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Klamath County, Oregon



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After Recording Return to:

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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND GRANT OF EASEMENTS**

Klamath Falls Town Center

Klamath Falls, Oregon

First American Title Ins. Co. has recorded this
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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration"), dated for reference purposes as of Dec 1, 2006, is made by K Falls One, LLC, an Oregon limited liability company (herein called "Declarant") as owner of that property known as the Klamath Falls Town Center, Klamath Falls, Oregon, and more fully described on Exhibit A hereto.

A. Termination of Prior Agreement, Covenants and Restrictions.

The property included in the Shopping Center has been encumbered by that certain Agreement between Oregon Shopping Center, Inc. and Erickson Investment Co. recorded March 30, 1966 in Volume M66, page 2768, Deed of Records Klamath County, Oregon and modified or amended by instrument recorded October 27, 1966 in volume M66, page 11345, Deed of Records of Klamath County, Oregon (herein called the "Prior CCR"). Declarant is the sole owner of all of the property previously owned by Oregon Shopping Center Inc. and Erickson Investment Co. that is subject to the Prior CCR and hereby terminates and cancels the Prior CCR in its entirety. From and after the date hereof, and upon recording this Declaration, this Declaration shall fully supercede and replace the Prior CCR and shall be the only CCR existing on the Shopping Center.

1. DEFINITIONS AND PURPOSE.

1.1. Definition of Shopping Center.

- 1.1.1. The term "Shopping Center" as used herein shall mean and refer to the Klamath Falls Town Center described in Exhibit A. Declarant is the current owner of the Shopping Center.

1.2. Definition of Owner.

- 1.2.1. The term "Owner" as used herein shall mean and refer to each person or entity which holds fee title to any portion of the Shopping Center and any successor of such person or entity acquiring said fee title from such person or entity. The term "Owner," unless otherwise provided in this Declaration, shall not include any lender, trust deed beneficiary or mortgagee, nor any lessee, tenant or occupant of space in the Shopping Center.
- 1.2.2. The term "Majority of Owners" as used herein shall mean persons owning such portions of the Shopping Center that is more than 50% of the total square footage of the Shopping Center. The Declarant shall be an Owner so long as Declarant owns any portion of the Shopping Center and references herein to Declarant or Owner shall include Declarant if applicable.

1.3. Purpose.

- 1.3.1. Declarant intends by recording this Declaration to subject the Shopping Center and all improvements situated or to be situated thereon to the

provisions of this Declaration and to impose on the Shopping Center mutually beneficial restrictions and limitations and to establish certain easements, covenants and reservations upon and subject to which the Shopping Center will be used, held, leased and developed by Declarant that will inure and pass with the Shopping Center.

2. DEFINITION OF BUILDING AREA AND COMMON AREA.

2.1. Building Area.

2.1.1. "Building Area" as used herein shall mean those portions of the Shopping Center located within the building limit lines and future building limit lines as shown on the site plan attached as Exhibit B, the "site plan." Notwithstanding the above, a Majority of Owners may amend the Site Plan and prepare a new and revised Exhibit B which may, among other changes add additional building areas within the Common Area so long as the parking areas and Common Area still meet the minimum requirements set forth in this Declaration. In the event the Site Plan is amended such revised Exhibit B shall be filed of record as an amendment to this Declaration.

2.2. Common Area.

2.2.1. "Common Area" shall be, all of the Shopping Center except the Building Area as the Building Area may be revised from time to time.

2.3. Conversion of Common Area.

2.3.1. Those portions of the Building Area which are not for material times used or cannot under the terms of this Declaration (including by virtue of Section 7.1.) be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided in this Declaration. A Building Area converted to Common Area as provided in this section may be converted back to Building Area by its development as Building Area by Owner.

3. USE.

3.1. Use in General.

3.1.1. The Shopping Center shall be used for the construction, operation, and maintenance of business, commercial, professional, and mercantile (retail and service) establishments as specified hereinafter and related facilities, including common and vehicular parking areas, all as more specifically described hereinafter. The Building Area shall be used for the construction, operation and maintenance of buildings that will be used for business, commercial, professional, or mercantile purposes (retail and service) of the type usually carried on in a shopping center of comparable

size and not prohibited by law or ordinance and in accordance with the terms herein.

3.2. Nuisances.

- 3.2.1. No portion of the Shopping Center shall be used by any Owner or by any Owner's tenants for (i) the conduct of any illegal, offensive, noisy, or dangerous trade, business, activity, or occupation; (ii) any activity which physically interferes with the business of any other Owner or Owner's tenants; or (iii) any other unreasonable use not compatible with the operation of a first-class retail and commercial shopping center, well maintained in accordance with the standards of this Declaration.

3.3. Prohibited Uses.

- 3.3.1. In recognition that the Owners, their tenants and customers need adequate parking facilities in close proximity to their premises and the importance of protecting such parking facilities against unreasonable or undue encroachment which is likely to result from long term parking by patrons or employees of certain types of business establishments and the need to promote compatible establishment within the Shopping Center:
- 3.3.1.1. No part of the Shopping Center shall be devoted to the use or operation of a carnival, bowling alley, skating rink, amusement center, electronic or mechanical games arcade, pool or billiard hall, betting parlor, bingo parlor, video or pinball game, massage parlor, pornographic shop, adult book store, nightclub, dance hall, tavern, cocktail lounge, any facility for the on-premises consumption of alcoholic beverages except as an incidental part of the operation of a full service restaurant; and
- 3.3.1.2. No part of the Shopping Center shall be used as a training or educational facility nor as a religious facility, or industrial facility or warehouse. Such restrictions include, without limitation, a beauty school, barber college, a church, a governmental office or operation, place of instruction, or any other operation catering primarily to students or trainees rather than to customers, but excludes employee training by any Owner or Owner's tenant incidental to the conduct of its business within the Shopping Center.

4. BUILDINGS.

4.1. Location.

- 4.1.1. No buildings shall be constructed erected, or maintained anywhere within the Shopping Center except within the Building Areas. With the approval of Declarant portions of the Building Area not improved with a building

may be utilized for the installation, removal, repair and replacement of drive-thru facilities incidental to the operation of the business conducted in the building adjacent thereto. Canopies may encroach from the Building Area over the Common Area and canopy support columns may encroach onto the Common Area provided such canopies and support columns do not interfere with the normal use of the Common Area and provided further such canopies and support columns shall be considered part of the buildings to which they are attached and not part of the Common Area improvements.

4.2. Design, Construction and Approval.

- 4.2.1. The buildings erected or the exteriors of which are altered, remodeled, added or reconstructed within the Shopping Center from and after the date of this Declaration shall be designed so that the exterior elevation of each will be architecturally and aesthetically compatible and so that the building foundations shall not encroach from one parcel onto another parcel. The design and construction of the buildings shall be in conformity with sound architectural and engineering standards and the construction shall be first quality. All buildings shall be one story only (but may include mezzanines) and shall not exceed forty feet (40') in height. No building shall be built in the Shopping Center, nor shall the exterior of any existing building be altered, remodeled or reconstructed, without the written consent of a Majority of Owners to confirm such matters as set forth above, which consent shall not be unreasonably withheld. Owners shall have 20 days after receipt of proposed building plans and specifications within which to approve or disapprove.

4.3. Encroachment.

- 4.3.1. In the event building wall footings encroach from one parcel onto another parcel, despite efforts to avoid that occurrence, the Owner onto whose parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the Owner whose building wall footings encroach.

4.4. Damage or Destruction.

- 4.4.1. In the event of any damage to or destruction of any building within the Shopping Center, the Owner of the parcel upon which such building is located, at its election, at its sole cost and risk and with all due diligence, shall in the event such damage or destruction is covered by the insurance required under section 9.2.2 restore or replace such building, subject to the provisions of this Declaration, or in the event the damage or destruction is not covered by such required insurance and exceeds 5% of the replacement cost of such improvements raze and remove all parts of said damaged or destroyed building then remaining and the debris resulting therefrom and otherwise clean and restore the Building Area affected by

such casualty to a level and clean condition, but in the event an Owner fails to restore and replace such building then unless such Owner commences to diligently build a new building on the Building Area within twelve months from the date of such damage or destruction, such Owner shall be deemed to have offered to sell his property in the Shopping Center to Declarant at its then fair market value. Declarant, or an assignee of Declarant, may accept such offer by written notice to such Owner at any time after such 12-month period and prior to such Owners commencing to build a new building on that Building Area. The fair market value shall be the value as agreed by the parties or if they cannot agree then as determined by binding arbitration in accordance with the rules of the American Arbitration Association or other arbitrator if the parties mutually agree on such other arbitrator. Nothing in this Section 5.4.1. shall prohibit an Owner from requiring that its tenant comply with such Owner's obligations under this Section 5.4.1.

5. COMMON AREA USE.

5.1. Grant of Easements.

5.1.1. Declarant, for the benefit of Owner and the Owner's tenants' and their customers, invitees, and employees, hereby grants and declares nonexclusive easements for roadways, walkways, ingress and egress, the parking of motor vehicles, underground utilities and storm water drainage systems, light standards, and use of facilities installed for the comfort and convenience of customers, invitees, and employees on the Common Area. The Common Area shall be for the sole and exclusive joint use of the Owner, the Owner's tenants, and their respective customers, invitees, and employees, and the easements granted in this Declaration shall be for the sole and exclusive use of such persons and no other persons. All utility lines shall be underground if amenable to being placed underground for this Shopping Center and the installation of any such lines shall be accomplished in a reasonable manner so as not to unnecessarily interfere with any other Owner.

5.2. Use.

5.2.1. Subject to existing easements of record, the Common Area shall be used for underground utility and storm water drainage facilities, roadways, walkways, ingress and egress, parking of motor vehicles, loading, and unloading of commercial and other delivery vehicles, for driveway purposes, and for the comfort and convenience of customers, invitees, and employees of all businesses and occupants of the buildings constructed on the Building Area. Pylon sign, directional signs, curbs, landscaping and landscaping planters, lighting standards, trash areas, utility lines, public telephones and similar items may be constructed in the Common Area with the approval of the Owner.

5.3. No Barriers.

- 5.3.1. No walls, fences, or barriers, of any land shall be constructed or maintained on the Common Area, or any portion thereof, from and after the date of this Declaration by any party which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitation, pedestrians and vehicular traffic between the various parcels; provided, however, reasonable traffic controls, as may be necessary to guide and control the orderly flow of traffic, may be installed so long as access driveways to the parking areas in the Common Area are not closed or blocked. The only exception to this provision shall be (i) for changes to the Building Area and Common Area permitted by this Declaration, and (ii) for incidental encroachments upon the Common Area which may occur as a result of the use of the ladders, scaffolding, storefront barricades, and similar facilities resulting in temporary obstruction of the Common Area, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being expeditiously pursued.

5.4. Limitations on Use.

- 5.4.1. Customers. Customers and invitees shall not be permitted to park on the Common Area except while shopping or transacting business in the Shopping Center.
- 5.4.2. Employees. Each Owner shall use its best efforts to cause its tenants to require their employees to park only in those portions of the Common Area designated as "employee parking areas". The Owner from time to time may mutually designate and approve "employee parking areas;" however, if they do not, the Owner may formally or informally designate "employee parking areas" on its own parcel, provided such designated employee parking area does not unreasonably burden the parking on any other parcel nor unreasonably interfere with the use of any other parcel.

5.5. General.

- 5.5.1. All of the uses permitted within the Common Area shall be used with reason and judgment so as not to interfere with the primary purpose of the Common Area, which is to provide for parking for the customers, invitees, and employees of those businesses conducted in the Shopping Center and for access to and servicing and supplying of such businesses.

5.6. No Use Fee.

- 5.6.1. Persons using the Common Area in accordance with this Declaration shall not be charged any fee for such use without the written consent of the Owners unless such fee shall be ordered by an appropriate governmental authority. If an appropriate governmental authority imposes a surcharge

or regulatory fee on customer or employee parking or based on the number of parking spaces within the Shopping Center or any other similar fee or charge, then the Owners shall use their best efforts to institute a uniform fee collection parking system for the Shopping Center.

5.7. Utility and Service Easements.

- 5.7.1. The Owners shall cooperate in the granting of appropriate and proper easements for the installation, repair, and replacement of storm drains, sewers, utilities, and other proper services necessary for the orderly development and operation of the Common Area and buildings to be erected upon the Building Area. Utility easements shall be located so as not to unreasonably interfere with the operation of businesses in the Shopping Center.

5.8. Signs.

- 5.8.1. Except for directional and informational signs for guidance upon the parking and driveway areas of the Common Area that conform to the sign program of the Center, and such other signs as fall within the guidelines of the sign program adopted by Declarant, no signs shall be erected or maintained upon the Common Area or Building Area of the Shopping Center without the prior written approval of Declarant which approval shall not be unreasonably withheld or delayed. Declarant shall adopt sign guidelines which shall allow the customary signs and logos used from time to time by individual Owners and tenants of Owners, provided such logos comply with the requirements of all applicable governmental bodies. Signs shall be placed upon the pylon associated with the Shopping Center in the discretion of Declarant. When an Owner, or tenant of an Owner vacates their premises they shall remove all of their signage and repair any and all damage.

5.9. Outside Merchandising.

- 5.9.1. The selling, displaying, or merchandising of goods shall be confined to the interior of the buildings within the Shopping Center, and except as hereinafter provided, shall not be conducted upon the Common Area. The occupant of the Building Area designated as Sherm's Market on the Site Plan may use the sidewalk immediately adjacent to its Building Area to the extent allowed by law for the placement of shopping carts and for the display of merchandise being sold from its Building Area provided the pedestrian use of the sidewalks shall not be unreasonably impeded by such use.

6. COMMON AREA DEVELOPMENT.

6.1. Development.

- 6.1.1. Common Area Ratio. At all times there shall be independently maintained on each parcel or further subdivision thereof, not less than four (4) square feet of developed Common Area for each one (1) square foot of total building floor area, including all basements and mezzanines.
- 6.1.2. Parking Ratio. At all times there shall be maintained within the Shopping Center the parking ratio required by applicable municipal requirements and by other governing instruments encumbering the Shopping Center.
- 6.1.3. Changes to Common Area. Majority of Owners, may change, alter, reconfigure or modify the Common Areas, including entrances and exits thereto from adjacent streets, parking stalls, traffic aisles or directions, provided that no such change may reduce or impede the visibility or accessibility to any Building Area.

7. MAINTENANCE.

7.1. Maintenance.

- 7.1.1. Building Upkeep and Maintenance. Each Owner shall at all times keep its Building Area and all improvements thereon, in good, clean and neat condition and repair.
- 7.1.2. Common Area. The Majority of Owners shall be responsible for maintaining the Common Area or hiring an agent for such maintenance. Said agent may receive a fee to cover supervision, management, accounting, and similar services. The cost and expenses incurred because of the engagement of such agent and all costs incurred for maintenance of the Common Area overall is to be included in the general maintenance expense paid by the respective Owners pro rata in accordance with the size of the Building Area owned by each Owner. Nothing in this Section 7.1.2. shall prohibit an Owner from requiring that its tenant comply with such Owner's obligations set forth in Section 7.1.1. Without limiting the generality of the foregoing, the maintenance obligations shall include the following:
 - 7.1.2.1. Maintaining, repairing, and replacing when necessary the surfaces in a level, smooth, and evenly covered condition with the type of surfacing material and striping originally installed or such substitute therefor as shall in all respects be equal in quality, use, and durability;
 - 7.1.2.2. Removing all papers, debris, filth, and refuse and washing or thoroughly sweeping the area to the extent reasonably

- necessary to keep the area in a neat, clean, and orderly condition and free of snow and ice;
- 7.1.2.3. Placing, keeping in repair; and replacing any necessary appropriate directional signs, markers, and lines;
 - 7.1.2.4. Operating, keeping in repair, and replacing when necessary, such artificial lighting facilities as shall be reasonable required;
 - 7.1.2.5. Maintaining any perimeter walls in a good condition and state of repair; and
 - 7.1.2.6. Maintaining all landscaped areas and making such replacement of shrubs and other landscaping as is necessary;
 - 7.1.2.7. Maintaining delivery and receiving areas in good condition;
 - 7.1.2.8. Maintaining the retention/detention ponds that are required for the Shopping Center;
 - 7.1.2.9. Maintaining public liability insurance against claims for personal injury, death or property damage in the Common Area;
 - 7.1.2.10. Payment of all real property taxes and other special taxes and assessments assessed against the Common Area.

Each Owner is deemed to covenant and agree to so maintain the Common Area on its parcel and shall promptly pay any and all sums that may be due and owing for such maintenance to so maintain its area.

8. INDEMNIFICATION, INSURANCE.

8.1. Owner's Indemnification.

- 8.1.1. Each Owner ("Indemnifying Owner") shall defend, indemnify, and hold harmless (the "Indemnification") the other Owners and other Owners' respective employees, contractors, agents, and tenants ("Indemnitees") from and against all demands, claims, causes of action, or judgments, and all reasonable expenses incurred in investigating or resisting the same, for injury to person, loss of life, or damage to property (i) occurring on the Indemnifying Owner's parcel, or (ii) occurring on another Owner's parcel if caused by the sole negligence, willful act, or omission of the Indemnifying Owner, its tenants, or their respective employees, contractors, agents or tenants. In no event shall the Indemnification set forth in clause (i) hereof apply to an Indemnatee's sole negligence, willful act, or omission.

8.2. Insurance.

- 8.2.1. Liability Insurance. Each Owner shall obtain and maintain comprehensive general liability insurance covering its obligations in Section 9.1.1. Such insurance shall be written with a reputable insurance carrier licensed to do business in the State in which the Shopping Center is located. The limits of liability of such insurance shall be not less than Two Million Dollars (\$2,000,000.00) combined single limit coverage for injury to person, loss of life, and damage to property arising out of any single occurrence. The dollar limit set forth above shall be increased on the commencement of the sixth (6th) year after the date of this Declaration and at five (5) year intervals thereafter so as to reflect the then common practice for such insurance levels in shopping centers in the general location of the Shopping Center. Upon request, each Owner shall provide the other Owners with a copy of a certificate of insurance evidencing such insurance.
- 8.2.2. Property Insurance. Each Owner shall maintain fire and extended coverage insurance on all improvements on the parcel owned by them in an amount equal to their full insurable value. Such insurance proceeds shall be used to rebuild or repair such improvements in the event of damage or destruction.

9. REALTY TAXES AND ASSESSMENTS.

9.1. Real Estate Taxes and Assessments.

- 9.1.1. It is intended that all real estate taxes and assessment relating to any portion of the Shopping Center or improvements thereon, or the ownership thereof, shall be paid prior to delinquency by the respective Owners thereof.
- 9.1.1.1. In the event any Owner fails at any time to pay before delinquency its taxes or assessments on any portion of its parcel or parcels, and which may become a lien on any of the Common Area, then, except while the validity thereof is being contested by judicial or administrative proceedings, any other Owner may pay such taxes and/or assessments together with interest, penalties and cost, and in any such event the defaulting Owner obligated to pay such taxes and/or assessments shall promptly reimburse such other Owner for all such taxes and/or assessments, interest, penalties, costs, and other charges and until such reimbursement has been made the amount thereof shall constitute a lien and charge on the defaulting Owner's parcel, such lien to be made in the same manner as provided in section 14.2.1.

10. EMINENT DOMAIN.

10.1. Owner's Right to Award.

10.1.1. Nothing herein shall be construed to give any Owner any interest in any award or payments made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's parcel or construed to give the public or any government any rights in the Shopping Center. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Area, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the Owner in fee thereof and no claim thereon shall be made by the Owners of any other portion of the Common Area.

10.2. Collateral Claims.

10.2.1. All other Owners of the Common Area may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from the Owner of the land taken.

10.3. Tenant's Claim.

10.3.1. Nothing in this Section 11. shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and Owner, and/or as may now or hereafter be provided at law or in equity, for all or a portion of any such award or payment.

10.4. Restoration of Common Areas.

10.4.1. The Owner of the fee of each portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area owned by it as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer without contribution from any other Owner.

11. CANCELLATION. MODIFICATION. DURATION.

11.1. Cancellation.

11.1.1. This Declaration may be canceled only by the written agreement of all Owners of the Shopping Center, which cancellation agreement shall be recorded in the office of the County Recorder of the county in which the Shopping Center is located.

11.2. Modification, Amendment.

11.2.1. Except as otherwise provided in Section 12.3.1, this Declaration may be modified or amended only by the written agreement of all Owners of the Shopping Center which modification agreement shall be recorded in the office of the County Recorder of the county in which the Shopping Center is located.

11.3. Site Plan and Common Area Ratio Modification.

11.3.1. The layout of the Shopping Center as set forth on the Site Plan, including both Building Area and Common Area, and the Common Area ratio set forth in Section 7.1.1. may be modified by the written agreement of a majority of the Owners, together with the written agreement of any Owner whose parcel is affected in any of the following ways:

11.3.1.1. The Building Area of such parcel is to be reduced or relocated or the building height thereof reduced;

11.3.1.2. The Common Area layout of such parcel is to be altered; or

11.3.1.3. The Common Area layout on any other parcel within fifty feet (50') of the property line of such parcel is to be materially altered and such alteration would substantially interfere with parking for or access to such parcel.

11.3.2. Any such modification agreement shall be recorded in the office of the County Recorder of the county in which the Shopping Center is located.

11.4. Duration.

11.4.1. Unless otherwise canceled and terminated as permitted herein, all the easements granted in this Declaration shall continue in perpetuity and all other covenants, conditions, and restrictions shall automatically terminate and be of no further force or effect after ninety-five (95) years from the date hereof.

12. RELEASE FROM LIABILITY.

12.1. Release from Liability.

12.1.1. Any person or entity acquiring fee or leasehold title to any portion of the Shopping Center shall be bound by this Declaration only as to the parcel or portion thereof acquired by such person or entity. Such person or entity shall be bound by this Declaration only during the period such person or entity is the fee or leasehold owner of such parcel or portion thereof, except as to obligations liabilities, or responsibilities that accrue during said period. Although persons or entities may be released under this

section the easements, covenants, and restrictions in this Declaration shall continue to be benefits and servitudes upon the Shopping Center running with the land.

13. ENVIRONMENTAL WARRANTY.

13.1. Each Owner represents and warranty that it will not use, generate, store or dispose of any hazardous wastes, toxic substances or related materials ("Hazardous Materials") in, on, under, around or above their premises or the Common Area except in full compliance with all applicable laws, rules and regulations. Hazardous Materials shall include, but shall not be limited to, any substances, materials, or wastes that are or become regulated by any local or state governmental authority, or the United States of America because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment. Further, each Owner agrees that it will indemnify and save each other Owner harmless from any and all actions, proceedings, claims, costs, expenses, and losses of any kind, including but not limited to those arising from injury to any person, including death, damage to or loss of use or value of real or personal property, and costs of investigation and cleanup or other environmental remedial work, which may arise in connection with a breach of the foregoing representation and warranty.

If at any time it is determined that there are any Hazardous Materials located in, on, under, around, or above the premises or Common Area which are subject to any federal, state or local environmental law, statute, ordinance or regulation, court or administrative order or decree, or private agreement ("Environmental Requirements", including Environmental Requirements requiring special handling of Hazardous Materials in their use, handling, collection, storage, treatment or disposal, the Owner responsible for such shall commence with diligence within thirty (30) days after receipt of notice of the presence of the Hazardous Materials, and thereafter diligently pursue, at its sole expense, compliance with all such Environmental Requirements.

14. NOTICES.

14.1. Notices.

14.1.1. Notices made by the Owners pursuant hereto may be served personally or may be served by depositing the same in the United States mail, postage prepaid, certified or registered mail, or forwarded by recognized overnight delivery service, address as follows:

If to K Falls One LLC:	If to any other Owner:
4260 Galewood , Suite A Lake Oswego, OR 97035	At the address of their property in the Shopping Center

14.1.2. Written and facsimile notices shall be deemed effective upon receipt, or upon attempt to deliver in accordance with the terms of this section 16.1. No notice required to be given under this Declaration shall be binding upon any party who is entitled to receive such notice unless that party was given notice in the manner required under this Section 15.1. The foregoing addresses may be changed by written notice given pursuant to provisions of this Section.

15. LENDER PROTECTION.

15.1. Lender Protection.

15.1.1. This Declaration, and the rights, privileges, covenants, agreements, and easements hereunder with respect to each Owner and all parcels, shall be superior and senior to any lien placed upon any parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust made in good faith and for value, but all of the covenants and restrictions, easements and conditions and other provisions, terms, and conditions contained in this Declaration shall be binding upon and effective against any person or entity (including any mortgagee or beneficiary under a deed of trust) who acquires title to any parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

16. GENERAL PROVISIONS.

16.1. Running of Benefits and Servitudes.

16.1.1. The easements, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes upon all the parcels of the Shopping Center running with the land. The singular number includes the plural and any gender includes all other genders.

16.2. Not a Public Dedication.

16.2.1. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Area to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Area of the parcels herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed, or dedication) is by permission, and subject to the control of the Owners. Notwithstanding any other provisions herein to the contrary, the Owners by mutual agreement may periodically restrict ingress and egress from the Common Area in order to prevent a prescriptive easement from arising by reason of continued public

use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the operation of the Shopping Center.

16.3. Interpretation.

16.3.1. The captions and headings of the Articles and Sections of this Declaration are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof.

16.4. No Joint Venture.

16.4.1. It is not intended by this Declaration to, and nothing contained in this Declaration shall, create any partnership, joint venture or other joint or equity type agreement between the Owners.

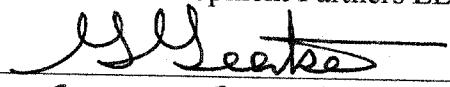
16.5. Reasonableness of Consent.

16.5.1. Unless otherwise provided herein, whenever an Owner's consent or approval is required under this Declaration, such Owner shall grant such consent or approval without delay unless in its good faith business judgment it would be reasonable to withhold such consent or approval. If an Owner shall not consent or shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. No consent or approval shall be effective unless express and in writing.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

K FALLS ONE, LLC
an Oregon limited liability company

By: Western Development Partners LLC, Manager

By: 
Greg Geertsen
managing member.

All signatures must be notarized.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

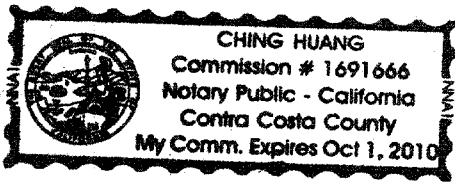
State of California

County of CONTRA COSTA } ss.

On JAN. 12, 2007 before me CHING HUANG, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared GREG GEERTSEN
Name(s) of Signer(s)

- ☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/her/their authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: DECLARATION OF COVENANTS, CONDITIONAL AND RESTRICTIONS AND GRANT OF EASEMENTS

Document Date: 12 / 1 / 2006 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

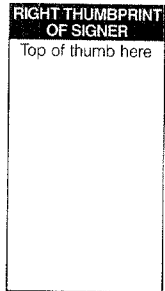


EXHIBIT A

DESCRIPTION OF THE SHOPPING CENTER

OVERALL BOUNDARY DESCRIPTION

A TRACT OF LAND BEING ALL THAT PORTION OF TRACTS 32, 33A AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST ONE-QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD WITH A 1 1/2" ALUMINUM CAP PER KLAMATH COUNTY SURVEY NO. 1441 AND LOCATED AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE OF PERSHING WAY AND THE WESTERLY RIGHT-OF-WAY LINE OF AUSTIN STREET; THENCE NORTH 55°53'18" WEST ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE 880.81 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF AVALON STREET; THENCE NORTH 30°35'30" EAST ALONG SAID EASTERLY LINE 1001.49 FEET; THENCE NORTH 89°51'08" EAST 110.58 FEET; THENCE NORTH 00°10'38" WEST 150.05 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SHASTA WAY; THENCE NORTH 89°49'57" EAST ALONG SAID SOUTH LINE 376.79 FEET TO SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 00°19'16" WEST ALONG SAID WESTERLY LINE 1,122.19 FEET TO AN ANGLE POINT IN SAID RIGHT-OF-WAY LINE; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE SOUTH 34°06'49" WEST 465.41 FEET TO SAID NORTHEASTERLY RIGHT-OF-WAY LINE AND THE POINT OF BEGINNING.

SAID TRACT CONTAINS 952,197 SQUARE FEET OR 21.86 ACRES, MORE OR LESS.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS PER C.S. NO. 4202, KLAMATH COUNTY SURVEY RECORDS.

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SITE PLAN OF THE SHOPPING CENTER

