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Klamath County, Oregon
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Fee: \$117.00

RECORDING REQUESTED BY,
THIS INSTRUMENT PREPARED BY,
AND WHEN RECORDED MAIL TO:

Tonkon Torp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Attn: Gwen Griffith

DEED OF TRUST

THIS DEED OF TRUST (this "Deed of Trust") dated as of October 17, 2018, by and from **MB REAL PROPERTIES, LLC**, an Oregon limited liability company ("Grantor"), whose address is 9440 N. Whitaker Road, Portland, OR 97217, to **AMERITITLE**, as trustee ("Trustee"), whose address is 300 Klamath Avenue, Klamath Falls, Oregon 97601, for the benefit of **PAUL M. NOVAK, and JOHN J. NOVAK AND ANN M. NOVAK AS CO-TRUSTEES OF THE NOVAK REVOCABLE LIVING TRUST PURSUANT TO THE TRUST AGREEMENT DATED APRIL 12, 2013**, (together, "Beneficiary"), with respect to the following unimproved real property:

See Exhibit A

together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues, and profits thereof (the "Property").

This Deed of Trust is for the purpose of securing payment of and performance of all obligations of Grantor under that certain Secured Promissory Note ("Note") to Beneficiary in the original principal amount of seven hundred twenty four thousand and two hundred dollars (\$724,200), dated as of October 17, 2018, made by Grantor.

DUE DATE: All unpaid principal and accrued interest under the Note shall be due to Beneficiary no later than October 17, 2038.

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

1. To keep the Property in good condition and repair; to permit no waste thereof; to complete any building, structure, or improvement being built or about to be built thereon; to restore promptly any building, structure, or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property.

117.

2. To pay before delinquent all lawful taxes and assessments upon the Property; to keep the Property free and clear of all other charges, liens, or encumbrances impairing the security of this Deed of Trust.

3. To keep all structures now or hereafter erected on the Property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by the Property. All policies shall list the Beneficiary as an additional insured, and be with such carriers as the Beneficiary may reasonably approve and have loss payable to Beneficiary to the extent of the then-outstanding balance of the Note, prior to the Grantor. Grantor assigns to Beneficiary all such insurance proceeds. All such insurance proceeds shall be held by Beneficiary as collateral to secure performance of Grantor's obligations owed under the Note. Subject to the other terms and conditions of this Deed of Trust, Grantor may elect either to restore or not to restore the damaged improvements that are part of the Property. Beneficiary shall pay or reimburse Grantor from the insurance proceeds paid to Beneficiary for any remaining unpaid reasonable costs incurred to complete repairs and replacements of the damaged improvements if the all of the following conditions are satisfied:

- (a) Beneficiary has, prior to the commencement of any repair or replacement work, provided notice to Grantor in writing, which shall not be unreasonably withheld, of its determination that the insurance proceeds plus any additional funds deposited by Grantor with Beneficiary are adequate to complete a full repair and restoration of the Property pursuant to plans and specifications approved by Beneficiary;
- (b) Grantor has repaired or replaced the damaged improvements in a manner reasonably satisfactory to Beneficiary, and provided proof of the performance of such work that is reasonably satisfactory to Beneficiary;
- (c) Grantor is not in default under the Note or this Deed of Trust; and
- (d) Grantor has already used all insurance proceeds that were paid directly to Grantor for the purpose of repairing or replacing the damaged improvements on the Property.

After such repairs and replacements are completed, or after Grantor notifies Beneficiary in writing that, pursuant to its rights under this Deed of Trust, it elects not to repair or replace the damaged improvements, Beneficiary shall apply the proceeds not to be so used toward payment of all or part of the indebtedness secured by this Deed of Trust, as the case may be. Any insurance proceeds held by Beneficiary that have not been paid out to Grantor within one year after their receipt for the repair or replacement of the damaged improvements on the Property shall forthwith be applied by Beneficiary toward payment of all or part of the indebtedness secured by this Deed of Trust, as the case may be.

4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. To pay all costs, fees, and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

6. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances, or other charges against the Property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the Note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

IT IS MUTUALLY AGREED THAT:

7. Grantor will be entitled to reconveyance of the Property from the lien of this Deed of Trust upon full payment and complete satisfaction of the Note.

8. Each of the following shall constitute an "Event of Default" under this Deed of Trust and under the Note:

- (a) Failure of Grantor to pay any amount due under the Note on or before the due date.
- (b) Failure of Grantor to perform or abide by any other covenant in the Note or in this Deed of Trust.
- (c) Falsity when made in any material respect of any representation, warranty, or information furnished by Grantor or its agents to Beneficiary in, or in connection with, the Note or this Deed of Trust.
- (d) The occurrence of any other default or event of default under the Note.
- (e) Any event of default by Baxter Auto Parts, Inc., an Oregon corporation ("Baxter"), under that certain promissory note between Baxter and Novak Parts Supply, Inc., an Oregon corporation, dated May 22, 2016.
- (f) The occurrence of any of the following with respect to Grantor, or the then-owner of the Property: (i) appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (ii) adjudication as a bankrupt or insolvent; (iii) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (iv) institution of any proceeding for dissolution or liquidation; (v) inability to pay debts when due; (vi) any general assignment for the benefit of creditors; or (vii) abandonment of the Property.
- (g) Failure of Grantor to pay any State Tax on or before the due date. For purposes of this Section, State Tax shall mean:
 - (i) A specific tax on mortgages, deeds of trust, or secured indebtedness by this Deed of Trust.
 - (ii) A specific tax on the grantor of property subject to a deed of trust

that the taxpayer is authorized or required to deduct from payments on the Deed of Trust.

- (iii) A tax on property chargeable against Beneficiary or Trustee under the Note or this Deed of Trust.
- (iv) A specific tax (other than an income tax or a gross receipts tax) on all or any portion payments of principal and interest made by Grantor.

If any State Tax is enacted after the date of this Deed of Trust applicable to this Deed of Trust, enactment of the State Tax shall constitute an event of default unless either of the following conditions are met: (A) Grantor lawfully pays the State Tax without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee; or (B) Grantor pays or agrees in writing to pay the State Tax within 30 days after notice from Beneficiary or Trustee that the State Tax has been enacted.

9. In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the Note secured by this Deed of Trust shall be paid to Beneficiary, to be held by Beneficiary as collateral to secure performance of Grantor's obligations owed under the Note. Subject to the other terms and conditions of this Deed of Trust, Grantor may elect either to restore or improve, or not to restore or improve, the remaining Property. Beneficiary shall pay or reimburse Grantor from the award paid to Beneficiary for any remaining unpaid reasonable costs incurred to complete restorations or improvements of the remaining Property, if the all of the following conditions are satisfied:

- (a) Beneficiary has, prior to the commencement of any restoration or improvement work, provided notice to Grantor in writing, which shall not be unreasonably withheld, of its determination that the award amount plus any additional funds deposited by Grantor with Beneficiary are adequate to complete a full restoration of the Property pursuant to plans and specifications approved by Beneficiary;
- (b) Grantor has repaired or replaced the damaged improvements in a manner reasonably satisfactory to Beneficiary, and provided proof of the performance of such work that is reasonably satisfactory to Beneficiary;
- (c) Grantor is not in default under the Note or this Deed of Trust; and
- (d) Grantor has already used all award amounts that were paid directly to Grantor for the purpose of restoring or improving the remaining Property.

After such restorations or improvements are completed, or if Grantor notifies Beneficiary in writing that, pursuant to its rights under this Deed of Trust, it elects not to restore or improve the Property, Beneficiary shall apply the proceeds not to be so used toward payment of all or part of the indebtedness secured by this Deed of Trust, as the case may be. Any award proceeds held by Beneficiary that have not been paid out to Grantor within one year after their

receipt for the repair or improvement of the Property shall forthwith be applied by Beneficiary toward payment of all or part of the indebtedness secured by this Deed of Trust, as the case may be.

10. By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

11. Trustee shall reconvey all or any part of the Property to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

12. Upon an Event of Default, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary subject to any cure period provided in the Note secured by this Deed of Trust, if any. In such event and upon written request of Beneficiary, Trustee shall sell the Property, in accordance with applicable Oregon law, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; and (3) the surplus, if any, shall be distributed to the persons entitled thereto.

13. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser all right, title and interest in the real and personal property which Grantor had or had the power to convey at the time of the execution of this Deed of Trust, and such as Grantor may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value.

14. The power of sale conferred by this Deed of Trust and by applicable Oregon law is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

15. In the event of the death, incapacity, disability, or resignation of Trustee, or at the discretion of the Beneficiary, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of an action or proceeding in which Grantor, Trustee, or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

16. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, and assigns. The term Beneficiary shall mean the holder and owner of the Note secured hereby, whether or not named as Beneficiary herein.

17. *ORS 93.040 Warning.* BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the Grantor has caused this Deed of Trust to be duly executed by its authorized representatives as of the date first written above.

GRANTOR:
MB Real Properties, LLC

By: *Lyle D. Moore*
Name: Lyle D. Moore
Title: Authorized Signatory

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this 15th day of October, 2018, by Lyle D. Moore as an Authorized Signatory of MB Real Properties, LLC



Kristina T. Marsh
Notary Public for Oregon
My commission expires : 11/1/19

Exhibit A

Legal Description

PARCEL 1: A piece or parcel of land in the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Commencing at the section corner marking the Northwest corner of said Section 3, Township 39 South, Range 9 East of the Willamette Meridian, and running thence South $0^{\circ} 00' 1/2''$ East along the Westerly boundary of the said Section 3, 826.8 feet, more or less, to its intersection with a line parallel with and 75 feet distant at right angles Northeasterly from the center line of The Dalles-California Highway, also known as South Sixth Street, as the same is now located and constructed; thence South $55^{\circ} 52' 1/2''$ East along said parallel line 1266.2 feet to the true point of beginning of this description; running thence South $55^{\circ} 52' 1/2''$ East 50 feet along said parallel line; thence North $34^{\circ} 07' 1/2''$ East 175 feet; thence North $55^{\circ} 52' 1/2''$ West 50 feet; thence South $34^{\circ} 07' 1/2''$ West 175 feet to the said point of beginning.

PARCEL 2: A tract of land situated in the SW1/4 of the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Commencing at the Northwest corner of said Section 3; thence South $00^{\circ} 00' 1/2''$ East along the Westerly boundary of said Section 3, 826.8 feet, more or less, to its intersection with a line parallel with and 75.0 feet distant from, at right angles Northeasterly from the center line of the Klamath Falls-Lakeview Highway, also known as South Sixth Street as the same is now located and constructed, said parallel line being the Northerly right of way line of said Highway; thence South $55^{\circ} 52' 1/2''$ East along said right of way line 1216.2 feet, more or less, to an iron peg marking the true beginning point of this description, for which a cross chiseled in the concrete sidewalk for a witness mark by the Oregon State Highway Commission on July 15, 1947, bears South $34^{\circ} 07' 1/2''$ West 10.0 feet; said beginning point also marks the center line of the party wall between the lands of Swan Lake Moulding Company and Frank P. Drew covered by party wall agreement dated June 1, 1948 and filed January 25, 1949 in Volume 228, page 196, Deed Records of Klamath County, Oregon, and further covered by extended party wall agreement dated August 26, 1968 in Volume M68, page 7816, Deed Records of Klamath County, Oregon; running thence at right angles to said Sixth Street North $34^{\circ} 07' 1/2''$ East following center line of said party wall and its extension 175.0 feet to an iron pin set in the Southwesterly boundary of the County Road known as Pershing Way; thence South $55^{\circ} 55' 1/2''$ East 50.0 feet along said Southwesterly boundary to an iron peg marking the boundary between the lands of the Novak Parts Supply Inc. and Swan Lake Moulding Company; thence South $34^{\circ} 07' 1/2''$ West 175.0 feet along said boundary to an iron peg in the Northerly right of way boundary of South Sixth Street, from which the cross chiseled in the concrete sidewalk for a witness mark by the O. S. H. C. bears South $34^{\circ} 07' 1/2''$ West 10.0 feet; thence from said iron peg North $55^{\circ} 52' 1/2''$ West along said boundary 50.0 feet to the place of beginning.

Klamath County, Oregon Tax Lots: R-3909-003BC-00500-000 and R-3909-003BC-00400-000.