

MT079795

RECORDING REQUESTED BY
WHEN RECORDED MAIL TO:

Randy Simonson

2861 Pinecrest Court

Medford, OR 97504

2007-013830

Klamath County, Oregon



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08/06/2007 01:42:33 PM

Fee: \$76.00

Above Space for Recorder's Use

TENANTS IN COMMON AGREEMENT

This Tenants in Common Agreement ("Agreement") is made and effective as of the date of recordation hereof, by and among the parties listed on Exhibit "A" attached hereto and incorporated herein (each sometimes referred to as a "Tenant in Common" or collectively as the "Tenants in Common"), with reference to the facts set forth below.

RECITALS

A. The Tenants in Common own real property and improvements thereon commonly known as Washburn Retail Center, located in Klamath Falls, Jackson County, Oregon, as more particularly described in Exhibit "B" attached hereto and incorporated herein ("Property").

B. The Tenants in Common desire to enter into this Agreement to provide for the orderly administration of the Property and to delegate authority and responsibility for the operation and management of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Nature of Relationship Between Co-Tenants.

1.1 Tenants in Common Relationship; No Partnership. The Tenants in Common shall each hold their respective undivided tenancy in common interests in the Property (the "Interests") as tenants-in-common. The Tenants in Common do not intend by this Agreement to create a partnership or joint venture among themselves, but merely to set forth the terms and conditions upon which each of them shall hold their respective Interests. In addition, the Tenants in Common do not intend to create a partnership or joint venture with the Property Manager (as defined below). Therefore, each Tenant in Common hereby elects to be excluded from the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended (the "Code"), with respect to the tenancy in common ownership of the Property. The

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exclusion elected by the Tenants in Common hereunder shall commence with the execution of this Agreement.

1.2 Reporting as Direct Owners and Not a Partnership. Each Tenant in Common hereby covenants and agrees to report on its federal and state income tax returns all items of income, deduction and credits which result from its Interests. All such reporting shall be consistent with the exclusion of the Tenants in Common from Subchapter K of Chapter 1 of the Code, commencing with the first taxable year following the execution of this Agreement. Further, each Tenant in Common covenants and agrees not to notify the Commissioner of Internal Revenue that he desires that Subchapter K of Chapter 1 of the Code apply to the Tenants in Common.

1.3 Indemnity. Each Tenant in Common hereby agrees to indemnify, protect, defend and hold the other Tenants in Common free and harmless from all costs, liabilities, tax consequences and expenses (for example, taxes, interest and penalties), including, without limitation, attorneys' fees and costs, which may result from any Tenant in Common so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return, report or other document.

1.4 No Agency. No Tenant in Common is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Tenant in Common, or to incur any obligations with respect to the Property.

2. Management.

2.1 Each Tenant in Common shall manage all facets of the business and affairs of such Tenant in Common's Interest. Any sale of the entire Property, any lease or re-lease of all or any portion of the Property, any negotiation, re-negotiation and approval of any indebtedness secured by any mortgage or deed of trust recorded against the entire Property, and the hiring of any property manager for the Property and the negotiation, re-negotiation, and approval of any management contract or agreement with any such property manager (and any extension or renewal of any such contract or agreement), shall require the unanimous approval of all Tenants in Common.

2.2 Washburn II, LLC, is hereby designated as the Property Manager. The Property Manager shall be responsible for managing the day-to-day operations of the Property. The duties of the Property Manager shall include, without limitation, paying all expenses of the Tenants in Common with respect to the Property, collecting, receiving and investing (on an interim basis) any cash proceeds received on account of the Property, maintaining the bank account and books and records of the Property, providing the notices to the Tenants in Common required by Paragraphs 4.2 and 5.1 of the Agreement, disbursing available cash in accordance with Paragraphs 3 and 5.2 of the Agreement and carrying out such other functions as are reasonably requested from time to time by the Tenants in Common. In addition, the Property Manager shall notify the Lender of any default by either Tenant in Common of any provision of this Agreement. Property Manager shall be entitled to delegate the performance of some or all of its duties to a management company pursuant to a separate management agreement so long as the terms of such separate management agreement are approved by all Tenants in Common.

3. Income and Liabilities. Except as otherwise provided herein, each of the Tenants in Common shall be entitled to all benefits and obligations of ownership of the Property. Accordingly, each of the Tenants in Common shall (a) be entitled to all benefits of ownership of the Property, on a gross and not a net basis, including, without limitation, all items of income and proceeds from sale or refinance or condemnation, in proportion to their respective Interests, and (b) bear, and shall be liable for, payment of all expenses of ownership of the Property, on a gross and not a net basis, including by way of illustration, but not limitation, all operating expenses and expenses of sale or refinancing or condemnation, in proportion to their respective Interests, except for such amounts as may be reasonably determined by the Property Manager to be retained for reserves or improvements.

4. Co-Tenant's Obligations. The Tenants in Common each agree to perform such acts as may be reasonably necessary to carry out the terms and conditions of this Agreement, including, without limitation:

4.1 Documents. Executing documents required in connection with a sale or refinancing of the Property in accordance with Section 5 below and such additional documents as may be required under this Agreement or may be reasonably required to effect the intent of the Tenants in Common with respect to the Property or any loans encumbering the Property.

4.2 Additional Funds. Each Tenant in Common will be responsible for a pro rata share (based on each Tenant in Common's respective Interest) of any future cash needed in connection with the ownership, operation and maintenance of the Property as determined by the Property Manager. To the extent any Tenant in Common fails to pay any funds pursuant to this Section within fifteen (15) days after the Property Manager delivers notice that such additional funds are required, any other Tenant(s) in Common may pay such amount. The nonpaying Tenant in Common shall reimburse the paying Tenant(s) in Common upon demand the amount of any such payments plus interest thereon at the rate of twelve percent (12%) per annum (but not more than the maximum rate allowed by law) until paid. Alternatively, the Property Manager is hereby authorized to pay the Tenant(s) in Common entitled to reimbursement the sums advanced (with interest thereon as provided above) out of future cash from operations or from sale or refinancing of the Property. The remedies against a nonpaying Tenant in Common provided for herein are in addition to any other remedies that may otherwise be available, including by way of illustration, but not limitation, the right to obtain a lien against the Interests of the nonpaying Tenant in Common to the extent allowed by law.

5. Sale or Encumbrance of Property.

5.1 Sale. Any loan encumbering the Property and any sale of the Property shall be subject to unanimous approval by the Tenants in Common, which approval shall be communicated to the Property Manager by written response to a written request by the Property Manager for approval. Any such written request of the Property Manager (or summary thereof) shall be accompanied by a copy of a bona fide offer (or summary thereof) to purchase or a loan commitment letter setting forth all the material terms of the loan transaction. The Loan (as defined in section 10.15 herein) has the unanimous consent of all Tenants in Common.

5.2 Distribution of Loan or Sales Proceeds. Notwithstanding any other provisions of this Agreement, each Tenant in Common's share of the proceeds of a loan or sale shall be applied at the closing of the loan or the sale as set forth below.

5.2.1 To the extent necessary, the proceeds shall first be used to pay in full its share of any loans encumbering title to the Property.

5.2.2 To the extent necessary, the proceeds shall next be used to pay in full any unsecured loan made to such Tenant in Common with respect to the Property.

5.2.3 The proceeds shall next be used to pay its share of all outstanding costs and expenses incurred in connection with the holding, marketing and sale of the Property.

5.2.4 The proceeds shall next be used to pay all outstanding fees and costs as set forth in the Management Agreement.

5.2.5 Any proceeds remaining shall be paid to such Tenant in Common.

6. Transfer or Encumbrance. Except as specifically provided in this Agreement and subject to compliance with applicable securities laws and the terms of the loan and associated loan documents secured by the Property, each Tenant in Common may sell, transfer, convey, pledge, encumber or hypothecate the Interests or any part thereof, provided that any transferee shall take such Interests subject to this Agreement.

7. Right of Partition.

7.1 General. The Tenants in Common agree generally that any Tenant in Common (and any of its successors-in-interest) shall have the right, at any time, to file a complaint or institute any proceeding at law or in equity to have the Property partitioned in accordance with and to the extent provided by applicable law. The Tenants in Common acknowledge and agree that partition of the Property may result in a forced sale by all of the Tenants in Common. To avoid the inequity of a forced sale and the potential adverse effect on the investment by the other Tenants in Common, the Tenants in Common agree that, as a condition precedent to filing a partition action, the Tenant in Common filing such action shall follow the buy-sell procedure set forth in Section 9.

7.2 Lender Mandate. Notwithstanding the general provisions of Section 7.1, if required by a lender as a condition of making a loan to the Tenants in Common to acquire the Property or refinance any loan secured by the Property, the Tenants in Common shall be deemed to have waived their right to file a complaint or institute any proceeding at law or in equity to have the Property partitioned in accordance with local law. The Tenants in Common acknowledge that the Lender, as hereinafter defined, has required this waiver.

8. Bankruptcy. The Tenants in Common agree that the following shall constitute an Event of Bankruptcy with respect to any Tenant in Common (and in any of its successors-in-interests): if a receiver, liquidator or trustee is appointed for any Tenants in Common, if any Tenant in Common becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due, if any petition for

bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law shall be filed by or against, consented to, or acquiesced in by, any Tenant in Common; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Tenant in Common then, upon the same not being discharged, stayed or dismissed within thirty (30) days thereof. To avoid the inequity of a forced sale and the potential adverse effect on the investment of the other Tenants in Common, the Tenants in Common agree that, as a condition precedent to entering into this Agreement, the Tenant in Common causing such Event of Bankruptcy shall follow the buy-sell procedure as set forth in Section 9.

9. Buy-Sell Procedure. Upon the filing of a partition action in accordance with Section 7 or the occurrence of an Event of Bankruptcy in accordance with Section 8, the Tenant in Common filing such action or the subject of the Event of Bankruptcy (hereinafter, "Seller") shall first make a written offer ("Offer") to sell its undivided interest to the other Tenants in Common at a price equal to (a) the Fair Market Value (as defined below) of Seller's undivided interest. The other Tenants in Common shall be entitled to purchase a portion of the selling Tenant in Common's interest in proportion to their undivided interest in the Property. In the event any Tenant in Common elects not to purchase its share of the selling Tenant in Common's interest, the other Tenants in Common shall be entitled to purchase additional interests based on their undivided interest in the Property. "Fair Market Value" shall mean the fair market value of Seller's undivided interest in the Property on the date the Offer is made as determined in accordance with the procedures set forth below. The other Tenants in Common shall have twenty (20) days after delivery of the Offer to accept the Offer. If any or all of the other Tenants in Common ("Purchaser") accept the Offer, Seller and Purchaser shall commence negotiation of the Fair Market Value within fifteen (15) days after the Offer is accepted. If the parties do not agree, after good faith negotiations, within ten (10) days, then each party shall submit to the other a proposal containing the Fair Market Value the submitting party believes to be correct ("Proposal"). If either party fails to timely submit a Proposal, the other party's submitted proposal shall determine the Fair Market Value. If both parties timely submit Proposals, then the Fair Market Value shall be determined by final and binding arbitration in accordance with the procedures set forth below. The parties shall meet within seven (7) days after delivery of the last Proposal and make a good faith attempt to mutually appoint a certified MAI real estate appraiser who shall have been active full-time over the previous five (5) years in the appraisal of comparable properties located in the County or City in which the Property is located to act as the arbitrator. If the parties are unable to agree upon a single arbitrator, then the parties each shall, within five (5) days after the meeting, each select an arbitrator that meets the foregoing qualifications. The two (2) arbitrators so appointed shall, within fifteen (15) days after their appointment, appoint a third arbitrator meeting the foregoing qualifications. The determination of the arbitrator(s) shall be limited solely to the issue of whether Seller's or Purchaser's Proposal most closely approximates the fair market value. The decision of the single arbitrator or of the arbitrator(s) shall be made within thirty (30) days after the appointment of a single arbitrator or the third arbitrator, as applicable. The arbitrator(s) shall have no authority to create an independent structure of fair market value or prescribe or change any or several of the components or the structure thereof; the sole decision to be made shall be which the parties' Proposals most closely corresponds to the fair market value of the Property. The decision of the single arbitrator or majority of the three (3) arbitrators shall be binding upon the parties. If either party fails to appoint an arbitrator within the time period specified above, the arbitrator appointed

by one of them shall reach a decision which shall be binding upon the parties. The cost of the arbitrators shall be paid equally by Seller and Purchaser. The decision of the arbitrator(s) may be submitted to any court of competent jurisdiction by the party designated in the decision. Such party shall submit to the superior court a form of judgment incorporating the decision of the arbitrator(s), and such judgment, when signed by a judge of the superior court, shall become final for all purposes and shall be entered by the clerk of the court on the judgment roll of the court. If one party refuses to arbitrate an arbitrable dispute and the party demanding arbitration obtains a court order directing the other party to arbitrate, the party demanding arbitration shall be entitled to all of its reasonable attorneys' fees and costs in obtaining such order, regardless of which party ultimately prevails in the matter. BY EXECUTING THIS AGREEMENT YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY OREGON LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY EXECUTING THIS AGREEMENT YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. In the event that the Seller's entire Interest is not purchased by the remaining Tenants in Common, the Seller shall have the right to exercise its partition rights and any purchaser thereunder shall acquire any Interest or portion of the Property free of the terms of this Agreement.

10. General Provisions.

10.1 Mutuality; Reciprocity; Runs With the Land. Except as otherwise provided herein all provisions, conditions, covenants, restrictions, obligations and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part of the Property; shall be binding upon and shall inure to the benefit of each of the Tenants in Common and their respective heirs, executors, administrators, successors, assigns, devisees, representatives, lessees and all other persons acquiring any undivided interest in the Property or any portion thereof whether by operation of law or any manner whatsoever (collectively, "Successors"); shall create mutual, equitable servitudes and burdens upon the undivided interest in the Property of each Tenant in Common in favor of the interest of every other Tenant in Common; shall create reciprocal rights and obligations between the respective Tenants in Common, their interests in the Property, and their Successors; and shall, as to each of the Tenants in Common and their Successors operate as covenants running with the land, for the benefit of the other Tenants in Common pursuant to applicable law. Except as otherwise provided herein it is expressly agreed that each covenant contained herein (i) is for the benefit of and is a burden upon the undivided interests in the Property of each of the Tenants in Common, (ii) runs with the undivided interest in the Property of each Tenant in Common and (iii) benefits and is binding upon each Successor owner during its ownership of any undivided interest in the Property, and each owner having any interest therein derived in any manner through any Tenant in Common or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement is contained in the instrument conveying such interest in the Property to such person or entity. The Tenants in Common agree that, subject to

the restrictions on transfer contained herein, any Successor shall become a party to this Agreement upon acquisition of an undivided interest in the Property as if such person was a Tenant in Common initially executing this Agreement.

10.2 Binding Arbitration. Any controversy arising out of or related to this Agreement or the breach thereof or an investment in the interests shall be settled by arbitration in Jackson County, Oregon, in accordance with the rules of The American Arbitration Association, and judgment entered upon the award rendered may be enforced by appropriate judicial action pursuant to the award. The arbitration panel shall consist of one member, which shall be the mediator if mediation has occurred or shall be a person agreed to by each party to the dispute within 30 days following notice by one party that he desires that a matter be arbitrated. If there was no mediation and the parties are unable within such 30 day period to agree upon an arbitrator, then the panel shall be one arbitrator selected by the Orange County office of The American Arbitration Association, which arbitrator shall be experienced in the area of real estate and limited liability companies and who shall be knowledgeable with respect to the subject matter area of the dispute. Such arbitrator shall be from either Jackson or Klamath County, Oregon. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorney's fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by him or the prevailing party or such costs shall be allocated by the arbitrator. The arbitration panel shall render a decision within 30 days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within 30 days following selection of the arbitrator any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery; provided, in any event each Tenant in Common shall be entitled to discovery in accordance with the law of the State of Oregon.

10.3 Attorneys' Fees. If any action or proceeding is instituted between all or any of the Tenants in Common arising from or related to or with this Agreement, the Tenant in Common or Tenants in Common prevailing in such action or arbitration shall be entitled to recover from the other Tenant in Common or Tenants in Common all of its or their costs of action or arbitration, including, without limitation, reasonable attorneys' fees and costs as fixed by the court or arbitrator therein.

10.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

10.5 Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of Oregon without regard to choice of law rules.

10.6 Modification. For so long as the Loan remains outstanding, this Agreement may not be amended without the prior written consent of the Lender. At such time as the Loan has been satisfied, this Agreement may be amended only with the consent of both Tenants in Common.

10.7 Notice and Payments. Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the Tenants in Common at the addresses specified in Exhibit "A" hereto. Any party hereto may from time to time, by written notice to the others, designate a different address which shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, or (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

10.8 Successors and Assigns. All provisions of this Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest, assigns, and legal representatives of the parties hereto.

10.9 Term. This Agreement shall commence as of the date of recordation and shall terminate at such time as the Tenants in Common or their successors-in-interest or assigns no longer own the Property as tenants-in-common.

10.10 Waivers. No act of any Tenant in Common shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Tenant in Common affected. Any Tenant in Common hereto may specifically waive any breach of this Agreement by any other Tenant in Common, but no such waiver shall constitute a continuing waiver of similar or other breaches.

10.11 Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

10.12 Severability. If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

10.13 Securities Laws. THE UNDIVIDED INTERESTS IN THE PROJECT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE PROJECTS MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS OR EXEMPTION THEREFROM.

10.14 Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

10.15 Lender Notification. The Tenants in Common acknowledge that _____, its successors and assigns ("Lender") has required as a condition of extending a non-recourse loan in the principal amount of \$_____ (the "Loan") to the Tenants in Common that the Lender shall only have to communicate with one Tenant in Common (the "Lender Contact") with respect to all matters relating to the Loan. The Tenants in Common designate the Property Manager as the Lender Contact. Any notices given by Lender to Lender Contact pursuant to any document evidencing, securing or relating to the Loan shall be deemed to have been given to each of the Tenants in Common and any notice received by Lender from the Lender Contact under any document evidencing, securing or relating to the Loan may be treated by Lender as having been sent by all Tenants in Common. The designation of Property Manager as the Lender Contact shall not amend or otherwise serve to alleviate the rights of any Tenant in Common under this Agreement.

10.16 Cross-Rights, etc. As long as the Loan is outstanding, the Tenants in Common agree that they will not take any action against each other for cross-rights, remedies or indemnities contained in this Agreement without the written consent of Lender. In addition, any claims that any Tenant in Common may have against the other shall be subordinate to the deed of trust securing the Loan.

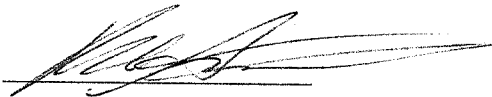
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

TENANTS IN COMMON:



AUTUMN THREE, LLC

By: John Batzer, Member



WASHBURN II, LLC

By: Randy Simonson, Member

ACKNOWLEDGMENT

STATE OF Oregon)

COUNTY OF Jackson)

On 7/25, 2007 before me personally appeared Randy Simonson, who being duly sworn, stated that he/she is President of the Managing Member of **WASHBURN II, LLC**, an Oregon limited liability company, and acknowledged the foregoing instrument to be the voluntary act and deed of the limited liability company, executed by authority of its members.

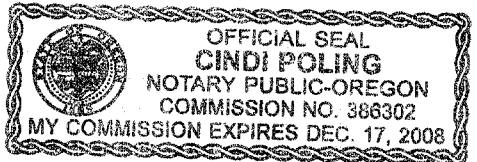
Cindi Poling
(Signature of notarial officer)(Seal, if any)

(Print Name)

Notary Public for Oregon

My commission

expires: 12/17/2008



ACKNOWLEDGMENT

STATE OF Oregon)

COUNTY OF Jackson)

On 7/25, 2007 before me personally appeared John Batzar, who being duly sworn, stated that he/she is the Managing Member of **AUTUMN THREE LLC**, an Oregon limited liability company, and acknowledged the foregoing instrument to be the voluntary act and deed of the limited liability company, executed by authority of its members.

Cindi Poling
(Signature of notarial officer)(Seal, if any)

(Print Name)

Notary Public for Oregon

My commission

expires: 12/17/2008

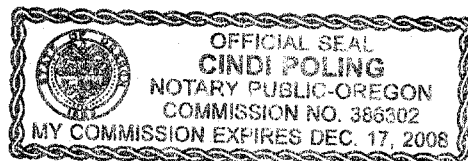


Exhibit A

Tenants in Common

Autumn Three, LLC and Washburn II, LLC

Exhibit B

Parcel 1 of Land Partition 18-06, said Land Partition being a replat of Parcel 3 of Land Partition 34-04, said Land Partition being situated in the NW 1/4 NW 1/4 of Section 10, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

TOGETHER WITH an easement for access and parking as created by instrument recorded May 2, 2003, in Volume M03 at page 29119, Microfilm Records of Klamath County, Oregon.