

05 MAR 24 AM 10:58

MT-68107

Vol M05 Page 19422

After recording return to:

SIERRA POINT CREDIT UNION  
c/o Business Partners, LLC  
9301 Winnetka Avenue  
Chatsworth, CA 91311  
Attn: Servicing Department

State of Oregon, County of Klamath  
Recorded 03/24/2005 10:58a m  
Vol M05 Pg 19422-30  
Linda Smith, County Clerk  
Fee \$ 61<sup>00</sup> # of Pgs 9

## ASSIGNMENT OF LEASES AND RENTS

(OREGON)

### Statutory Notice:

- A. The address of the entity holding a lien or other interest created by this instrument is:

SIERRA POINT CREDIT UNION  
c/o Business Partners, LLC  
9301 Winnetka Avenue  
Chatsworth, CA 91311  
Attn: Servicing Department

- B. The tax account number(s) of the Property subject to the lien or in which the interest is created:

3909-003BB-00300-000

6/10  
mm

## ASSIGNMENT OF LEASES AND RENTS (OREGON)

THIS ASSIGNMENT OF LEASES AND RENTS (the "**Assignment**") dated as of **February 24, 2005**, is made by **FIRST KLAMATH, L.L.C.**, an Oregon limited liability company, whose address is c/o Southstar P.M., Inc., 7831 SE Stark St. #103, Portland, OR 97215, as assignor ("**Borrower**"), to and for the benefit of **SIERRA POINT CREDIT UNION**, a California state chartered credit union, whose address is c/o Business Partners, LLC, 9301 Winnetka Avenue, Chatsworth, CA 91311, Attn: Commercial Loan Department, as assignee ("**Lender**").

THIS ASSIGNMENT IS GIVEN TO LENDER in connection with the Indebtedness evidenced by Borrower's Promissory Note payable to Lender, dated as of the date of this Assignment, and maturing on **April 1, 2010**, in the principal amount of **ONE MILLION TWO HUNDRED TEN THOUSAND AND 00/100 DOLLARS (US \$1,210,000.00)**, and all renewals, extensions and modifications of the Indebtedness, the payment of all sums advanced by or on behalf of Lender to protect the security of the Security Instrument (as hereinafter defined) under Section 12 of the Security Instrument, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower is the owner of the Mortgaged Property, including the Land located in **Klamath County, State of Oregon** and described in Exhibit A attached to this Assignment. Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to give this Assignment, and that there are no other outstanding assignments of the Leases and Rents described herein.

**Covenants.** Borrower and Lender covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Assignment (including when used in the above recitals), shall have the following meanings:
  - (a) "**Borrower**" means all persons or entities identified as "Borrower" in the first paragraph of this Assignment, together with their successors and assigns.
  - (b) "**Borrower Certificate**" means that certain Borrower Certificate dated the same date as this Assignment, executed by Borrower in favor of Lender.
  - (c) "**Collateral Agreement**" means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.
  - (d) "**Environmental Indemnity**" means that certain Environmental Indemnity Agreement dated the same date as this Assignment, executed by Borrower, as Indemnitor, in favor of Lender, as Indemnitee.
  - (e) "**Event of Default**" means the occurrence of any event listed in Section 22 of the Security Instrument.
  - (f) "**Imposition Deposits**" are defined in Section 7(a) of the Security Instrument.
  - (g) "**Improvements**" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.
  - (h) "**Indebtedness**" means the principal of, interest at the fixed or variable rate set forth in the Note on, and all other amounts due at any time under, the Note, the Security Instrument, this Assignment or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 of the Security Instrument to protect the security of the Security Instrument.
  - (i) "**Land**" means the land described in Exhibit A.
  - (j) "**Leases**" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.
  - (k) "**Lender**" means the entity identified as "Lender" in the first paragraph of this Assignment, or any subsequent holder of the Note.
  - (l) "**Loan Documents**" means the Note, the Security Agreement, this Assignment, the Borrower Certificate, the Environmental Indemnity, all guaranties, all indemnity agreements, all Collateral Agreements, all O&M Programs (as defined in the Environmental Indemnity), and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

- (m) **"Mortgaged Property"** shall have the meaning set forth in the Security Instrument and includes all of Borrower's present and future right, title and interest in and to the Land, Improvements, Rents and Leases.
- (n) **"Note"** means the Promissory Note described on page 1 of this Assignment, including all schedules, riders, allonges and addenda, as such Promissory Note may be amended from time to time.
- (o) **"Property Jurisdiction"** is defined in Section 9(a).
- (p) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.
- (q) **"Security Instrument"** means that certain mortgage, deed of trust, or deed to secure debt of even date herewith, executed by Borrower in favor of Lender as security for the Indebtedness and constituting a first lien on the Mortgaged Property. The Security Instrument is to be recorded substantially concurrently herewith. The terms and provisions of the Security Instrument are incorporated herein by reference. Any capitalized terms not otherwise defined herein shall have the meaning defined in the Security Instrument.
- (r) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

## 2. WARRANTIES OF BORROWER.

- (a) Borrower warrants to Lender that (i) Borrower is the sole owner of the entire lessor's interest in the Leases; (ii) the Leases are valid, enforceable and in full force and effect and have not been altered, modified or amended in any manner whatsoever except as disclosed to Lender; (iii) neither the Leases nor the Rents have been assigned or otherwise pledged or hypothecated; (iv) none of the Rents have been collected for more than one (1) month in advance; (v) Borrower has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Mortgaged Property; (vi) the premises demised under the Leases have been completed and Lessees under the Leases have accepted the same and have taken possession of the same on a rent-paying basis except as explicitly identified on the certified rent roll delivered by Borrower to Lender; and (vii) there exist no offsets or defenses to the payment of any portion of the Rents.
  - (b) Borrower covenants with Lender that Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send to Lender copies of all notices of default which Borrower shall receive under the Leases; (iii) shall not collect any Rents more than two (2) months in advance; (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (v) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Lender shall from time to time require; (vi) shall not enter into any new lease of the Mortgaged Property without the prior written consent of Lender, and in any event, any new Lease shall be on a form of lease approved by Lender; (vii) shall deliver to Lender, upon request, a tenant estoppel certificate and subordination, attornment and non-disturbance agreement ("SNDA") from each Lessee at the Mortgaged Property in form and substance satisfactory to Lender (provided, however, that Borrower shall not be required to deliver such certificates more frequently than two [2] times in any calendar year); and (viii) shall deliver to Lender, at Lender's request, executed copies of all Leases now existing or hereafter arising.
  - (c) Borrower further covenants with Lender that, except to the extent that Borrower is acting in the ordinary course of business as a prudent operator of property similar to the Mortgaged Property, Borrower (i) shall promptly send to Lender copies of all notices of default which Borrower shall send to Lessees under the Leases or which Borrower shall receive from any Lessee under the Leases; (ii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the Lessees thereunder to be observed or performed, short of termination thereof; (iii) shall not alter, modify or change the terms of the Leases without the prior written consent of Lender, or cancel or terminate the Leases or accept a surrender thereof or take any other action which would effect a merger of the estates and rights of, or a termination or diminution of the obligations of, Lessees thereunder; (iv) shall not alter, modify or change the terms of any guaranty of any of the Leases or cancel or terminate any such guaranty without the prior written consent of Lender; (v) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Lender; and (vi) shall not waive, release, reduce, discount or otherwise discharge or compromise the payment of any of the Rents to accrue under the Leases.
- ## 3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.
- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further

assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in the Security Instrument. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Assignment and the comparable Security Instrument provisions create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Assignment. Lender may, at its option and discretion, elect to enforce this Assignment, or the comparable Security Instrument provisions, or both, and such election shall not diminish or affect Lender's available remedies under any other Loan Document provisions.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Assignment. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Assignment there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two (2) months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Assignment, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Assignment, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including computer files and other records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged

Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12 of the Security Instrument.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Assignment shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Assignment or any other Loan Document.

#### **4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in the Security Instrument. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Assignment and the comparable Security Instrument provisions create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Assignment. Lender may, at its option and discretion, elect to enforce this Assignment, or the comparable Security Instrument provisions, or both, and such election shall not diminish or affect Lender's available remedies under any other Loan Document provisions.

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Assignment), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Assignment or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Assignment by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Assignment) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of the Security Instrument and this Assignment; (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease for more than two (2) months in advance.

**5. REMEDIES CUMULATIVE.** Each right and remedy provided in this Assignment is distinct from all other rights or remedies under this Assignment or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

**6. FORBEARANCE.**

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Assignment, the Note, the Security Instrument or any other Loan Document; release anyone liable for the payment of any amounts under this Assignment, the Note, the Security Instrument, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Assignment, the Note, the Security Instrument, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Assignment, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 of the Security Instrument shall not operate to cure or waive any Event of Default.

**7. WAIVER OF STATUTE OF LIMITATIONS.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Assignment or to any action brought to enforce any Loan Document.

**8. FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Assignment and the Loan Documents.

**9. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Assignment, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "Property Jurisdiction").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Assignment, the Security Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

**10. SUCCESSORS AND ASSIGNS BOUND.** This Assignment shall bind, and the rights granted by this Assignment shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 21 of the Security Instrument shall be an Event of Default.

**11. JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Assignment as Borrower, the obligations of such persons and entities shall be joint and several.

12. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Assignment and the comparable provisions of the Security Instrument contain the entire agreement among the parties as to the rights granted and the obligations assumed in this Assignment and in the comparable provisions of the Security Instrument. This Assignment may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

13. **CONSTRUCTION.** The captions and headings of the sections of this Assignment are for convenience only and shall be disregarded in construing this Assignment. Any reference in this Assignment to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Assignment or to a Section of this Assignment. All Exhibits attached to or referred to in this Assignment are incorporated by reference into this Assignment. Any reference in this Assignment to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Assignment, the term "including" means "including, but not limited to."

14. **WAIVER OF TRIAL BY JURY.** BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS ASSIGNMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**ATTACHED EXHIBIT.** The following Exhibit is attached to this Assignment:

Exhibit A Description of the Land

**IN WITNESS WHEREOF,** Borrower has signed and delivered this Assignment or has caused this Assignment to be signed and delivered by its duly authorized representative.

**BORROWER:**

**FIRST KLAMATH, L.L.C., an Oregon limited liability company**

By: \_\_\_\_\_

**PETER L. DWARES**  
Its Manager

State of ~~Oregon~~ California )  
County of San Francisco ) ss.

19429

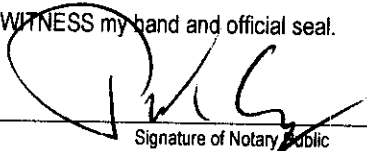
On this 14<sup>th</sup> day of March, 2005, before me, Robert K. Crosby, the undersigned Notary Public, personally appeared **PETER L. DWARES**,

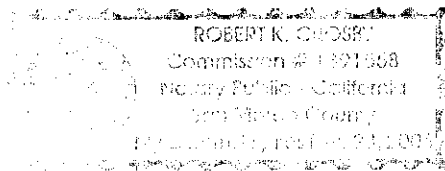
☐ personally known to me - OR -

☒ proved to me on the basis of satisfactory evidence

to be the person(s) who executed the within instrument as **Manager** on behalf of **FIRST KLAMATH, L.L.C.**, a limited liability company, and acknowledged to me that the limited liability company executed the same for the purposes therein stated.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary Public



LSC 2161741

Place Notary Seal and/or Any Stamp Above



**EXHIBIT "A"**  
**DESCRIPTION OF THE LAND**

**19430**

THE LAND REFERRED TO HEREIN IS SITUATED IN KLAMATH COUNTY, STATE OF OREGON, AND IS DESCRIBED AS FOLLOWS:

A portion of Tract 36 and 43 ENTERPRISE TRACTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning on the Southerly line of Shasta Way, South 0° 00 1/2' East 73 feet and North 89° 54' East 280 feet form the section corner common to Sections 33 and 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, and Sections 3 and 4, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; thence South 0° 00 1/2' East parallel with the West line of said Tract 43 along the East line of the tracts of land described in 2 deeds recorded in Deed Volume 225 at page 261 and Deed Volume 255 at page 613, 659.44 feet to the Northeast line of Pershing Way; thence South 55° 50 1/2' East 277.99 feet along said Northeasterly line of Pershing Way; thence North 0° 00 1/2' West 820 feet more or less to the Southerly line of Shasta Way; thence South 89° 54' West 230 feet to the point of beginning.

PROPERTY ADDRESS: 2660 Shasta Way, Klamath Falls, Oregon 97603