneficiary deems necessary to perfect and continue Trustee’s and/or Beneficiary’s rights under this Trust Deed. Grantor will pay all the fees, costs, and expenses of recording this Trust Deed and any other document that Trustee or Beneficiary deems necessary to perfect and continue Trustee’s and/or Beneficiary’s rights under this Trust Deed.

2.3 Reconveyance. Within ninety (90) days after the full payment and performance of the Obligations, Beneficiary will deliver a written request to Trustee to reconvey the Trust Property to Grantor. Within thirty (30) days after Beneficiary delivers the written request to reconvey to Trustee, Trustee will reconvey the Trust Property to Grantor.

3. Assignment of Lease Rights.

3.1 Assignment. Grantor assigns and transfers to Beneficiary all of Grantor’s rights under each Lease, together with all prepaid rent and existing and future security or other deposits that each Tenant has paid and will pay with respect to the Tenant’s Lease.

3.2 No Assumption. Beneficiary will not assume any of Grantor’s liabilities or obligations under any Lease.

3.3 Revocable License. Beneficiary grants Grantor a revocable and exclusive license to (a) retain, collect, and receive any prepaid rent and existing and future security or other deposits that each Tenant has paid or will pay with respect to the Tenant’s Lease, but only to the extent that the prepaid rent and deposits are applied for the purposes required by the Tenant’s Lease, to the Obligations, or to any other commercially reasonable purpose, (b) collect and receive the rent and other payments due to Beneficiary under the Leases, but only to the extent that the payments are applied to the Obligations or to any other commercially reasonable purpose, and (c) enforce Beneficiary’s rights under the Leases.

3.4 Automatic Reassignment and Termination. Upon the full payment and performance of the Obligations, (a) all of Beneficiary’s rights under the Leases, together with all prepaid rent and existing security or other deposits that each Tenant has paid to Grantor or Beneficiary with respect to the Tenant’s Lease, will be automatically reassigned and transferred to Grantor, and (b) the license described in Section 3.3 will automatically terminate.

3.5 Indemnification. Grantor will defend, indemnify, and hold Beneficiary and each Beneficiary Representative harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, any liability and/or obligation of Grantor under any Lease.

4. Representations and Warranties of Grantor. In addition to any other representation and/or warranty made by Grantor under this Trust Deed, Grantor represents and warrants to Beneficiary as follows:

4.1 Authority; Binding Obligation; No Conflicts. 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. 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. 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) breach any agreement to which Grantor is a party, or give any person the right to accelerate any obligation of Grantor, (b) violate any law, judgment, or order to which Grantor is subject, and/or (c) require the consent, authorization, and/or approval of any person, including, without limitation, any governmental body.

4.2 Real Property. Grantor's use of the Trust Property complies with all applicable zoning laws. Grantor's use of the Trust Property is not subject to any permitted nonconforming use and/or to any structure classification. No fixture and/or improvement on any parcel of land not included in the Trust Property encroaches onto the Trust Property. The Trust Property abuts and has direct vehicular access to a public road or to a permanent, irrevocable, appurtenant easement that provides direct vehicular access to a public road.

4.3 Title to Trust Property. Except as encumbered by any Permitted Encumbrances, Grantor has good title to the Trust Property free from any and all Encumbrances.

4.4 Commercial Purposes. Grantor will use the Trust Property exclusively for commercial purposes.

4.5 Name of Grantor. The exact full legal name of Grantor is Elk Meadow LLC, an Oregon limited liability company.

4.6 Compliance With Laws. Grantor will comply with all applicable laws relating to the ownership, lease, use, and/or operation of the Trust Property. No event has occurred or circumstances exist that will likely result in Grantor's failure to comply with any applicable law relating to the ownership, lease, use, and/or operation of the Trust Property.

4.7 Environmental. Grantor has no liabilities and/or obligations of any kind arising out of or related to, whether directly or indirectly, any Environmental Law, whether known or unknown, fixed or contingent, disputed or undisputed, matured or unmatured, liquidated or unliquidated, or secured or unsecured. Grantor is not a party to any contract, settlement agreement, or other similar arrangement that requires or may require Grantor to have any liability or obligation of any kind arising out of any Environmental Law. No event has occurred or circumstances exist that will likely result in

Grantor having any liability or obligation of any kind arising out of any Environmental Law. Grantor has complied with all applicable Environmental Laws. No event has occurred or circumstances exist that will likely result in Grantor's failure to comply with any applicable Environmental Law. Grantor has not received any notice from any governmental authority or other person regarding (a) any actual, alleged, and/or potential failure by Grantor to comply with any Environmental Law, and/or (b) any actual or threatened liability or obligation of Grantor arising out of any Environmental Law with respect to the Trust Property. No action, arbitration, audit, hearing, investigation, litigation, suit, and/or other proceeding relating to any Environmental Law is pending or, to Grantor's Knowledge, threatened against Grantor. Grantor is not subject to any judgment or order relating to any Environmental Law. No Hazardous Substance is present on the Trust Property. No Hazardous Substance has been spilled, discharged, and/or otherwise released on and/or into the Trust Property. To Grantor's Knowledge, no Hazardous Substance is present on any real property that geologically or hydrologically adjoins the Trust Property. To Grantor's Knowledge, no Hazardous Substance has been spilled, discharged, or otherwise released on and/or into any real property that geologically or hydrologically adjoins the Trust Property. No underground storage tank is present on the Trust Property. The Trust Property does not contain any wetlands or other protected areas, flora, or fauna.

4.8 Non-foreign Person. Grantor is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

5. 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:

5.1 Obligations. Grantor will fully and promptly pay and perform the Obligations when due.

5.2 Ownership of Trust Property. Grantor will keep the Trust Property free from any and all Encumbrances except the Permitted Encumbrances. Grantor will defend Trustee's and Beneficiary's rights under this Trust Deed against the adverse claim of any person.

5.3 Restriction on Transfer. Grantor will not Transfer all or any interest in the Trust Property without Beneficiary's prior written consent.

5.4 Condition of Trust Property. Grantor will keep the Trust Property in good repair and condition, reasonable wear and tear excepted, and will not commit or permit any waste of the Trust Property. Grantor will not remove, demolish, and/or materially alter any improvement on the Trust Property, except in connection with the replacement of an improvement in the ordinary course of Grantor's business.

5.5 Use of Trust Property. Grantor will not initiate, support, and/or consent to any rezoning of the Trust Property and/or any change in any public or private covenant, condition, and/or restriction relating to the use of the Trust Property. Grantor will use the Trust Property exclusively for commercial purposes, and will ensure that this Trust Deed does not become a residential trust deed.

5.6 No Cutting or Harvesting of Trees. Grantor shall not remove or harvest any timber on the Trust Property without Beneficiary's written consent which may be withheld in Beneficiary's sole and absolute discretion.

5.7 Name of Grantor. Grantor will not change Grantor's legal name and/or state of business.

5.8 Leases. Grantor will fully and promptly pay and perform all of Grantor's obligations under each Lease. Unless and until the license described in Section 3.3 is revoked by Beneficiary, Grantor will, at Grantor's own cost and expense, use commercially reasonable efforts to (a) collect the rent and other payments due to Beneficiary under the Leases, except that Grantor will not collect any prepaid rent or other payments that are due under any Lease more than thirty (30) days before the due date of the payment, and (b) enforce Beneficiary's rights under the Leases. Grantor will promptly notify Beneficiary if Grantor or any Tenant materially breaches any Lease. Grantor will not renew, materially amend, waive any right under, and/or terminate any Lease without the prior written consent of Beneficiary. Grantor will not enter into any new Lease without the prior written consent of Beneficiary. Grantor will not pay, contest, and/or settle any claim relating to any Lease without the prior written consent of Beneficiary.

5.9 Estoppel Certificates. Upon Beneficiary's request, Grantor will use commercially reasonable efforts to obtain from each Tenant an estoppel certificate signed by the Tenant, in form and substance reasonably satisfactory to Beneficiary.

5.10 Notification. Grantor will promptly notify Beneficiary if any of the following occurs: (a) any material change in the business of Grantor; (b) any material loss or damage with respect to the Trust Property with a value over Five Thousand Dollars (\$5,000.00), whether or not the loss or damage is covered by insurance; (c) any adverse change in the financial condition of Grantor; and/or (d) an Event of Default.

5.11 Future Commercial Tort Claims. Grantor will promptly notify Beneficiary if Grantor obtains any rights to any commercial tort claim relating to the ownership, lease, use, and/or operation of the Trust Property. Grantor will ensure that the notice includes the adverse parties to the claim and the specific facts out of which the claim arose.

5.12 Inspection. Upon Beneficiary's request, Grantor will permit Beneficiary to (a) inspect the Trust Property, (b) inspect and copy Grantor's books of account and records related to the Trust Property including, without limitation, all contracts involving the ownership, lease, use, and/or operation of the Trust Property, and (c) inspect and copy any books and records of Grantor related to Grantor's business.

5.13 Compliance With Laws. Grantor will comply with all laws, ordinances, regulations, directions, rules, and requirements of all governmental authorities and others applicable to the use and/or occupancy of the Trust Property.

5.14 Environmental. Grantor will comply with all applicable Environmental Laws. Grantor will comply with the terms and conditions of each judgment and order relating to any Environmental Law to which Grantor is subject. Grantor will not cause or permit any Hazardous Substance to be present on or to be spilled, discharged, and/or otherwise released on and/or into the Trust Property. Grantor will fully and promptly pay and perform all of Grantor's obligations arising out of any Environmental Law. Grantor will comply with the terms and conditions of any contract, settlement agreement, and/or other similar arrangement that requires or may require Grantor to have any liability or obligation of any kind arising out of any Environmental Law. Grantor will promptly notify

Beneficiary if Grantor obtains Knowledge of the occurrence after the Effective Date of any fact or condition that would cause Grantor to breach any representation or warranty in Section 4.7 if the representation or warranty were made as of the date of the occurrence.

5.15 Taxes. Grantor will file on a timely basis all tax returns and reports required to be filed by applicable laws. All of Grantor's filed tax returns will be complete and accurate in all respects. Grantor will pay – or make provision for the payment of – all taxes that become due for all periods. Grantor will promptly notify Beneficiary if any taxing authority asserts – or informs Grantor that it intends to assert – any deficiency in the payment of any taxes by Grantor. Grantor will not seek any extension of time within which to file a tax return.

5.16 Insurance. Grantor will obtain and maintain at all times during the term of this Trust Deed insurance policies that provide adequate insurance coverage for the Trust 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 Trust Property is normally exposed. If any portion of the Trust Property is located in a special flood hazard area, Grantor will obtain flood insurance under the National Flood Insurance Program. Each insurance policy that covers the Trust Property will (a) be in form and substance reasonably satisfactory to Beneficiary, (b) name Beneficiary as a loss payee, and (c) provide that the insurance policy may not be amended or cancelled without ten (10) days' prior written notice to Beneficiary. Upon Beneficiary's request, Grantor will deliver a copy of each insurance policy to Beneficiary.

6. Damage or Destruction. Grantor will perform the following obligations and observe the following conditions until the Obligations are fully paid and performed:

6.1 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 Trust Property.

6.2 Application of Proceeds. If any damage or destruction occurs with respect to the Trust Property, and if Beneficiary receives any insurance proceeds under any insurance policy that provides coverage to Grantor for the Trust 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 6.2, and (b) Beneficiary may, in Beneficiary's sole discretion, apply the proceeds (1) to the Obligations, whether or not the Obligations are then due, and/or (2) to the cost and expense of restoring the portion of the Trust Property that was damaged or destroyed, subject to any conditions that Beneficiary deems reasonably necessary to ensure that the Trust Property is properly restored, including, without limitation, holding the proceeds until the restoration is complete.

7. First Position. This Trust Deed will be secured in first position.

8. Condemnation. Grantor will perform the following obligations and observe the following conditions until the Obligations are fully paid and performed:

8.1 Notice. Grantor will promptly notify Beneficiary if all or any portion of the Trust Property is condemned or threatened with condemnation. The notice will include a copy of all correspondence relating to the condemnation or the threat that Grantor received from any third-party.

8.2 Proceeding. Beneficiary may elect to control the condemnation matter described in Grantor's notice by notifying Grantor within twenty (20) days after the delivery of Grantor's notice. If Beneficiary elects to control the condemnation matter within the twenty-day period after the delivery of Grantor's notice Beneficiary may institute a condemnation proceeding, in which case (1) Beneficiary must diligently prosecute the proceeding, with counsel reasonably satisfactory to Grantor, (2) Grantor may participate in the prosecution of the proceeding, at Grantor's own cost and expense, and (3) Beneficiary may settle the matter with the consent of Grantor, which Grantor may not unreasonably withhold, condition, and/or delay. If Beneficiary does not elect to control the condemnation matter within the twenty-day period after the delivery of Grantor's notice Grantor may institute a condemnation proceeding, in which case (1) Grantor will diligently prosecute the proceeding, with counsel reasonably satisfactory to Beneficiary, (2) Beneficiary may participate in the prosecution of the proceeding, at Beneficiary's own cost and expense, and (3) Grantor may settle the matter with the consent of Beneficiary. In any condemnation proceeding that is subject to the provisions in this Section 8.2, Grantor and Beneficiary will keep each other fully informed of the status of the proceeding, cooperate with each other with respect to the prosecution of the proceeding, and attempt to preserve in full any attorney-client and work-product privileges and the confidentiality of any confidential information.

8.3 Assignment of Compensation. Grantor assigns and transfers to Beneficiary all of Grantor's rights to receive compensation as a result of any condemnation of all or any portion of the Trust Property.

8.4 Application of Compensation. If all or any portion of the Trust Property is condemned, and if Beneficiary receives any compensation as a result of the condemnation, (a) Beneficiary may hold the compensation as additional security for the full and prompt payment and performance of the Obligations, subject to the provisions of this Section 8.4, and (b) Beneficiary may, in Beneficiary's sole discretion, apply the compensation (1) to the Obligations, whether or not the Obligations are then due, and/or (2) to the cost and expense of restoring or improving the remaining portion of the Trust Property, if any, subject to any conditions that Beneficiary deems reasonably necessary to ensure that the remaining portion of the Trust Property is properly restored or improved, including, without limitation, holding the proceeds until the restoration or improvement is complete.

9. Payment of Taxes and Other Charges by Beneficiary. Whenever Grantor fails to pay when due any taxes, assessments, interest on prior mortgages, insurance premiums, and/or other charges necessary to be paid for the protection of Trustee's and/or 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 default interest rate specified in the Note.

#### **BENEFICIARY'S WARNING TO GRANTOR**

**UNLESS YOU [GRANTOR] PROVIDE US [BENEFICIARY] WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR CONTRACT OR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY COVERAGE ELSEWHERE.**

**YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO YOUR CONTRACT OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.**

**THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.**

**10. Defaults and Remedies.**

**10.1 Events of Default.** The occurrence of any one or more of the following events constitutes an event of default under this Trust Deed (each an "Event of Default"): (a) Grantor fails to make any payment Obligation when due; (b) Grantor fails to perform any non-payment Obligation within ten (10) 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 respect as of the Effective Date; (d) an Encumbrance other than a Permitted Encumbrance attaches to the Trust Property; (e) any Transfer of the Trust Property and/or any interest in the Trust Property to any person other than Trustee or Beneficiary, unless the Transfer is expressly permitted by this Trust Deed; (f) any change in ownership of the voting stock, partnership interests, membership interests or other ownership interests, as the case may be, of Grantor; (g) any material loss or damage with respect to the Trust Property occurs that is not covered by insurance; (h) any material portion of the Trust Property is condemned; (i) Grantor fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Grantor's debts as they become due, or makes a general assignment for the benefit of creditors; (j) a proceeding with respect to Grantor is commenced under any applicable law for the benefit of creditors, including, without limitation, 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 and/or the Trust Property is entered; (k) an event of default occurs under (1) any Loan Document, and/or (2) any agreement securing the performance of any of the obligations of any guarantor of the Obligations; (l) Grantor dissolves and/or ceases doing business; and/or (m) the occurrence of any event that has or may reasonably be expected to have an adverse effect on Grantor's financial condition and/or Grantor's ability to pay and perform the Obligations.

**10.2 Remedies.** On and after an Event of Default, Beneficiary may exercise the following remedies, which remedies 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) upon notice to Grantor, the right to take possession, control, and charge of the Trust Property; (c) the right to institute an action to appoint a receiver to take charge of the Trust Property; (d) the right to institute an action to obtain a temporary restraining order; (e) upon notice to Grantor, the right to pay and perform any of the Obligations; (f) any remedy available to Beneficiary under any Loan Document and/or any agreement securing the performance of any of the obligations of any guarantor of the Obligations; (g) any remedy available to Beneficiary under ORS Chapter 86, including, without limitation, the foreclosure of this Trust Deed by advertisement and sale in the manner provided in ORS 86.705 to ORS



86.795; (h) the right to foreclose this Trust Deed as provided by law for the foreclosure of mortgages on real property; (i) any remedy available to Beneficiary under the Uniform Commercial Code; (j) the right to revoke the license described in Section 3.3 and to (1) retain, collect, and receive all prepaid rent and existing and future security or other deposits that each Tenant has paid and will pay with respect to the Tenant's Lease, (2) collect and receive the rent and other payments due to Beneficiary under the Leases, and (3) enforce Beneficiary's rights under the Leases; (k) the right to deliver to each Tenant a letter, in form and substance reasonably satisfactory to Beneficiary, notifying the Tenant that (1) all of Grantor's rights under the Tenant's Lease have been assigned to Beneficiary, and (2) all future rent and other payments must be paid to Beneficiary; and/or (l) any other remedy available to Beneficiary at law or in equity.

**10.3 Additional Rights and Obligations.** After an Event of Default, (a) upon Beneficiary's request, Grantor will sign for each Tenant the letter described in Section 10.2(k), and (b) upon Beneficiary's request, Grantor will otherwise assist Beneficiary in exercising any remedy available to Beneficiary under this Trust Deed.

**10.4 Possession and Protection of Trust Property.** If Beneficiary or a receiver takes possession, control, and/or charge of the Trust Property after an Event of Default, Grantor will peacefully relinquish possession of the Trust Property upon Beneficiary's or the receiver's request. After taking possession, control, and/or charge of the Trust Property, Beneficiary or the receiver may (a) manage, develop, improve, partition, change the character of, or abandon the Trust Property, (b) make ordinary or extraordinary repairs or alterations to the Trust Property, demolish any improvements, and raise existing or erect new party walls or buildings, (c) subdivide the Trust Property, make or obtain the vacation of plats, or adjust boundaries, (d) enter into a lease of all or any portion of the Trust Property, (e) insure the Trust Property against damage or loss, (f) borrow and advance money for the protection of the Trust Property, and for all expenses, losses, and liability sustained in the protection of the Trust Property, (g) pay, contest, and/or settle any claim relating to the Trust Property, (h) pay taxes, assessments, and other expenses incurred in the protection of the Trust Property, (i) employ persons to advise or assist Beneficiary or the receiver in the protection of the Trust Property, and act without independent investigation upon their recommendations, (j) prosecute or defend actions, claims, and/or proceedings for the protection of the Trust Property, and/or (k) take any other actions that Trustee or the receiver deems reasonably necessary to protect the Trust Property. Any payments made or indebtedness incurred by Beneficiary or the receiver in connection with protecting the Trust Property will be added to the Obligations and will bear interest at the default rate specified in the Note. If Beneficiary or the receiver receives any rent or other payments after taking possession, control, and/or charge of the Trust Property, (y) Beneficiary may hold the payments as additional security for the full and prompt payment and performance of the Obligations, subject to the provisions of this Section 10.4, and (z) Beneficiary may, in Beneficiary's sole discretion, apply the payments (1) to the Obligations, whether or not the Obligations are then due, and/or (2) to the cost and expense of protecting the Trust Property.

**10.5 Sale of Trust Property.** After an Event of Default, Trustee may sell the Trust Property 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.

**10.6 Proceeds of Sale of Trust Property.** After an Event of Default and a sale of the Trust 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; (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.

10.7 No Obligation to Pay or Perform. Beneficiary has no obligation to pay or perform any Obligation.

11. Release, Indemnification, and Waivers.

11.1 Release and Indemnification. Grantor releases and will defend, indemnify, and hold Trustee, Beneficiary, and each Beneficiary Representative harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, obligations, costs, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, the following: (a) any action that Trustee, Beneficiary, and/or any Beneficiary Representative takes to perfect or continue Trustee's and/or Beneficiary's rights under this Trust Deed; (b) the exercise of any remedy available to Beneficiary under this Trust Deed, without regard to cause or the negligence of Trustee, Beneficiary, any Beneficiary Representative, and/or any other person; (c) any breach and/or inaccuracy of any Grantor representation, warranty, and/or covenant made in this Trust Deed and/or any Loan Document; and/or (d) any failure by Grantor to pay and/or perform any covenant and/or obligation required to be performed by Grantor under this Trust Deed and/or any Loan Document. This indemnification and hold harmless provision will survive the termination of this Trust Deed and the satisfaction of the obligations of Grantor to Beneficiary under this Trust Deed.

11.2 Waiver by Grantor. Grantor waives demand, presentment for payment, notice of dishonor or nonpayment, protest, notice of protest, and lack of diligence in collection, and agrees that Beneficiary may amend any agreement evidencing, guaranteeing, or securing any of the Obligations or extend or postpone the due dates of the Obligations without affecting Grantor's liability.

11.3 No Waiver by Beneficiary. No waiver will be binding on Beneficiary unless it is in writing and signed by Beneficiary. Beneficiary's waiver of a breach of a provision of this Trust Deed or any agreement evidencing, guaranteeing, or securing any of the Obligations will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. Beneficiary's failure to exercise any remedy under this Trust Deed or any agreement evidencing, guaranteeing, or securing any of the Obligations will not be considered a waiver by Beneficiary of Beneficiary's right to exercise the remedy.

12. Environmental Indemnification.

12.1 Indemnification. Grantor will defend, indemnify, and hold Trustee, each Trustee Representative, Beneficiary, and each Beneficiary Representative harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, Grantor's breach of any representation, warranty, covenant, and/or other obligation of Grantor in Section 4.7 and/or Section 5.13.

12.2 Survival. All representations, warranties, covenants, and other obligations of Grantor in Section 4.7, Section 5.14, and Section 12.1 will survive the reconveyance of the Trust Property to Grantor and the foreclosure of this Trust Deed.

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

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

15. Miscellaneous.

15.1 Time of Essence; No Assignment; Binding Effect. Time is of the essence with respect to all dates and time periods in this Trust Deed. Grantor may not assign or delegate any of Grantor's rights or obligations under this Trust Deed to any person without the prior written consent of Beneficiary, which Beneficiary may withhold in Beneficiary's sole discretion. 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.

15.2 Amendment; Notice. This Trust Deed may be amended only by a written document signed by the party against whom enforcement is sought. Any notice required under this Trust Deed must be in writing. Any notice will be deemed given when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day.

15.3 Severability; Further Assurances; Remedies. 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. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Trust Deed. Beneficiary will have all remedies available to it at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

15.4 Governing Law; Venue. 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. 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.

15.5 Attorney Fees. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Trust Deed, including, without limitation, 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 attorney fees and other fees, costs,

and expenses of every kind, including, without limitation, 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.

15.6 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.

15.7 No Waiver by Beneficiary. No failure and/or delay of Beneficiary in exercising any right, power, and/or remedy under this Trust Deed and/or any other Loan Document will operate as a waiver of such right, power, and/or remedy of Beneficiary or of any other right. A waiver of any provision of this Trust Deed and/or any other Loan Document will not constitute a waiver of or prejudice Beneficiary's right to demand strict compliance with that provision and/or any other provision. Any waiver, permit, consent, and/or approval of any kind or character on the part of Beneficiary must be in writing and will be effective only to the extent specifically set forth in writing.

15.8 Interpretation and Exercise of Discretion. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Trust Deed. When Beneficiary is exercising any consent, approval, determination, and/or similar discretionary action under this Trust Deed, the standard will be Beneficiary's sole discretion. For purposes of this Trust Deed, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

15.9 Attachments. Any exhibits, schedules, and other attachments referenced in this Trust Deed are part of this Trust Deed.

15.10 Waiver of Jury Trial and Hearing. GRANTOR IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING HEREAFTER INSTITUTED BY OR AGAINST GRANTOR IN RESPECT TO THIS TRUST DEED, THE NOTE, AND/OR ANY OTHER DOCUMENT PERTAINING TO THIS LOAN TRANSACTION. GRANTOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS TRUST DEED IS A PART IS A COMMERCIAL TRANSACTION. TO THE EXTENT PERMITTED BY ANY STATE OR FEDERAL LAW, GRANTOR WAIVES ANY RIGHT GRANTOR MAY HAVE TO PRIOR NOTICE OF AND A HEARING ON THE RIGHT OF ANY HOLDER OF THIS TRUST DEED, THE NOTE, AND/OR ANY OTHER DOCUMENT PERTAINING TO THIS LOAN TRANSACTION TO ANY REMEDY OR COMBINATION OF REMEDIES THAT ENABLES SAID HOLDER, BY WAY OF FORECLOSURE, ATTACHMENT, GARNISHMENT, OR REPLEVIN, TO DEPRIVE GRANTOR OF ANY PROPERTY, AT ANY TIME, PRIOR TO FINAL JUDGMENT IN ANY LITIGATION INSTITUTED IN CONNECTION WITH THIS TRUST DEED, THE NOTE, AND/OR ANY OTHER DOCUMENT PERTAINING TO THIS LOAN TRANSACTION.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Trust Deed to be executed and effective for all purposes as of the Effective Date.

GRANTOR:

Elk Meadows LLC, an Oregon limited liability company



By: Judith A. McGee, Member

State of Oregon )

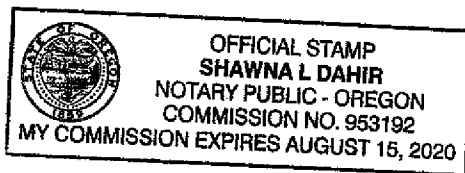
County of

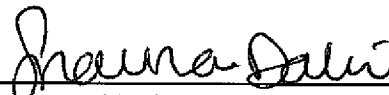
Washington )

ss.

I certify that I know or have satisfactory evidence that Judith A. McGee as Member of Elk Meadows LLC signed this instrument and acknowledge it to be her free and voluntary act for the uses and purposes contained in this instrument.

Before me:





Notary Public for Oregon

Commission No.: 953192

My Commission Expires: August 15, 2020

Appendix A  
Definitions

"Beneficiary Representative(s)" means Beneficiary and its successors, assigns, divisions, affiliates, and related entities, and all past, present, and future officers, directors, shareholders, members, managers, employees, attorneys, agents, volunteers, contractors, representatives, and insurers of the aforementioned.

"Encumbrance(s)" means any liens, mortgages, pledges, security interests, reservations, restrictions, changes, claims, and/or any other encumbrances.

"Environmental Law(s)" means any law designed to minimize, prevent, punish, and/or remedy the consequences of actions that damage or threaten the environment or public health and safety.

"Event of Default" means any event specified in Section 10.1.

"Hazardous Substance(s)" means any hazardous or toxic substance, material, and/or waste, including, without limitation, the following: (a) any hazardous or toxic substance, material, and/or waste that is defined as such under any Environmental Law; and (b) petroleum, petroleum products, asbestos, presumed asbestos-contaminating materials, asbestos-contaminating materials, urea formaldehyde, and polychlorinated biphenyls.

"Knowledge" means, with respect to Grantor, the actual knowledge of any member or manager of Grantor and any knowledge Grantor and/or any member or manager of Grantor would have obtained if Grantor and such member or manager had conducted a reasonably comprehensive investigation of the relevant matter.

"Lease(s)" means any lease affecting the Trust Property to which Grantor is or becomes a party.

"Loan Document(s)" means (a) this Trust Deed, (b) the Note, (c) all personal guaranties, and (d) any agreement evidencing, guaranteeing, and/or securing the performance of any of Grantor's obligations arising out of or under the aforementioned.

"Note" means the Promissory Note dated as of the Effective Date in the principal amount of \$147,500.00 made by Grantor in favor of Beneficiary and referenced in Recital A.

"Obligation(s)" means all present and future obligations of any kind owed by Grantor to Beneficiary, including, without limitation, all of Grantor's obligations arising out of or under (a) the Note, (b) this Trust Deed, (c) any other agreement evidencing, guaranteeing, and/or securing the performance of any of Grantor's obligations arising out of or under the aforementioned agreements.

"Permitted Encumbrance(s)" means (a) any lien, mortgage, pledge, security interest, and/or other encumbrance in favor of Beneficiary, and (b) any lien, mortgage, pledge, security interest, or other Encumbrance arising by operation of law for taxes, assessments, or government charges not yet due.

"Real Property" means the real property described on Exhibit A.

"Tenant(s)" means any person other than Grantor that is a party to any Lease.

"Transfer(s)" means (a) any transfer, including, without limitation, any sale, conveyance, exchange, gift, lease, encumbrance, foreclosure of an encumbrance, or attachment, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence, and (b) any agreement involving the ownership, lease, and/or use of all or any portion of the Property for a period longer than thirty (30) days.

"Trust Property" means all of Grantor's right, title, and interest in and to the Real Property, together with the following:

(a) all interests, estates, and rights that Grantor now has and/or may acquire in the Real Property;

(b) any and all options, agreements, and contracts for the purchase or sale of all or any part or parts of the Real Property or interests in the Real Property;

(c) all easements, rights-of-way, and rights used in connection with the Real Property and/or as a means of access to the Real Property;

(d) all tenements, hereditaments, and appurtenances in any manner belonging, relating, and/or appertaining to the Real Property;

(e) all interests, estates, and rights of Grantor, now owned or hereafter acquired, in and to any land lying within any streets, sidewalks, alleys, strips, and/or gores adjacent to or used in connection therewith;

(f) all Grantor rights, titles, and interests, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Real Property and all fixtures, machinery, equipment, and other personal property located on the Real Property or attached to, contained in, or used in any such buildings and other improvements, and all appurtenances and additions to and substitutions and replacements of the Real Property (all of the foregoing being collectively referred to below as the "Improvements");

(g) any and all mineral, oil and gas rights, air rights, development rights, water rights, water stock, and water service contracts, drainage rights, zoning rights, and other similar rights or interests that benefit or are appurtenant to the Real Property or the Improvements or both, and any of their proceeds;

(h) all Grantor rights, titles, and interests in and to all present and future licenses, permits, approvals, and agreements with or from any municipal corporation, county, state, or other governmental or quasi-governmental entity or agency relating to the development, improvement, division, or use of all or any portion of the Real Property to the extent assignable by law; and all other general intangibles relating to the Real Property, the Improvements, or their use and operation;

(i) all Grantor rights in and to any escrow or withhold agreements, title insurance, surety bonds, warranties, management contracts, leasing and sales agreements, and service contracts that are

in any way relevant to the ownership, development, improvement, management, sale, and/or use of all or any portion of the Real Property or any of the Improvements;

(j) Grantor's rights under any payment, performance, and/or other bond in connection with construction of any Improvements, and all construction materials, supplies, and equipment delivered to the Real Property or intended to be used in connection with the construction of any Improvements; and

(k) all rights, interests, and claims that Grantor now has or may acquire with respect to any damage to or taking of all or any part of the Real Property and/or the Improvements, including, without limitation, any and all proceeds of insurance in effect with respect to the Improvements, any and all awards made for taking by eminent domain or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Property or the Improvements, and any and all awards resulting from any other damage to the Real Property or the Improvements, all of which are assigned to Beneficiary under this Trust Deed.

"Trustee Representative(s)" means each present and future director, officer, shareholder, employee, member, assignee, manager, partner, and authorized representative of Trustee.



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

Beginning at a point on the East line of the SW1/4 NW1/4 of Section 31 which point lies North along said line 252 feet from the Southeast corner of said SW1/4 NW1/4; thence North 60°58' West 1427.23 feet to that property described in Volume 226, page 39, Deed Records of Klamath County, Oregon; thence Northeasterly at right angles 100 feet; thence Northwesterly at right angles 80 feet to the Easterly right of way of the Dalles-California Highway right of way; thence Northeasterly along said right of way to that property described in Volume 346, page 660, Deed Records of Klamath County, Oregon; thence Southeasterly at right angles to said right of way 200 feet; thence Northeasterly at right angles 300 feet; thence Northwesterly at right angles 20 feet; thence Northeasterly at right angles 260 feet; thence Southeasterly at right angles 20 feet; thence Northeasterly at right angles 100 feet; thence Northwesterly at right angles, 200 feet to the East right of way of the Dalles-California Highway; thence Northeasterly along said Highway right of way to that property described in Volume 259, page 428, Deed Records of Klamath County, Oregon; thence Southeasterly at right angles 180 feet; thence Northeasterly at right angles 300 feet; thence Northwesterly at right angles 180 feet to said highway right of way; thence Northeasterly along said highway right of way to that property described in Volume 331, page 162, Klamath County Deed Records; thence Southeasterly at right angles 280 feet; thence Northeasterly at right angles 300 feet; thence Northwesterly at right angles 100 feet; thence Northeasterly at right angles 20 feet; thence Northeasterly at right angles 285 feet to the North line of Section 31; thence Easterly along said Section line to that property described in Volume 302, page 38, Deed Records of Klamath County, Oregon; thence South 29°02' West 418 feet; thence Easterly parallel to the North line of Section 31 to the East line of the NW1/4 NW1/4 of said Section; thence Southerly along the East line of the NW1/4 NW1/4 and SW1/4 NW1/4 of Section 31, Township 24 South, Range 9 East of the Willamette Meridian, to the point of beginning. EXCEPTING THEREFROM the following parcel deeded to Arthur V. Ellsworth and Etta D. Ellsworth, husband and wife in Volume 274, page 468, Deed Records of Klamath County, Oregon as follows: Running 944.08 feet East from the Northwest corner of Section 31, Township 24 South, Range 9 East of the Willamette Meridian, to an iron pipe on the East line of U.S. Highway 97; thence Southerly on said line 1213 feet 7 inches to a point; thence Easterly 270 feet to point of beginning description of this piece of land; thence continuing Easterly at right angles to Highway 97 200 feet; thence Southerly parallel to Highway 97, 310 feet; thence Westerly at right angles to said Highway 200 feet; thence Northerly parallel to said Highway 310 feet to point of beginning.

**PARCEL 2:**

The SE1/4 NW1/4 and SW1/4 NE1/4 of Section 31, Township 24 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

**PARCEL 3:**

The NE1/4 NW1/4 of Section 31, Township 24 South, Range 9 East of the Willamette Meridian, SAVING AND EXCEPTING that portion of said property lying within the following described property: Running East 944.08 feet from the Northwest corner of Section 31, Township 24 South, Range 9 East of the Willamette Meridian, to an iron pin; thence East 243 feet to Main Street; thence East 60 feet to point of beginning of this description; thence Southwest 418 feet parallel with the Dalles-California Highway; thence East 418 feet; thence Northeast 522 1/2 feet; thence West 418 feet; thence Southwest 104 1/2 feet to the point of beginning.