



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301
 (503) 986-0900
 www.wrd.state.or.us

RECEIVED Application for a Permit to
FEB 24 2020 **Store Water**
OWRD **in a Reservoir**
 (Alternate Review)

Alternate Review Process (ORS 537.409): You may use this form for any reservoir storing less than 9.2 acre-feet or with a dam less than 10 feet high.

Use a separate form for each reservoir

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply, insert "n/a". A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

1. APPLICANT INFORMATION

Applicant: Tyler Rolen
First Last
 Mailing Address: 4635 Thompson Creek Rd
Jacksonville OR 97530
City State Zip
 Phone: 541 531 9597
Home Work Other
 Fax: _____ E-Mail Address*: rolenstonefarms@gmail.com
 * By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

2. AGENT INFORMATION

The agent is authorized to represent the applicant in all matters relating to this application.

Agent: Taurie Rubaloff
First Last
 Mailing Address: 4635 Thompson Creek Rd
Jacksonville OR 97530
City State Zip
 Phone: 541 816 9999
Home Work Other
 Fax: _____ E-Mail Address*: Taurie@rolenstonefarms.com
 * By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

3. LOCATION AND SOURCE

A. Reservoir Name: N/A
 B. Source: Provide the name of the water body or other source from which water will be diverted, and the name of the stream or lake it flows into. Indicate if source is run-off, seepage, or an unnamed stream or spring.
 Source: Spring Tributary to: Thompson Creek
 C. County in which diversion occurs: Jackson

App. No. <u>R-00011</u>	For Department Use	Permit No. _____	Date _____
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D. Reservoir Location

Township (N or S)	Range (E or W)	Section	quarter/quarter	tax lot number
N	W	8		300

E. Dam: Maximum height of dam: 1 feet. If excavated, write "zero feet".

F. Quantity: Amount of water to be stored in the reservoir at maximum capacity. List volume in acre-feet: 1.30

Acre-feet = $\frac{\text{Average Length} \times \text{Average Width} \times \text{Average Depth}}{43,560}$
 $\frac{90 \times 43,560 \times 7}{43,560}$

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4. WATER USE

Indicate the proposed use(s) of the stored water. **NOTE: You may wish to consider filing for "Multipurpose use" for your reservoir. Multipurpose use does not limit the types of future uses for the stored water. Multipurpose covers all uses including: stockwater, fish and wildlife, aesthetics, domestic, irrigation, agriculture, fire protection and pollution abatement.** If any use will be out of reservoir use, regardless of the type of storage listed, a secondary application must be filed to appropriate the stored water.

Multipurpose: Mainly for irrigation use and agriculture use during winter season and mountain irrigation water is not accessible

5. PROPERTY OWNERSHIP

Please provide a copy of the recorded deed(s).

Do you own all the land where you propose to divert, transport, and use water?

Yes (please check appropriate box below then skip to section 5)

There are no encumbrances

This land is encumbered by easements, right of way, roads of way, roads or other encumbrances

No (Please check the appropriate box below)

I have a recorded easement or written authorization permitting access.

I do not currently have written authorization or easement permitting access.

Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigated and/or domestic use only (ORS 274.040).

(Do not check this box if you described your use as "Multipurpose" in #3 above.)

List the names and mailing addresses of all affected landowners:

6. ENVIRONMENTAL IMPACT

- A. **Channel:** Is the reservoir: in-stream or off channel?
- B. **Wetland:** Is the project in a wetland? Yes No Don't know
- C. **Existing:** Is this an existing reservoir? Yes No
If yes, how long has it been in place? 15+ years.
- D. **Fish Habitat:** Is there fish habitat upstream of the proposed structure? Yes No Don't know
If yes, how much? _____ miles.
- E. **Partnerships:** Have you been working with other agencies? Yes No
Indicate agency, staff and phone numbers of those involved. Also indicate any agencies that are cost sharing in this project.

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7. WITHIN A DISTRICT

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

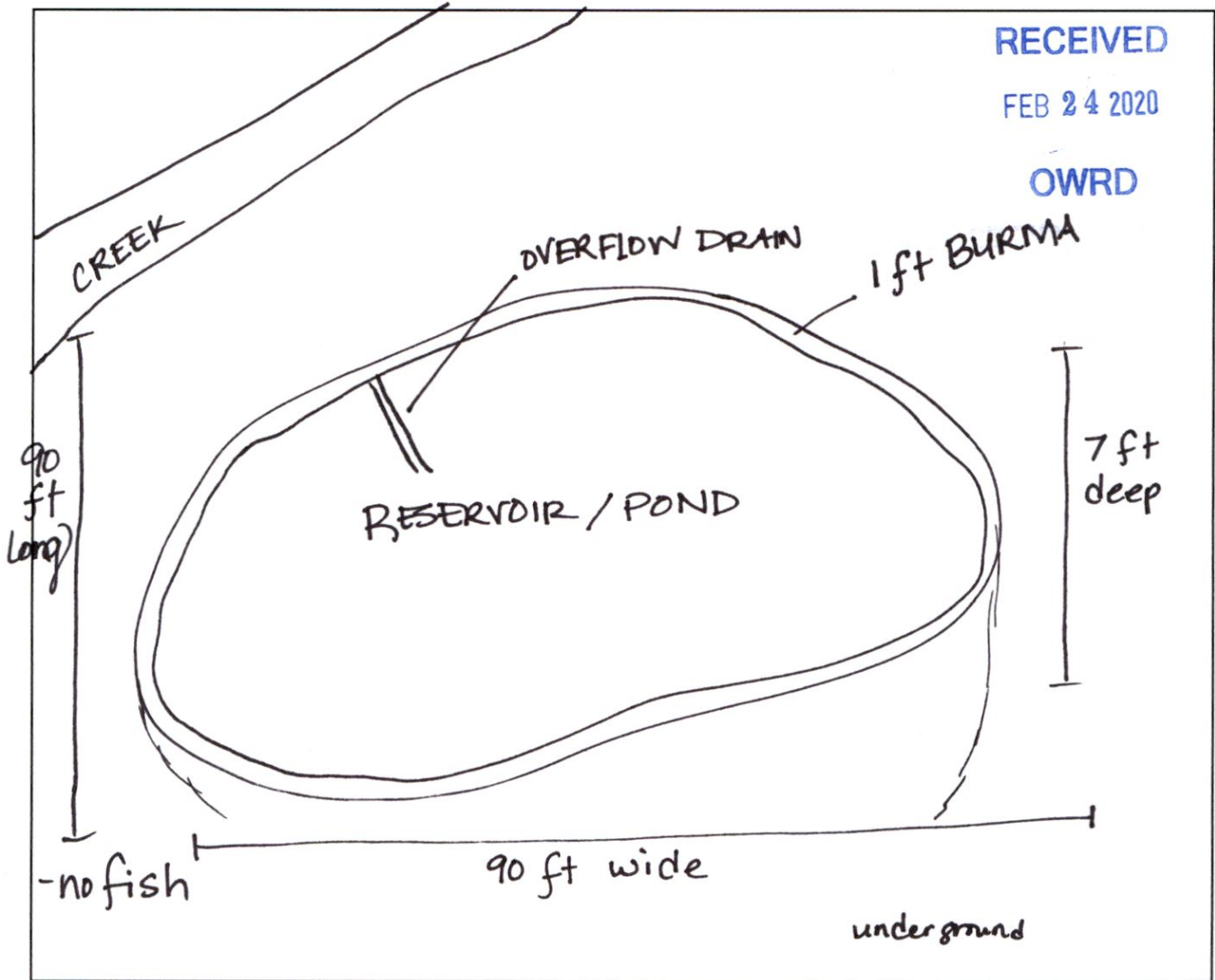
Irrigation District Name	Address	
City	State	Zip

8. DESCRIPTION

Provide a description of the design and operation of the proposed diversion, including a description of how live flow will be passed outside the authorized storage season. Use this space for narrative. You may also provide narrative and sketches on separate pages.

Pump water from CREEK to POND for Storage and then connected to water tank.

If the diversion involves a dam, use this space for sketches of the diversion (e.g. cross-section of the dam with its dimensions, dimension and placement of outlet pipe, means of passing live flow outside of the authorized storage season, and means for providing fish passage).



9. SIGNATURE

I swear that all statements made and information provided in this application are true and correct to the best of my knowledge.

[Handwritten Signature]
Applicant Signature

Feb 5, 2020
Date

Before you submit your application be sure you have:

- Answered each question completely.
- Included a legible map that includes Township, Range, Section, quarter-quarter and tax lot number.
- The map must meet map requirements to be accepted.
- Included a land use form or receipt stub signed by a local planning official.
- Included a check payable to Oregon Water Resources Department for the appropriate amount.

WATERMASTER ALTERNATE RESERVOIR APPLICATION REVIEW SHEET

Recommendations for Water Right Applications under the Alternate Reservoir review process (ORS 537.409)

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the department provides public notice...any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

The review of alternate reservoirs is limited to these criteria only.

Application #: R-

Applicant's Name:

Tyler Rolan

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1) Does the proposed reservoir have the potential to injure existing water rights?

NO

YES

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Explain:

Thompson Creek has ISWR under C-59825 that is often not met during period of use

2) Can conditions be applied to mitigate the potential injury to existing water rights?

NO

YES

If YES, which conditions are recommended:

can't fill Pond unless ISWR is met.
diversion from Thompson Creek needs to be met

3) Did you meet with staff from another agency to discuss this application?

NO

YES

Who:

Agency:

Date:

Who:

Agency:

Date:

Watermaster printed name:

Sharon Haynes

Watermaster signature:

Date:

2/4/2020

WRD Contact:

Caseworker:

Water Rights Division, 503-986-0900 / Fax 503-986-0901

NOTE: This completed form must be returned to the applicant

Land Use Information Form



725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

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Applicant: Tyler First

Rolen Last

Mailing Address: 4635 Thompson Creek Rd

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Jacksonville City

OR State

97530 Zip

Daytime Phone: 5415319597

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
39	4W	8		300		<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Jackson County
Jacksonville

B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water
 Water Right Transfer
 Permit Amendment or Ground Water Registration Modification
 Limited Water Use License
 Allocation of Conserved Water
 Exchange of Water

Source of water: Reservoir/Pond Ground Water Surface Water (name)

Estimated quantity of water needed: 3 acre-feet/month for off season irrigation Nov-March
 cubic feet per second gallons per minute acre-feet

Intended use of water: Irrigation Commercial Industrial Domestic for _____ household(s)
 Municipal Quasi-Municipal Instream Other _____

Briefly describe:

Goal = water use rights to POND. Ultimately end goal is to pump Creek water (under water rights currently) to pond for storage to use outside irrigation months (winter)

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

For Local Government Use Only

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The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

Please check the appropriate box below and provide the requested information

- Land uses to be served by the proposed water uses (including proposed construction) are allowed ^{and} ~~outright~~ or are ~~not~~ regulated by your comprehensive plan. Cite applicable ordinance section(s): 4.3-1.
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
<u>439-16-00667-7on</u>	<u>4.3-1, 3.13</u>	<input checked="" type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

no work in Floodplain authorized F.H.

Name: Francisco M. Hernandez Title: Planner III
 Signature: [Signature] Phone: 541-774-6903 Date: 12-10-19
 Government Entity: Jackson County

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____
 City or County: _____ Staff contact: _____
 Signature: _____ Phone: _____ Date: _____

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JACKSON COUNTY ZONING INFORMATION SHEET

DEVELOPMENT SERVICES
Planning Division
10 South Oakdale Ave., Room 100
Medford, OR 97501-2902
Phone: 541-774-6907
Fax: 541-774-6791

ZONING: Exclusive Farm Use

RECORD #: 439-18-00193-ZON

ADDRESS: 4635 THOMPSON CR RD

PRINT DATE: 12/10/2019

PRIMARY PARCEL #: 39-4W-08-300

LAST UPDATED: 01/31/2018

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ASSOCIATED LOTS:

FEB 24 2020

<u>Owners</u>	<u>Record Detail Description</u>
MANKINS RONALD M/WENDY S 4670 THOMPSON CREEK RD APPLEGATE, OR 97530	ZIS Grading at House

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<u>Primary Contact</u>	<u>Contact Type</u>
Newman, Newman 4670 THOMPSON CREEK RD APPLEGATE, OR 97530	Applicant

GENERAL ZIS INFORMATION:

<u>STAFF</u>	<u>DATE</u>	<u>COMMENTS</u>
WILLIASM	01/31/2018	01/31/2018: Proposal is to obtain permit for grading work done around house. TN confirmed work is outside the FP and does not need a FP Development Permit. Ok for grading permit sw

12/10/2019: UPDATED GRADING PLANS SUBMITTED. WORK IN FIELD DOES NOT MATCH PLANS ORIGINALLY SUBMITTED. CONCURRENT LAND USE/FP PERMIT MAY BE REQUIRED. GRADING PLANS STAMPED IN ORDER TO SUBMIT TO BUILDING. TRACIE AND SUMMER WILL NEED TO REVIEW THE UPDATED PLANS OFF-COUNTER BEFORE ISSUANCE. FH

OVERLAY DETAILS:

<u>Applicable Overlay</u>	<u>Comments</u>
Floodplain 100 Year Wildfire Hazard Area	FD #9

STRUCTURE / SIZE DETAILS:

<u>Item</u>	<u>Units</u>	<u>Proposed Size</u>	<u>Approved Size</u>	<u>Comments</u>
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HEIGHT / LOCATION DETAILS:

<u>Items</u>	<u>Distance</u>	<u>Direction</u>	<u>Approved Height</u>	<u>Comments</u>
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THIS DOCUMENT IS FOR INFORMATION PURPOSES ONLY!
THIS IS NOT A LAND USE PERMIT

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<u>Condition</u>	<u>Hold Level</u>	<u>Status</u>
Counter Consultation Fee Due ZIS fee must be paid prior to issuance of any permits applicable to this case. * Under circumstances where the approved use and/or structure is found to be exempt from building permits, all outstanding ZIS fees must be paid prior to initiating the approved use and/or prior to initiating construction of said structure.		Met
Plan Approval All plans must be reviewed and approved by planning staff prior to authorization of permits.		Met
Plot Plan PRIOR TO PERMITS An accurate plot plan must be submitted for review by Development Services on either standard 8.5" x 11" or legal 8.5" x 14" size paper. The plot plan must accurately depict the boundaries of the parcel. It must be accurately drawn to a base 10-foot scale (e.g. 1" = 60'). All improvements on the property must be shown on the plot plan with labels and distances to the property lines. (LDO Sections 3.4.2A; 6.2.1A; 12.2.3)		Met

Assigned Staff:

**RECORDING COVER SHEET
ORS 205.234**

This cover sheet has been prepared by the person presenting the attached instrument for recording. Any error in this cover sheet DOES NOT affect the transaction(s) contained in the instrument itself.

Jackson County Official Records **2017-040126**
R-TAF
Stn=0 MORGANSS 11/28/2017 02:04:08 PM
\$100.00 \$10.00 \$5.00 \$8.00 \$11.00 **\$158.00**
\$20.00 \$4.00
I, Christine Walker, County Clerk for Jackson County, Oregon, certify
that the instrument identified herein was recorded in the Clerk
records.
Christine Walker - County Clerk

- A. AFTER RECORDING RETURN TO -**
required by ORS 205.180(4) & 205.238:

Olga Groat
Southwest Portland Law Group, LLC
8235 SW Oleson Road, Suite C
Portland, OR 97223

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- B. TITLE(S) OF THE TRANSACTION(S) -** required by ORS 205.234(1)(a)
Note: "Transaction" means any action required or permitted by law to be recorded, including, but not limited to, any transfer, encumbrance or release affecting title to or an interest in real property. Enter descriptive title for the instrument:
TRUST DEED, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING

- C. DIRECT PARTY / GRANTOR -** required by ORS 205.234(1)(b)
Tyler Rolan

- D. INDIRECT PARTY / GRANTEE -** required by ORS 205.234(1)(b)
Cliff Arnold and Cameron Chad Arnold, individuals.

- E. For an instrument conveying or contracting to convey fee title, the information required by ORS 93.260:**

**UNTIL A CHANGE IS REQUESTED,
ALL TAX STATEMENTS SHALL BE
SENT TO THE FOLLOWING
ADDRESS:**

Tyler Rolan
4635 Thompson Creek Road
Applegate, Oregon 97530

- F. TRUE AND ACTUAL CONSIDERATION**
- required by ORS 93.030 for instrument conveying or contracting to convey fee title or any memorandum of such instrument:

N/A (Deed of Trust)
Secured amount is \$500,000.00

- G. TAX ACCOUNT NUMBER OF THE PROPERTY, IF THE INSTRUMENT CREATES A LIEN OR OTHER INTEREST THAT COULD BE SUBJECT TO TAX FORECLOSURE -** required by ORS 312.125(4)(b)(B):
Tax Account Numbers 1-031167-9 and 1-078117-8

After Recording, Return to:
Olga Groat
Southwest Portland Law Group, LLC
8235 SW Oleson Road, Suite C
Portland, OR 97223

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

This TRUST DEED, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made on November 21, 2017, by **Tyler Rolan**, an individual whose address is 4635 Thompson Creek Road, Applegate, Oregon 97530 ("Grantor"), to **First American Title Company of Oregon**, whose address is 1225 Crater Lake Avenue, Suite 101, Medford, OR 97504 ("Trustee"), for the benefit of **Cliff Arnold**, an individual, and **Cameron Chad Arnold**, an individual, whose address is 2832 CR 3311, Greenville, TX 75402 ("Beneficiary").

WHEREAS Beneficiary has offered to make a loan to Grantor in the sum of \$500,000 that is to be evidenced by a Promissory Note of even date with this Trust Deed and that, if not sooner paid, is due and payable in full on December 1, 2020 (the promissory note as modified, supplemented, extended, renewed, or replaced from time to time is referred to below as the "Note"); and

WHEREAS, as a condition to the making of the loan to Grantor, Beneficiary has required, and Grantor has agreed to execute and deliver, this Trust Deed;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations described in section 1.1 below, Grantor irrevocably grants, bargains, sells, conveys, assigns, and transfers to Trustee in trust for the benefit and security of Beneficiary, with power of sale and right of entry and possession, all of Grantor's right, title, and interest in and to the real property located in Jackson County, Oregon, and more particularly described in Exhibit A attached to this Trust Deed and incorporated in it (the "Property");

TOGETHER WITH all interests, estates, including leasehold estates, and rights that Grantor now has or may acquire in (1) the Property, (2) any and all options, agreements, and contracts for the purchase or sale of all or any part or parts of the Property or interests in the Property and all proceeds of them, (3) all easements, rights-of-way, and rights used in connection with the Property or as a means of access to the Property, and (4) all tenements, hereditaments, and appurtenances in any manner belonging, relating, or appertaining to the Property;

TOGETHER WITH 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 gores adjacent to or used in connection with them;

TOGETHER WITH all rights, titles, and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures, machinery, equipment, and other personal property located on the 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 Property (all of the foregoing being collectively referred to below as the "Improvements");

TOGETHER WITH any and all mineral rights, 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 Property or the Improvements or both, and any of their proceeds;

TOGETHER WITH all present and future rights in and to the trade name by which all or any portion of the Property and the Improvements are known; all books and records relating to the use and operation of all or any portion of the Property and Improvements; all right, title, and interest of Grantor in, to, and under all present and future plans, specifications, and contracts relating to the design, construction, management, or inspection of any Improvements; all rights, titles, and interests of Grantor 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 Property to the extent that the trade names, licenses, permits, approvals, and agreements are assignable by law; and all other general intangibles relating to the Property, the Improvements, or their use and operation;

TOGETHER WITH all rights of Grantor in and to any escrow agreements, title insurance, surety bonds, warranties, management contracts, construction contracts, leasing and sales agreements, and service contracts that are in any way relevant to the ownership, development, improvement, management, construction, sale, or use of all or any portion of the Property or any of the Improvements;

TOGETHER WITH Grantor's rights under any payment, performance, or other bond in connection with the construction of any Improvements, and all construction materials, supplies, equipment, and other personal property delivered to the Property or intended to be used in connection with the construction of any Improvements;

TOGETHER WITH 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 Property 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 Property or the Improvements, and any and all awards resulting from any other damage to the Property or the Improvements.

All of the above is sometimes referred to below as the "Trust Property."

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, forever.

PROVIDED ALWAYS that if all the Obligations (as defined in section 1.1 below) are paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed will be reconveyed.

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

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

ARTICLE I
PARTICULAR COVENANTS AND WARRANTIES OF GRANTOR

1.1 Obligations Secured. This Trust Deed secures the following, collectively referred to as the "Obligations":

(1) The payment of all indebtedness, including but not limited to principal and interest, and the performance of all covenants and obligations of Grantor, under the Note, whether such payment and performance is now due or becomes due in the future;

(2) The payment and performance of all covenants and obligations in this Trust Deed, in the other Loan Documents, and in all other security agreements, notes, agreements, and undertakings now existing or hereafter executed by Grantor with or for the benefit of Beneficiary; and

(3) The payment and performance of any and all other indebtedness and obligations of Grantor to Beneficiary of any nature whatsoever, whether direct or indirect, primary or secondary, joint or several, liquidated or unliquidated, whenever and however arising, and whether or not reflected in a written agreement or instrument.

This Trust Deed does not secure payment of any guaranty of the Note given by a third party nor does it secure that certain Environmental Indemnity Agreement executed by Grantor in favor of Beneficiary.

1.2 Payment of Indebtedness and Performance of Covenants. Grantor will duly and punctually pay and perform all the Obligations.

1.3 Property. Grantor warrants that it holds good and merchantable title to the Property and the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except for those specifically listed in Exhibit B. Grantor covenants that it will forever defend Beneficiary's and Trustee's rights under this Trust Deed against the adverse claims and demands of all persons.

1.4 Further Assurances, Filing, Refiling, Etc.

(1) Grantor 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.

(2) Immediately on the execution and delivery of this Trust Deed, and thereafter from time to time, Grantor will cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust, and each instrument of further assurance to be recorded and rerecorded in the manner and in the places that may be required by any present or future law to perfect, and continue perfected, the lien and estate of this Trust Deed.

(3) Grantor will pay all filing and recording fees, and all expenses incident to the execution, filing, recording, and acknowledgment of this Trust Deed or any security agreement, mortgage, or deed of trust supplemental to this Trust Deed and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments, and charges arising out of or in connection with the execution, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust, and any instrument of further assurance.

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1.5 Compliance with Laws. Grantor further represents, warrants, and covenants that:

(1) The Property, if developed, has been developed, and all Improvements, if any, have been constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments (collectively, "Laws"), and all private covenants, conditions, easements, and restrictions affecting the Property (collectively, "Covenants"); and

(2) Grantor will cause the Property and its operations on the Property to comply at all times hereafter, in all material respects, with all applicable Laws and Covenants.

1.6 Definitions, Environmental Covenants, Warranties, and Compliance.

(1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances (as defined below), health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 USC §§ 9601-9675) and the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 USC §§ 6901-6992k).

(2) For purposes of this section, "Hazardous Substance" includes without limitation any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.

(3) Grantor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for any Hazardous Substances that may be used in the ordinary course of Grantor's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and recordkeeping.

(4) Grantor will keep and maintain the Property in compliance with all Environmental Laws, and will not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.

(5) Grantor will give prompt written notice to Beneficiary of:

(a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;

(b) All known claims made or threatened by any person against Grantor or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;

(c) The existence of any Hazardous Substance on or about all or any portion of the Property;
or

(d) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Grantor's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.

(6) Grantor will promptly provide to Beneficiary copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. Beneficiary will have the rights to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and to have its attorney fees in connection with such an action paid by Grantor, if Beneficiary determines that such participation is reasonably necessary to protect its interest in the Trust Property.

(7) If at any time Beneficiary has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements has occurred or is threatened, or if Beneficiary has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, Beneficiary may require Grantor to obtain or may itself obtain, at Grantor's expense, an environmental assessment of that condition or threatened condition by a qualified environmental consultant. Grantor will promptly provide to Beneficiary a complete copy of any environmental assessment obtained by Grantor.

(8) If any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, by any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release, or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether currently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Grantor will, within 30 days after written demand by Beneficiary for Grantor's performance under this provision (or shorter period of time as required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion the Remedial Work. Grantor will pay all costs and expenses of that Remedial Work, including without limitation Beneficiary's reasonable attorney fees and costs incurred in connection with monitoring or reviewing the legal aspects of the Remedial Work. If Grantor fails to timely commence, or cause to be commenced, the Remedial Work, Beneficiary may, but will not be required to, cause the Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work will become part of the Obligations secured by this Trust Deed and will bear interest until paid at the rate provided in the Note.

(9) Grantor represents and warrants to Beneficiary that:

(a) Neither the Property nor Grantor is in violation of or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.

(b) Grantor has not obtained and is not required by any Environmental Law to obtain any permit or license other than those that it has obtained to construct or use the Improvements.

(c) To the best of Grantor's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.

(d) Grantor will hold Beneficiary and its directors, officers, employees, agents, successors, and assigns harmless from, will indemnify them for, and will defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Grantor's warranties in this section 1.6, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without

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limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial, or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

1.7 Maintenance and Improvements. Grantor will not permit all or any part of the Improvements to be removed, demolished, or materially altered without Beneficiary's prior written consent, except for those Improvements that become obsolete in the usual conduct of Grantor's business and as long as the removal or material alteration of the obsolete Improvements does not materially detract from the operation of Grantor's business and as long as all obsolete Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Grantor will maintain every portion of the Property and Improvements in good repair, working order, and condition, and will at Beneficiary's election restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in section 1.16 below). Grantor will not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property.

1.8 Liens. Grantor will pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Grantor will not create or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance on the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in Exhibit B.

1.9 Impositions.

(1) Grantor will pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and other governmental and nongovernmental charges of every nature now or hereafter assessed or levied against any part of the Trust Property (including without limitation levies or charges resulting from Covenants), or on the lien or estate of Beneficiary or Trustee (collectively, the "Impositions"). But if by law any Imposition may be paid in installments, whether or not interest will accrue on the unpaid balance, Grantor may pay the same in installments, together with accrued interest on the unpaid balance, as they become due, before any fine, penalty, interest, or cost attaches.

(2) Grantor may, at its expense and after prior notice to Beneficiary, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence the amount, validity, or application, in whole or in part, of any Imposition or lien on the Trust Property or any claim of any laborer, materialman, supplier, or vendor or lienholder, and may withhold payment pending completion of the proceedings if permitted by law, provided that (a) the proceedings will suspend enforcement against the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Grantor pays the amount or satisfies the condition being contested, and Grantor would have the opportunity to do so if Grantor failed to prevail in the contest; (c) neither Beneficiary nor Trustee will, by virtue of the permitted contest, be exposed to any risk of liability for which Grantor has not furnished additional security as provided in clause (d) below; and (d) Grantor furnishes to Beneficiary cash, corporate surety bond, or other additional security in respect of the claim being contested or the loss or damage that may result from Grantor's failure to prevail in the contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Grantor will promptly satisfy any final judgment.

(3) Grantor 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 Books and Records and Inspection of the Property. Grantor will keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied. Grantor will permit Trustee, Beneficiary, and their authorized representatives to enter and inspect and appraise the Property and the Improvements, and to examine and make copies or extracts of Grantor's records and books of account with respect to the Property and the Improvements, all at any reasonable times that Beneficiary or Trustee may choose.

1.11 Limitations on Use. Grantor will not initiate, join in, or consent to any rezoning, partitioning, subdividing, property-line readjustment, or replatting of the Property or any change in any covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of Beneficiary.

1.12 Insurance.

(1) *Property and Other Insurance.* Grantor will obtain and maintain in full force and effect during the term of this Trust Deed: (a) Special Form property insurance together with endorsements for replacement-cost, inflation-adjustment, malicious-mischief, and sprinkler-damage coverages, all in amounts not less than the full replacement cost of all Improvements, without reduction for coinsurance; (b) commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to Beneficiary, and in no event less than \$1,000,000 combined single-limit coverage; and (c) unless Beneficiary otherwise agrees in writing, rent-loss or business-interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property. In addition, Grantor will obtain and maintain all other insurance coverages designated by Beneficiary that at the time are commonly carried for similar property, in any amounts that Beneficiary may require.

(2) *Insurance Companies and Policies.* All insurance must (a) be written by a company or companies reasonably acceptable to Beneficiary with a rating of A-, VIII, or better as provided in *Best's Key Rating Guide—Property/Casualty*; (b) contain a long-form mortgagee clause in favor of Beneficiary with loss proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary or as provided in section 5.10 below; (c) require 30 days' prior written notice to Beneficiary of cancellation or reduction in coverage; (d) contain waivers of subrogation and endorsements that no act or negligence of Grantor or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy, will affect the validity or enforceability of the insurance as against Beneficiary; (e) be in full force and effect on the date of this Trust Deed; and (f) be accompanied by proof of premiums paid for the current policy period. Beneficiary must be named as an additional insured on all liability policies. Grantor will forward to Beneficiary, on request, certificates executed by the insurer or its agent evidencing the coverages required under this Trust Deed and copies of all policies. If a blanket policy is issued, a certified copy of the policy must be furnished together with a certificate indicating that the Trust Property and Beneficiary are insured under that policy in the proper designated amount.

(3) *Assignments of Policies on Foreclosure.* In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Grantor in and to all policies of insurance procured under section 1.12 will inure to the benefit of and pass to the successors in interest of Grantor or the purchaser or grantee of all or any part of the Trust

Property.

(4) *Notice and Proof of Loss.* After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Grantor will give prompt written notice of the casualty to Beneficiary, specifically describing the nature and cause of the casualty and the extent of the damage to or destruction of the Trust Property. Beneficiary may make proof of loss if it is not made promptly and to Beneficiary's satisfaction by Grantor.

(5) *Restoration and Use of Proceeds.* Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in section 5.10 below, Grantor assigns to Beneficiary all insurance proceeds that Grantor may be entitled to receive with respect to any casualty. Beneficiary may, at its sole option, apply the insurance proceeds to the reduction of the Obligations in any order that Beneficiary may determine, whether or not the Obligations are then due, or allow all or any portion of the insurance proceeds to be applied by Grantor to the cost of restoring and rebuilding the portion of the Trust Property that was damaged or destroyed. If Beneficiary elects to apply the insurance proceeds to rebuilding and restoration, Beneficiary will be entitled to hold the proceeds, and the proceeds will be released only on the terms and conditions that Beneficiary may require in its sole discretion, including but not limited to prior approval of plans and release or waiver of construction liens. No proceeds will be released if Grantor is in default under this Trust Deed.

1.13 Actions to Protect Trust Property; Reserves.

(1) If Grantor fails to obtain the insurance required by section 1.12, fails to make the payments required by section 1.9 (other than payments that Grantor is contesting in accordance with section 1.9(2)), or fails to perform or observe any of its other covenants or agreements under this Trust Deed, Beneficiary may, without obligation to do so, obtain or pay them or take other action that 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, or to recover any indebtedness secured by this Trust Deed, will be a lien on the Trust Property, will be secured by this Trust Deed, and will be paid by Grantor on demand, together with interest 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 default. The following notice is provided in accordance with ORS 746.201(1):

WARNING:

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

Grantor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to Grantor's loan balance. If the cost is added to Grantor's loan balance, the interest rate on the underlying loan will apply to this added amount. The effective date of coverage may be the date on which Grantor's prior coverage lapsed or the date on which Grantor failed to provide proof of coverage.

The coverage that Beneficiary purchases may be considerably more expensive than insurance that

Grantor 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 Grantor fails to promptly perform any of its Obligations under section 1.9 or 1.12 of this Trust Deed, Beneficiary may require Grantor thereafter to pay and maintain with Beneficiary reserves for payment of the Obligations. In that event, Grantor 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 and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Grantor will pay any deficiency to Beneficiary on demand. The reserves may be commingled with Beneficiary's other funds, and Beneficiary will not be required to pay interest to Grantor on those reserves. Beneficiary will not hold the reserve in trust for Grantor, and Beneficiary will not be the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

1.14 Estoppel Certificates. Within five days of Beneficiary's request, Grantor will give 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. If Grantor fails to provide this statement within the time allowed, Beneficiary will be authorized, as Grantor's attorney-in-fact, to execute and deliver the statement. Upon request, Grantor will also use its best efforts to obtain and deliver to Beneficiary a written certificate from each lessee of all or any portion of the Property that its lease is in effect, that there are no defaults by the lessor under the lease, and that rent is not paid more than 30 days in advance.

1.15 Financial Information. Within 90 days after the end of each of Grantor's fiscal years, Grantor will give Beneficiary a complete copy of Grantor's financial statement for the year, audited or reviewed by a certified public accountant (including balance sheet, income statement, and statement of changes in financial position). Grantor will promptly provide to Beneficiary any and all other financial information that Beneficiary may reasonably request from time to time.

1.16 Condemnation.

(1) If any part of or interest in the Trust Property is taken or damaged by reason of any public-improvement, eminent-domain, or condemnation proceeding, or in any similar manner (a "Condemnation"), or if Grantor receives any notice or other information regarding such an action, Grantor will give immediate notice of the action to Beneficiary.

(2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in section 5.10 below, Beneficiary will be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and will be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Grantor's name and make any compromise or settlement in connection with the Condemnation. If the Trust Property is taken in its entirety by Condemnation, all Obligations secured by this Trust Deed, at Beneficiary's election, will become immediately due and collectible.

(3) Beneficiary may, at its sole option, apply the Condemnation Proceeds to the reduction of the Obligations in any order that Beneficiary may determine, or allow all or any portion of the Condemnation Proceeds to be applied by Grantor to the cost of restoring the remaining Trust Property. If Beneficiary elects to apply the Condemnation Proceeds to restoration, the proceeds will be held by Beneficiary and will be released only on any terms and conditions that Beneficiary may require in its sole discretion, including but not limited to prior approval of plans and release or waiver of liens. No

Condemnation Proceeds will be released if Grantor is in default under this Trust Deed. Any Condemnation Proceeds remaining after restoration of the Improvements will be applied to reduce the Obligations in the order that Beneficiary determines.

ARTICLE II ASSIGNMENT OF LEASES, RENTS, ISSUES, AND PROFITS

2.1 Assignment. Grantor assigns and transfers to Beneficiary (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals of them (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion of the Trust Property, including but not limited to lease and security deposits (collectively, the "Rents"). This assignment is intended by Grantor and Beneficiary to create a present and unconditional assignment to Beneficiary, subject only to the license set forth in section 2.4 below.

2.2 Rights of Beneficiary. Subject to the provisions of section 2.4 below giving Grantor a revocable, limited license, Beneficiary has the right, power, and authority to:

(1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not Beneficiary has taken possession of the Trust Property;

(2) Discount, settle, compromise, release, or extend the time for payment of any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to Beneficiary;

(3) Collect and enforce payment of Rents and all provisions of the Leases, and prosecute any action or proceeding, in the name of Grantor or Beneficiary, with respect to any and all Leases and Rents; and

(4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

2.3 Application of Receipts. Beneficiary has the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of Beneficiary, and in collecting any Rents, and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection with it, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses, and after Beneficiary has set up any reserves that it deems necessary in its sole discretion for the proper management of the Trust Property, Beneficiary will apply all remaining Rents collected and received by it to the reduction of the Obligations in any order that Beneficiary may determine. Beneficiary's exercise of or failure to exercise any of the rights or powers granted in this assignment will not constitute a waiver of default by Grantor under this Trust Deed, the Note, or any of the other Loan Documents.

2.4 License. Beneficiary hereby grants to Grantor a revocable license to collect and receive the Rents. This license may be revoked by Beneficiary, without notice to Grantor, on the occurrence of any

event of default under this Trust Deed, including any default by Grantor of its covenants in this article II. Unless and until the license is revoked, Grantor agrees to apply the proceeds of Rents to the payment of the Obligations and to the payment of taxes, assessments, governmental charges, insurance premiums, and other obligations in connection with the Trust Property, and to the maintenance of the Trust Property, before using the proceeds for any other purpose.

2.5 Covenants Regarding Leases. Grantor agrees (1) to observe and perform every obligation of Grantor under the Leases, (2) to enforce or secure at its expense the performance of every obligation to be performed by any lessee or other party under the Leases,

(3) to promptly give notice to Beneficiary of any default by a lessee or other party under any of the Leases, and promptly provide Beneficiary with a copy of any notice of default given to the lessee or other party, (4) not to collect any Rents more than 30 days in advance of the time when they become due, or anticipate any other payments under the Leases, except for bona fide security deposits not in excess of an amount equal to two months' rent, (5) not to further assign or hypothecate any of the Leases or Rents, (6) except with Beneficiary's prior written consent, not to waive, release, or in any other manner discharge any lessee or other party from any of its obligations under any of the Leases, (7) except with Beneficiary's prior written consent, not to modify or amend any of the Leases, (8) except with Beneficiary's prior written consent, not to cancel, terminate, or accept surrender of any of the Leases unless Grantor has entered into a Lease for the space to be vacated on terms at least as favorable to Grantor, commencing within 30 days after the cancellation, termination, or surrender, (9) except with Beneficiary's prior written approval, not to enter into any future Lease or any modifications of any present or future Lease, (10) to deliver copies of all present and future Leases to Beneficiary promptly, and (11) to appear in and defend, at Grantor's sole cost and expense, any action or proceeding arising out of or in connection with the Leases or the Rents.

2.6 Tenant's Bankruptcy. If any Lease is rejected in any proceeding under the federal Bankruptcy Code or any other federal, state, or local statute, no damage settlement may be made without the prior written consent of Beneficiary. Grantor will request that any check in payment of damages for rejection or termination of such a Lease will be made payable to both Grantor and Beneficiary. Grantor hereby assigns any such payment to Beneficiary.

2.7 Limitation of Beneficiary's Obligations. Notwithstanding the assignment provided for in this article II, Beneficiary is not obligated to perform or discharge, and Beneficiary does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment does not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property on Beneficiary, or to make Beneficiary responsible for any condition of the Property. Beneficiary is accountable to Grantor only for the sums actually collected and received by Beneficiary under this assignment. Grantor will hold Beneficiary fully harmless from, indemnify Beneficiary for, and defend Beneficiary against any and all claims, demands, liabilities, losses, damages, and expenses, including attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against Beneficiary on account of this assignment or any obligation or undertaking alleged to arise from it.

2.8 Termination. The assignment provided for in this article II will continue in full force and effect until all the Obligations have been fully paid and satisfied. At that time, this assignment and the authority and powers herein granted by Grantor to Beneficiary will cease and terminate.

2.9 Attorney-in-Fact. Grantor irrevocably constitutes and appoints Beneficiary, and each of its officers, as its true and lawful attorney-in-fact, with power of substitution, to undertake and execute any and all of the rights, powers, and authorities described in this article II with the same force and effect as if

undertaken or performed by Grantor, and Grantor ratifies and confirms any and all such actions that may be taken or omitted to be taken by Beneficiary and its employees, agents, and lawyers.

ARTICLE III SECURITY AGREEMENT AND FIXTURE FILING

To secure payment and performance of the Obligations, Grantor grants to Beneficiary a security interest in the following: (1) the Trust Property to the extent that it is not encumbered by this Trust Deed as a first-priority real estate lien; (2) all personal property that is used or will be used in the construction of any Improvements on the Trust Property; (3) all personal property that is now or will hereafter be placed on or in the Trust Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in Oregon's version of the Uniform Commercial Code as accounts, equipment, fixtures, inventory, and general intangibles, to the extent that they are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; (7) all options, agreements, and contracts for the purchase or sale of all or any part of the Trust Property or interests in the Trust Property; and (8) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed constitutes a security agreement and a "fixture filing" under Oregon's version of the Uniform Commercial Code regarding secured transactions. The mailing address of Grantor and the address of Beneficiary from which information may be obtained are set forth in the cover sheet of this Trust Deed. Grantor authorizes Beneficiary to file with all applicable governmental entities financing statements and continuation statements evidencing the security interest granted in this Trust Deed.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

4.1 Events of Default. Each of the following events constitutes an event of default under this Trust Deed and under each of the other Loan Documents:

- (1) *Nonpayment.* Grantor's failure to pay any of the Obligations on or before the due date.
- (2) *Breach of Trust Deed Covenants.* Grantor's failure to perform or abide by any covenant in section 1.6(5)(a), 1.12(1), 2.4, 2.5(3) through (9), or 2.6 in this Trust Deed when due, or Grantor's failure to perform or abide by any other covenant in this Trust Deed within 20 days after notice of the failure by Beneficiary to Grantor; if the failure cannot be reasonably cured during the 20-day period, however, then Grantor may have an additional period, not to exceed 90 days from the notice of the failure, in which to cure the failure.
- (3) *Breach of Other Loan Documents.* Grantor's failure to perform or abide by any covenant included in any other Loan Document, including without limitation those covenants in the Note or any other Loan Document, after the expiration of any notice or cure period provided for in the other Loan Document.
- (4) *Misinformation.* 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 any of the Obligations, including the breach of any representation or warranty in this Trust Deed.
- (5) *Other Indebtedness, Secondary Financing.* Grantor's default beyond any applicable grace periods in the payment of any other indebtedness owed by Grantor to any person, if the indebtedness is

secured by all or any portion of the Trust Property.

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

(7) *Transfer; Due-on-Sale; Due-on-Encumbrance.* Any sale, gift, grant of a security interest in all or any part of the Trust Property, or any interest in it, voluntarily, involuntarily, or by the operation of law (a "Transfer"), without Beneficiary's prior written consent. The occurrence at any time of any sale, conveyance, assignment, or other transfer of, or the grant of a pledge of or security interest in, any equity or other beneficial interest in Grantor, including without limitation any shares of capital stock, limited liability membership interest, or partnership interest in Grantor, is a Transfer under this subsection (7). The provisions of this subsection (7) apply to each and every Transfer, regardless of whether or not Beneficiary has consented to or waived its rights in connection with any previous Transfer. Beneficiary may attach any conditions to its consent under this subsection (7) that Beneficiary may determine in its sole discretion, including without limitation an increase in the interest rate on the Note or the payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by Beneficiary.

4.2 Remedies in Case of Default. If an event of default occurs, Beneficiary or Trustee 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) *Receiver.* Beneficiary may have a receiver appointed for the Trust Property. Beneficiary is entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or Beneficiary does not disqualify a person from serving as a receiver. Grantor consents to the appointment of a receiver at Beneficiary's option and waives any and all defenses to such an appointment.

(3) *Possession.* Beneficiary may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control the Trust Property as Beneficiary deems appropriate in its sole discretion. Upon request after an event of default, Grantor will peacefully relinquish possession and control of the Trust Property to Beneficiary or any receiver appointed under this Trust Deed.

(4) *Rents.* Beneficiary may revoke Grantor's license to collect the Rents, and may, either itself or through a receiver, collect the Rents. Beneficiary will not be deemed to be in possession of the Property solely by reason of its exercise of the rights contained in this subsection (4). If Beneficiary collects the Rents under this subsection, Grantor hereby irrevocably appoints Beneficiary as Grantor's attorney-in-fact, with power of substitution, to endorse instruments received in payment of the Rents in the name of Grantor and to negotiate those instruments and collect their proceeds. After payment of all Obligations, any remaining amounts will be paid to Grantor and this power will terminate.

(5) *Power of Sale.* Beneficiary may direct Trustee, and Trustee will be empowered, to

foreclose this Trust Deed by advertisement and sale under the Oregon Trust Deed Act.

(6) *Foreclosure.* Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Property and awarding Beneficiary a judgment lien in the amount of any deficiency remaining under the Obligations after sale of the Trust Property by the county sheriff and application of the sale proceeds to the expenses of sale and the Obligations.

(7) *Fixtures and Personal Property.* With respect to any Improvements and other personal 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 Oregon's version of the Uniform Commercial Code.

(8) *Abandonment.* Beneficiary may abandon all or any portion of the Trust Property by written notice to Grantor.

4.3 Sale. In any sale under this Trust Deed or in accordance with 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 that Beneficiary may choose, without regard to the right of Grantor, any person claiming under Grantor, or any guarantor or surety to the marshaling of assets. Trustee will convey the Trust Property to the purchaser at such a sale, and the purchaser will take title to the Trust Property or the part of it so sold, free and clear of Grantor's estate, the purchaser being hereby discharged from all liability to see to the application of the purchase money. The recitals in the deed from Trustee will be conclusive in favor of a purchaser for value in good faith relying on them. Any person, including Beneficiary and its officers, agents, and employees, may purchase at such a sale, other than the Trustee.

4.4 Cumulative Remedies. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy does not preclude the exercise of any other remedy. An election by Beneficiary to cure under section 1.13 does not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy impairs the full exercise of that or any other right or remedy or constitute a waiver of the default.

4.5 Receiver or Mortgagee-in-Possession. Upon taking possession of all or any part of the Trust Property, Trustee, Beneficiary, or a receiver may:

(1) *Management.* Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for any purpose and for any maintenance and improvements that it deems reasonably necessary.

(2) *Rents and Revenues.* Collect all Rents, revenues, income, issues, and profits from the Trust Property and apply those sums to the reasonable expenses of use, operation, management, maintenance, and Improvements.

(3) *Construction.* At its option, complete any construction in progress on the Property and, in that connection, pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.

(4) *Additional Indebtedness.* If the revenues produced by the Trust Property are insufficient to pay expenses, borrow or advance sums on any terms that it deems reasonably necessary for the purposes stated in this section. All advances will bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of those sums will be secured by this Trust Deed.

4.6 Application of Proceeds. All proceeds realized from the exercise of the rights and remedies under section 4.2 will be applied as follows:

(1) *Costs and Expenses.* To pay all costs of exercising the rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in section 5.7 below.

(2) *Indebtedness.* To pay all Obligations, in any order that Beneficiary may determine in its sole discretion.

(3) *Surplus.* The surplus, if any, remaining after satisfaction of all the Obligations to pay the clerk of the court in the case of a judicial foreclosure proceeding, and otherwise to pay the person or persons legally entitled to the surplus.

4.7 Deficiency. No sale or other disposition of all or any part of the Trust Property under to section 4.2(6) may be deemed to relieve Grantor of any of the Obligations, except to the extent that the proceeds are applied to the payment of the Obligations. If the proceeds of a sale, a collection, or other realization of or on the Trust Property are insufficient to cover the costs and expenses of the realization and the payment in full of the Obligations, Grantor will remain liable for any deficiency to the fullest extent permitted by law.

4.8 Waiver of Stay, Extension, Moratorium, and Valuation Laws. To the fullest extent permitted by law, Grantor waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property before any sale.

ARTICLE V GENERAL PROVISIONS

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

5.2 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 liability of any persons for the 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 of any facts will be conclusive proof of their truthfulness.

5.3 Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed must be in writing and may be delivered by hand, or mailed by first-class, registered, or 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.

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

5.5 Trust Deed Binding on Successors and Assigns. This Trust Deed is binding on and inures to the benefit of the successors and assigns of Grantor, Trustee, and Beneficiary. If the Trust Property or any portion of it becomes vested in any person other than Grantor, Beneficiary will have the right to deal with the successor regarding this Trust Deed, the Trust Property, and the Obligations in any manner that Beneficiary deems appropriate in its sole discretion, without notice to or approval by Grantor and without impairing Grantor's liability for the Obligations.

5.6 Indemnity. Grantor will defend and indemnify Beneficiary and Trustee and their respective directors, officers, employees, agents, and attorneys and hold them harmless from and against 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 interest under this Trust Deed, except that Grantor is not required to defend and indemnify Beneficiary and Trustee and hold them harmless for their own [gross] negligence, willful misconduct, or acts in violation of applicable law.

5.7 Expenses and Attorney Fees. If Beneficiary refers any of the Obligations to an attorney 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 proceedings under federal bankruptcy law, eminent domain, or probate proceedings, or in connection with any state or federal tax lien), and Beneficiary employs an attorney to appear in such an action, suit, or proceeding, or to reclaim, sequester, protect, preserve, or enforce Beneficiary's interests, or to seek relief from a judicial or statutory stay, then in such an event Grantor must pay reasonable attorney fees, costs, and expenses incurred by Beneficiary or its attorney in connection with the above-mentioned events or any appeals related to them, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Those amounts are secured by this Trust Deed and, if not paid on demand, will bear interest at the rate specified in the Note.

5.8 Applicable Law. The Trust Deed and its validity, interpretation, performance, and enforcement are governed by Oregon law, without regard to principles of conflicts of laws.

5.9 Captions. The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and do not define, diminish, or enlarge the rights of the parties or affect the construction or interpretation of any portion of this Trust Deed.

5.10 Rights of Prior Mortgagee. If all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted in Exhibit B, the rights of Beneficiary with respect to insurance and Condemnation Proceeds as provided in sections 1.12 and 1.16, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed beneficiary, are subject to the rights of the superior mortgagee or trust deed beneficiary. Grantor hereby authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation Proceeds and all other sums held by them to Beneficiary, to be applied in accordance with this Trust Deed.

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

5.12 Severability. If any provision of this Trust Deed is held to be invalid, illegal, or unenforceable, that invalidity, illegality, or unenforceability will not affect any other provisions of this Trust

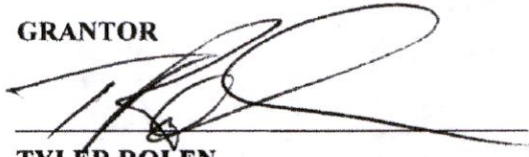
Deed, and the other provisions will be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

5.13 Entire Agreement. This Trust Deed contains the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained in this Trust Deed is binding or valid.

5.14 Commercial Property. Grantor covenants and warrants that the Property and Improvements are or will be used by Grantor exclusively for business and commercial purposes. Grantor also covenants and warrants that no portion of the Property and Improvements is now, and at no time in the future will be, occupied as the principal residence of Grantor, Grantor's spouse, or Grantor's minor or dependent child.

5.15 Standard for Discretion. If this Trust Deed is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard is sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

GRANTOR



TYLER ROLEN

STATE OF OREGON) SS.
COUNTY OF JACKSON)

On November 21, 2017 before me personally appeared Tyler Rolen, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Tyler E. Wilkins
Notary Public

TYLER E. WILKINS
Printed Name

05-03-2019
My commission expires

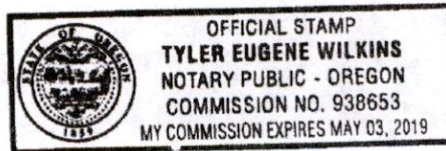


EXHIBIT A

PARCEL I:

Commencing at the Northeast corner of the Northwest Quarter of Section 8, Township 39 South, Range 4 West of the Willamette Meridian, Jackson County, Oregon; thence South $0^{\circ} 11' 47''$ East along the East line of said Quarter 328.17 feet to the point of beginning; thence South $89^{\circ} 58' 52''$ West along the North line of the South half of the North half of the Northeast Quarter of said Northwest Quarter 1307.76 feet; thence South $89^{\circ} 56' 39''$ West along the North line of the South half of the North half of the Northwest Quarter of said Northwest Quarter to the Easterly right of way line of Thompson Creek Road; thence Southwesterly along said right of way line to the South line of said South half; thence North $89^{\circ} 56' 17''$ East along said South line to the Southwest corner of said South half of the North half of the Northeast Quarter of the Northwest Quarter; thence North $89^{\circ} 57' 46''$ East 1307.52 feet along the South line of said South half to the East line of said Quarter; thence North $0^{\circ} 11' 47''$ West along said East line 328.17 feet to the point of beginning. EXCEPTING THEREFROM the following: Commencing at the Northeast corner of the Northwest Quarter of Section 8, Township 39 South, Range 4 West of the Willamette Meridian, Jackson County, Oregon; thence South $64^{\circ} 12' 58''$ West 894.80 feet to a 5/8 inch iron pin and the point of beginning; thence West 208.71 feet to a 5/8 inch iron pin; thence South 208.71 feet to a 5/8 inch iron pin; thence East 208.71 feet to a 5/8 inch iron pin; thence North 208.71 feet to the point of beginning.

PARCEL II:

Commencing at the Northeast corner of the Northwest quarter of Section 8, Township 39 South, Range 4 West of the Willamette Meridian, Jackson County, Oregon; thence South $64^{\circ} 12' 58''$ West 894.80 feet to a 5/8 inch iron pin and the point to beginning; thence West 208.71 feet to a 5/8 inch iron pin; thence South 208.71 feet to a 5/8 inch iron pin; thence East 208.71 feet to a 5/8 inch iron pin; thence North 208.71 feet to the point of beginning.



Oregon Water Resources Department
Alternate Reservoir Application

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[Contact Us](#)

For impoundments less than 10 feet in height or storing less than 9.2 acre feet of water.

Today's Date: Tuesday, February 4, 2020

Base Application Fee.		\$410.00
Proposed Dam Height in feet.	1	
Proposed Reservoir volume in Acre Feet.	1.3	\$70.00
Subtotal:		\$480.00
Permit Recording Fee. ***		\$520.00
*** the Permit Recording Fee is not required when the application is submitted but, must be paid before a permit will be issued. It is fully refundable if a permit is not issued. If the recording fee is not paid prior to issuance of the Final Order, permit issuance will be delayed.	<input type="button" value="Recalculate"/>	
Estimated cost of Permit Application		\$1,000.00

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ODFW Alternate Reservoir Application Review Sheet

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This portion to be completed by the applicant.

Applicant Name/Address/Phone/Email: Tyler Rolan

4635 Thompson Creek Road, Jacksonville, OR 97530; 541-531-9597; rolenstonefarms@gmail.com

Reservoir Name: 1 Source: Spring _____ Volume (AF): 1.30

Twp Rng Sec QQ: T39S R4W S8 Basin Name: Thompson Creek / Applegate

in-channel
 off-channel

Note: It is unlikely that ODFW will be able to complete this form while you wait, nevertheless we recommend making an

This portion to be completed by Oregon Department of Fish and Wildlife (ODFW) District staff.

1) Is the proposed project and AO¹ off channel? YES NO*
(if yes then proceed to #4; if no then proceed to #2)

*Based on available information, the proposed use does not appear to involve instream structures that would create or maintain an artificial obstruction. However, if the applicant creates or maintains an artificial obstruction to fish passage for the proposed use, the applicant will need to address Oregon's fish passage laws.

2) Is the proposed project or AO located where NMF² are or were historically present?..... YES NO
(if yes then proceed to #3; if no then proceed to #4)

3) If NMF are or were historically present:

- a. Is there an ODFW-approved fish-passage plan?..... YES NO
- b. Is there an ODFW-approved fish-passage waiver or exemption?..... YES NO

If fish passage is required under ORS 509.580 through .910, then either 3(a) or 3(b) must be "Yes" to move forward with the application. If responses to 3(a) and 3(b) are "No", then the proposed reservoir does not meet the requirements of Oregon Fish Passage Law and shall not be constructed as proposed.

4) Would the proposed project pose any other significant detrimental impact to an existing fishery resource locally or downstream?..... YES NO

Explain below (for example, list STE species or other existing fishery resources that would be impacted negatively.)

- Any diversion or appropriation of water for storage during the period **February, April through December** poses a significant detrimental impact to existing fishery resources. (For example, if diversion of water for storage during a certain time period would cause a significant detrimental impact to an existing fishery resource, then ODFW should recommend conditions or limitations.) If NMF fish are present at the project site or point of water diversion then the applicant should be advised that a fish screen consistent with screening criteria will be required.
- This proposed pond or reservoir contemplates impounding water in the Columbia Basin above Bonneville Dam. ODFW has determined that additional diversions of water in this area pose a significant detrimental impact to existing fishery resources during the period April 15 through September 30.

Fish present at the location of the proposed use or otherwise impacted by the proposed use include Coho Salmon (ESA Threatened Species), Summer (State Sensitive Species) and Winter Steelhead, and Pacific Lamprey (State

¹ AO = Artificial Obstruction means any dam, diversion, culvert or other human-made device placed in waters of this state that precludes or prevents the migration of native migratory fish. ORS 509.580 (1)

² NMF = Native Migratory Fish Species in Oregon as defined by OAR 635 - 412 - 0005 (32)

Sensitive Species). There are instream water rights in Thompson Creek (C59825) and Applegate River (C66612) for supporting aquatic life that will be impacted by the proposed use. Based on parameters assessed by ODFW biologically necessary flows are not available February, April – December to support fishery resources. Thompson Creek is water quality limited for dissolved oxygen year round. Therefore, the proposed use will impair the identified biologically necessary flows and water quality for fish wholly or partially and pose a significant detrimental impact to an existing fishery resource locally and downstream.

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If **YES**, can conditions be applied to mitigate the significant detrimental impact to an existing fishery resource?

NO (explain)

YES (select from Menu of Conditions on next page)

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Available information shows flows within the impacted reach are currently wholly or partially below those essential to support the biological needs of fish and/or the proposed use will otherwise impact habitat or ecological functions important to fish. The proposed use may diminish physical habitat and alter the flow regime to which fish are naturally adapted, negatively impacting their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed water use will impair or be detrimental to fish and/or their habitat without appropriate mitigation. ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) outlined below, and other recommended conditions, to compensate for any potential impact from the proposed use. To meet the goals outlined in ODFW's Mitigation Policy, ODFW recommends the mitigation provided be available within the mitigation reach and **legally protected and maintained** for the life of the permit and subsequent certificate.

ODFW's Recommended Conditions:

- 1) **Screen:** The permittee shall install, maintain, and operate fish screening consistent with current Oregon Department of Fish and Wildlife (ODFW) standards or submit documentation that ODFW has determined fish screening is not necessary or is exempted. Fish screening is to prevent fish from entering the proposed diversion. The required screen is to be in place, functional, and approved in writing by ODFW prior to diversion of water. The water user shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly. The permittee is hereby directed to schedule a consultation with an ODFW Fish Screening Coordinator.
- 2) **Wetland:** To protect beneficial uses, the Oregon Department of Fish and Wildlife recommends the applicant submit an offsite determination request to the Oregon Department of State Lands (DSL) to determine the need for a wetland delineation. The offsite determination will identify waters of this state that are subject to regulation and authorization requirements of the Removal-Fill Law (ORS 196.800 to 196.990) that may be needed prior to disturbance or development of the point of diversion.
- 3) **Riparian:** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with the Oregon Department of Fish and Wildlife's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. Prior to development of the point of diversion, the permittee shall submit, to the Oregon Water Resources Department, a Riparian Mitigation Plan approved in writing by ODFW unless ODFW provides documentation that riparian mitigation is not necessary. The permittee shall maintain the riparian area for the life of the permit and subsequent certificate per the approved Riparian Mitigation Plan. If ODFW determines the riparian area is not being maintained, and is unsuccessful in working with the water user to fulfill the obligation, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the mitigation is sufficient. The permittee is hereby directed to contact the local ODFW Fish Biologist prior to development of the point of diversion.

- 4) **In-Water Work:** To protect beneficial uses, the Oregon Department of Fish and Wildlife (ODFW) recommends any in-water work related to development of the proposed use be conducted during July 1 – September 15 unless an alternate time period is approved by ODFW.
- 5) **Pond construction:** Permittee must construct the pond off channel.
- 6) **Pond releases:** Permittee shall not release polluted off-channel stored water into waters of the state unless under emergency situations. Permittee shall treat released water to comply with OAR 340-041 and ensure that water-quality standards are not violated by releases from storage.
- 7) **Water Quality and Prohibited Activities:** The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water-quality standards. Permittee may not cause pollution of any waters of the state, or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means, per ORS 468B.025(1). If the Department of Environmental Quality determines that pollution of waters of the state is occurring, DEQ shall notify OWRD of the violation and the water right may be restricted if the permittee fails to implement corrective actions as directed by the Department of Environmental Quality.
- 8) **Agricultural Water Quality Management Area Rules:** Permittee must comply with basin-specific Agricultural Water Quality Management Area Rules in OAR 603-095. Livestock management and cropping must protect riparian areas on the property, allowing site capable vegetation along streams to establish and grow to provide the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff. Active management of livestock and/or a livestock exclusion fence is needed to protect riparian areas and provide the required functions.
- 9) The applicant shall contact DEQ (541-686-7930) to determine if a 1200 C permit is required for construction.
- 10) The applicant will need to contact the U.S. Army Corps of Engineers for confirmation that Removal/Fill regulatory requirements are met for new impoundments. Contact the USACE by email at PortlandRegulatory@usace.army.mil or by phone 503-808-4373.

ODFW's Recommended Mitigation Obligation:

ODFW recommends the applicant submit, to the application caseworker at WRD, a Mitigation Proposal that fulfills the Mitigation Obligation outlined below (consistent with the goals and standards of OAR 635-415-0025; ODFW Habitat Mitigation Recommendations), as well as other recommended conditions. ODFW recommends the Proposal include an assessment of options using the following actions listed in order of priority:

- (1) avoiding the impact altogether,
- (2) minimizing the impact by limiting the degree or magnitude of the action,
- (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
- (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action and by monitoring and taking appropriate corrective measures, and
- (5) compensating for the impact by replacing or providing comparable substitute resources or environments.

ODFW recommends the applicant contact the caseworker to schedule a consultation with the local ODFW Fish Biologist concerning the recommended Mitigation Obligation if questions arise.

Reservoir Uses

If the applicant chooses to pursue water use when biologically necessary flows are not met, ODFW recommends the applicant provide water-for-water mitigation that is available within the mitigation reach and **legally protected and maintained as an instream water right** for the life of the permit and subsequent certificate, as outlined below.

A) Water Quantity: 1.30 AF (AF; equals amount requested)

B) Months (when biologically-necessary flows are not met during the period of impact): February, April – December.

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C) Location of Mitigation:

- within the watershed **at or above** the point of diversion
- at or above the point of diversion is preferred, but may occur within the watershed of the impacted population(s)
- within the watershed of the impacted population(s)
- benefitting the impacted population(s) and/or higher priority species: list species here

D) Additional comments:

ODFW Signature: 

Print Name: Jason Brandt _____

ODFW Title: SW Hydro Coordinator Date: 2/10/20

NOTE: This completed form must be returned to the applicant.

Revised 10/4/12

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Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

February 26, 2020

Dear Applicant:

The Oregon Water Resources Department has received your application to store water in a reservoir under the Alternate Review process. Your application has been assigned file number **R-88811**. Please refer to this number when contacting the Department. Should you have any questions about your application, please contact the following Water Rights Specialist assigned to your application:

Lisa Graham, Water Rights Specialist	Phone: 503-986-0808
	Email: elisabeth.a.graham@oregon.gov

A description of the steps that are used for processing an application to stored water in a reservoir are shown on the reverse side of this letter.

Included with this letter is a Wetland Determination Request form provided by the Department of State Lands (DSL) Wetland Program to determine if wetlands or other regulated water bodies (such as creeks) are in the project area. Please complete and return the form to DSL.

Please note that your application is subject to review and comment from other state agencies and interested parties.

Sincerely,

COPY

Judy Ferrell
Customer Service Representative
Oregon Water Resources Department

cc:
File
Taurie Rubaloff, Agent
Encl. - DSL Wetland Offsite Form

Water-Use Permit Application Processing Steps
Oregon Water Resources Department

Alternate Review Process for a Reservoir Applications:

After a completed application has been received by the Department, the Department must make public notice of the application within 60 days. Applications are noticed to the public every Tuesday and can be accessed from the Department's website: <https://www.oregon.gov/owrd>.

The Department does not notify individual, neighboring landowners of an application, unless they are identified in the application as affected landowners. The public notice is to ensure that any person may submit detailed information requesting the Department deny an application based upon whether the proposed use causes injury to existing water rights or poses a significant detrimental impact to an existing fishery resource. All comments must be submitted within 60 days of the public notice.

Following the 60-day public comment period, the Department can issue a Final Order. Alternate Reservoir applications typically take between 3-5 months to process, depending upon the number of pending applications in the queue.

The Department recommends applicants not schedule excavation work or otherwise expend financial resources until an ODFW fish passage plan and the alternate reservoir application have been approved. Also note that other permits may be required for any construction activities in waterways, wetlands, or riparian areas.

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