

NTC 13916 - 9784

2009-013804

Klamath County, Oregon



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10/23/2009 03:41:51 PM

Fee: \$92.00

When Recorded
Return To:
Freehold Capital Partners
P.O. Box 6193
Round Rock, TX 78683

DECLARATION OF COVENANT

NOTICE TO CLOSING AGENT, GRANTOR AND GRANTEE

THIS DECLARATION OF COVENANT MAY REQUIRE COLLECTION OF A FEE,
CHARGE OR ASSESSMENT IN CONNECTION WITH CONVEYANCE OF TITLE.
THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES.

Instructions to Closing Agent: Check the official public records for subsequent amendments to this Declaration. See ¶6 of this Declaration for exempt sales. For non-exempt sales made before termination of this Declaration (see ¶2), collect from Grantor one percent (1%) of the Consideration paid by the Grantee (see ¶5), retain Closing Agent fee (see ¶13d) and remit balance to Trustee (see ¶9, ¶14). Contact Trustee with inquiries related to this Declaration and for assistance with closing. See also ¶13.

STATE OF OREGON

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF KLAMATH

This Declaration of Covenant (this "Declaration") is made by **K FALLS ONE, LLC., AN OREGON LIMITED LIABILITY COMPANY**, whose mailing address is 4260 Galewood Street, Suite A, Lake Oswego, OR 97035 (hereinafter "Declarant") for the purposes herein set forth as follows:

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property ("Property") located in Klamath County, State of Oregon, described as follows:

The real property described in Exhibit "A" attached hereto and incorporated herein for all purposes.

NOW THEREFORE, Declarant hereby declares that the Property shall be transferred, held, sold and conveyed subject to this Declaration and all matters set forth in this Declaration, which shall be deemed covenants running with the land and the title to the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof:

1. **DEFINITIONS.** In addition to words and phrases defined elsewhere in this Declaration, the following words when used in this Declaration shall have the following meanings:

- a. "Beneficiary" and "Beneficiaries" shall refer to each party listed in Paragraph 17 of this Declaration, including all successors and assigns thereof.
- b. "Closing Agent" or "Settlement Agent" shall have its customary meaning within the real estate industry, and generally shall refer to the party responsible for conducting and/or facilitating a closing of a conveyance of all or any portion of the Property; usually either a title company, attorney or escrow agent who prepares paperwork and

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conducts a closing related to the Conveyance.

c. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the Conveyance Instrument and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(i) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, Consideration shall include (without limitation) the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(ii) In the case of a creation of a subleasehold interest, Consideration shall include (without limitation) the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(iii) In the case of a Controlling Interest in any entity that owns real property, Consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(iv) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, Consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(v) In the case of (i) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, Consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

d. "Controlling Interest" means (i) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

e. "Conveyance" means the transfer or transfers of any Real Property Interest by any method, including but not limited to sale, exchange, assignment, surrender, foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a Controlling Interest in any entity with a Real Property Interest. Transfer of a Real Property Interest shall include the creation of a leasehold or sublease only where (i) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (ii) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (iii) the lease or sublease is for substantially all of the premises constituting the portion of the Property that is the subject of the conveyance. Notwithstanding the foregoing, Conveyance shall not include a conveyance pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded

mortgage or deed of trust; or a release of lien of tax.

f. "Conveyance Instrument" shall mean the instrument of Conveyance, which shall include (without limitation): warranty deed; trustee deed; quit claim deed; executor's deed; administrator's deed; court order; lease; assignment; or other instrument of Conveyance.

g. "Estoppel Certificate" shall mean a document, in recordable form, signed by the Trustee, that sets forth whether or not there exists, at the time of issuance of the Estoppel Certificate, any amount due under, or defaults in connection with, this Declaration, as the same relates to the Property that is the subject of the Estoppel Certificate.

h. "Grantor" means the Person making the Conveyance. Where the Conveyance consists of a transfer or an acquisition of a Controlling Interest in an entity with a Real Property Interest, "Grantor" means the entity with a Real Property Interest or a shareholder or partner transferring stock or partnership interest, respectively.

i. "Grantee" means the Person who obtains the Real Property Interest as a result of a Conveyance.

j. "Of Record" shall mean filed in the OPR.

k. "OPR" shall mean the Office of Public Records (also known as, and also referred to herein as, "official public records", "real property records", "deed records", "county recorder's office", "county clerk's office" and "public records") of the county, municipality, parish, township, town or similar political subdivision in which the Property is located; the recorder's office for recording of deeds, liens and similar real property records. All documents required under this Declaration to be filed in the OPR shall be filed in recordable form, with all filing fees paid, and with a copy to the Trustee by certified mail.

l. "Owner" shall mean the record owner(s) holding fee simple title to all or any part of the Property that is subject to this Declaration.

m. "Parties to this Declaration" shall mean persons, firms and entities then holding rights or having obligations under this Declaration and their successors and assigns.

n. "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

p. "Property" shall mean the real property described on page one of this Declaration, together with (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the real property (collectively the "Improvements"); and (ii) all right, title and interest of Owner, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, existing or proposed, abutting, adjacent, used in connection with or pertaining to the real property or the Improvements; and (2) all water and water rights, timber, and mineral interests on or pertaining to the real property. and SAVE AND EXCEPT any portion of the Property that is owned by a governmental entity (whether state, local, federal, or otherwise, hereinafter "Public Property"). This Covenant shall not apply to Public Property. Where the context requires it, the term Property shall refer to that portion of the Property that is sold or acquired in connection with a Conveyance.

q. "Real Property Interest" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of all or any portion of the Property or the right to receive rents, profits or other income derived from all or any portion of the Property. It shall also include an option or contract to purchase all or any portion of the Property, to the extent that such option or contract gives the Grantee use and occupancy rights of the real property. It shall not include a right of first refusal to purchase all or any portion of the Property.

r. "Reconveyance Fee" shall mean the fee described in paragraph 5 of this Declaration, together with interest, costs and fees associated with an Unpaid Reconveyance Fee as otherwise described in this Declaration.

2. TERM. Except as otherwise provided herein, this Declaration and the covenants contained herein shall become binding upon the Property and the Parties to this Declaration upon filing of this Declaration in the OPR and shall expire at midnight ninety nine (99) years following the date referenced in paragraph 6(i) of this Declaration.

3. CONSENT. By acceptance of the Conveyance Instrument or Conveyance, each Owner of such Real Property Interest covenants, acknowledges, consents and agrees to the terms, conditions, promises, stipulations, grant of rights and authority, covenants, charges, liens, obligations, duties and restrictions contained in this Declaration, intending to be legally bound by same to the maximum extent allowed by law, and to the same extent as if expressed in the Conveyance Instrument, and takes and conveys such Real Property Interest subject to the provisions of this Declaration. Each Owner acquiring the Real Property Interest, whether expressed in the Conveyance Instrument or not, covenants and agrees to payment of the Reconveyance Fee upon a Conveyance by such Owner of such Real Property Interest, in whole or in part.

4. CONSIDERATION FOR BENEFITS AND BURDENS. By acceptance of a Conveyance Instrument or Conveyance, whether expressed therein or not, each Owner consents and agrees (a) that Declarant has caused one or more tangible and intangible improvements to, impressed benefits upon, or created common areas and easements appurtenant to, the Property; and/or (b) this Declaration is an essential component to the future viability of the community and the Property and will allow the Property to be used for other purposes by initial and subsequent owners; (c) the Consideration paid by Owner was based in whole or in part upon the existence of this Declaration; (d) that this Declaration benefits the land within the community in which the Property is located, and, by extension, the Property itself and (e) that the foregoing and this Declaration benefit the Property and the Owner, (said benefits and consideration in "a-e" jointly and singularly "Property Benefits"). In addition, each Owner expressly covenants, acknowledges and agrees (i) that the Property Benefits all and singularly, jointly and severally, are appurtenant to the Property; (ii) the Reconveyance Fee is, in whole or in part, compensation for the Property Benefits, the Consideration paid for the Property, and for the rights granted herein and the benefits flowing therefrom, and (iii) that in consideration therefore, and for other good, valuable, independent and adequate consideration, the receipt and sufficiency of which is intended, acknowledged, stipulated and accepted by Owner's acceptance of a Conveyance Instrument, and as a covenant running with the Property and any portion thereof, the Owner shall be bound by the terms and conditions of this Declaration.

5. AMOUNT DUE. Except as otherwise provided herein, contemporaneous with, and as an encumbrance in connection with a Conveyance, the Grantor shall pay to Trustee, as trustee for Beneficiaries, a fee (the "Reconveyance Fee") equal to one percent (1%) of the Consideration (as defined in section 1(c)) paid by or on behalf of the Grantee in connection with the Conveyance.

6. EXEMPTIONS. The Reconveyance Fee shall not be assessed or payable in connection with a Conveyance (a) by the Declarant; (b) made by the Owner in connection with a mortgage or deed of trust where the conveyance is for the sole purpose of securing the indebtedness of the Owner; (c) resulting from death or legal disability of an Owner, including transfers by will or probate; (d) by or to an Institutional Lender or trustee under a deed of trust made in connection with a judicial or non-judicial foreclosure; (e) by or to a governmental entity or agency (whether local, state, federal or otherwise) or 501(c)(3) entity; (f) made by a Grantor with a Controlling Interest in the Grantee, or where the Grantee owns a Controlling Interest in the Grantor (an "Affiliate Transaction"); (g) made by order of a court (whether in connection with bankruptcy, divorce or otherwise); (h) where the Trustee cannot be identified by reference to this Instrument or the OPR; or (i) occurring prior to 01/01/2012. "Institutional Lender" shall mean any bank, government sponsored entity, savings and loan association or other lender that is engaged in the business of owning, servicing or providing mortgage financing on real property and is licensed to engage in such business if required by applicable law.

7. RESERVATION: This Declaration and the premises and promises contained herein are intended to be a covenant running with the land and title to the real property and as a deed restriction (whether stated in the deed or not) and be binding upon each Owner and its successors and assigns. Whether expressed therein or not, a Conveyance Instrument conveying a Real Property Interest shall be deemed to contain therein a reservation providing that the Conveyance is expressly subject to this Declaration. Parties acquiring any portion of the Real Property Interest take title subject to this Declaration and the reservation heretofore provided. In the event of any conflict between the provisions of this Declaration and any Conveyance Instrument, this Declaration shall control.

8. LIEN AND PRIORITY; LIABILITY; COLLECTION. To the extent permitted by law, a Reconveyance Fee that is not paid when due ("Unpaid Reconveyance Fee") shall thereupon become a continuing lien and charge

("Lien") upon the portion of the Property that was the subject of the Conveyance giving rise to the Unpaid Reconveyance Fee ("Lien Property"), which Lien shall thereafter be binding upon such Lien Property and a personal obligation of such Lien Property's Owner, and:

- a. The Lien is effective from and shall relate back to the most recent of the date of recording in the OPR of (1) this Declaration, (2) an Estoppel Certificate or (3) a Substitute Estoppel Certificate.
- b. The Lien shall secure the Unpaid Reconveyance Fee as well as interest and all reasonable costs and attorney's fees incurred incident to the collection process.
- c. The liability of an Institutional Lender (including its successor or assignees) for any Unpaid Reconveyance Fee is limited to one percent (1%) of the original first lien mortgage debt.
- d. With the prior written consent of the Beneficiaries then holding a majority interest in this Declaration (which consent shall include instructions pertaining to payment of enforcement costs and disposition of Lien Property ultimately acquired at any foreclosure) the Trustee may bring an action, in its name or on behalf of one or more Beneficiaries, to foreclose the Lien for Unpaid Reconveyance Fees, together with such other sums incident thereto, in the manner a mortgage of real property is foreclosed in the jurisdiction where the property is located (including a power of sale and non-judicial foreclosure if applicable) and may also bring an action to recover a money judgment for such unpaid amounts. The Trustee is entitled to recover from the Owner of the Lien Property (including from the proceeds of the sale, if any) reasonable attorney's fees incurred in either a foreclosure action or an action to recover a money judgment for Unpaid Reconveyance Fees.
- e. For the benefit of the Beneficiaries, the Trustee has the power to purchase the Lien Property at the foreclosure sale and to then hold, lease, mortgage, or convey it.
- f. Except as otherwise set forth herein, the Lien Property shall remain subject to Unpaid Reconveyance Fees and any party acquiring title to Lien Property is liable for, and shall promptly pay to the Trustee, all Unpaid Reconveyance Fees accrued prior to the acquisition of the Lien Property by such party. This liability is without prejudice to any right that such party may have to seek contribution or indemnity from prior Grantor(s) or owner(s) of the Lien Property.
- g. An Institutional Lender (or its successor or assignees) who acquires title to Lien Property by foreclosure (including by an instrument of conveyance in lieu of foreclosure) shall have no liability for Unpaid Reconveyance Fees that became due prior to the mortgagee's acquisition of title to such Lien Property.
- h. For purposes of this subsection, the term "successor or assignee" as used with respect to an Institutional Lender includes only a subsequent holder of the first first lien mortgage debt.
- i. The Trustee shall be a proper party to intervene in any foreclosure proceeding related to Lien Property.
- j. A foreclosure by the Trustee shall not extinguish this Declaration with respect to the Lien Property.
- k. Any proceeding under one remedy shall not constitute an election of remedies. Failure to proceed under any remedy shall not be deemed a waiver of that remedy.
- l. Unpaid sums due under this Declaration shall bear interest at the lesser of the maximum non-usurious lawful rate allowed by law or 18 percent per year. Interest shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. This provision overrides other provisions, demands or actions to the contrary.
- m. Except as provided under 10(c), payment received by the Trustee shall be applied first to any permissible accrued interest, then to any costs and reasonable attorney's fees incurred in collection, and then to the Unpaid Reconveyance Fee. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.
- n. Within 10 business days after Trustee's receipt of a written request ("Estoppel Request") from an Owner or their designated representative, including any mortgagee or closing agent (the "Requesting Party"), the Trustee shall furnish to such Requesting Party an Estoppel Certificate. All Estoppel Requests shall include a copy of this Declaration and shall describe with reasonable particularity (i) the Owner; (ii) the approximate date of and Consideration for the Conveyance; and (iii) the Requesting Party's name, address and contact information. An Estoppel Certificate delivered by the Trustee shall be conclusive and binding upon the Trustee and Beneficiaries,

and the Property described in the Estoppel Certificate shall not be subject to liens or claims arising out of this Declaration for any amounts or defaults (including, without limitation, Unpaid Reconveyance Fees) that may have accrued prior to the date of the Estoppel Certificate and which are not otherwise described within the Estoppel Certificate. If the Trustee fails to timely respond to a written request made pursuant to this provision, then after an additional five (5) days notice of intent to file a Substitute Estoppel Certificate ("Substitute Estoppel Notice") with a copy of said Substitute Estoppel Certificate contained therein, delivered to Trustee by certified mail, return receipt requested, it shall be conclusively deemed that there are no unpaid amounts or defaults as of the date of the request, and the Requesting Party shall have the right to record an affidavit (attaching all prior requests for an Estoppel Certificate) to such effect (a "Substitute Estoppel Certificate") in the OPR, provided that same is recorded within fourteen (14) days from date of mailing of the Substitute Estoppel Notice.

o. Within ten (10) business days from date of receipt of a written request from Trustee, an Owner or Closing Agent shall promptly provide information reasonably requested by the Trustee related to a Conveyance to or from an Owner, including date of Conveyance, the Grantor and Grantee, the Consideration, and a copy of any closing statement prepared in connection therewith (redacted as to each tax identification number and date of birth appearing therein). By acceptance of a Conveyance Instrument, each Owner does thereby irrevocably authorize and instruct each Closing Agent involved in closing a Conveyance to comply with the foregoing, and does release said Closing Agent(s) from liability of whatever kind and of whatever nature arising out of or related to a Closing Agent's compliance with this provision.

p. The Trustee shall be entitled to charge a reasonable fee for Estoppel Certificates.

q. To the extent the foregoing conflicts with any applicable statute, the statute shall apply.

9. **TRUSTEE AND SUCCESSORS.** The following shall serve as Trustee: Rjon Robins, Esq., 6300 NW 5th Way, Ft. Lauderdale, Fl. 33309. Check www.covenantclearinghouse.com for additional information. including any successor trustee, the "Trustee"). The Trustee shall act on behalf of the Beneficiaries in accordance with the rights, privileges and duties granted in this Instrument together with any separate agreement as contemplated herein. Licensor shall have the sole and exclusive authority to appoint successor trustees, succeeding to all rights and responsibilities of Trustee, including the right to bifurcate and designate the trustee rights and duties herein into more than one person or entity, but said appointment shall be by notice(s) filed in the OPR. A Trustee shall be entitled to appoint a successor trustee, but such appointment shall be subordinate to Licensor's aforementioned right of appointment. Upon Licensor's or Trustee's request, parties to this Declaration shall promptly join in execution of any appointment made pursuant to this provision together with any documents necessary to effectuate same. However, failure of one or more party to provide written consent shall not invalidate an appointment. Appointment of a substitute Trustee shall be in writing and filed Of Record. To the extent permitted by law, all Parties to this Declaration jointly and severally waive any and all claims against Licensor and Trustee which arise out of or which are related to acts undertaken pursuant to an Appointment made pursuant to this section.

10. **NON-JUDICIAL FORECLOSURE.** To the extent permitted by law, each Owner, by acceptance of the Conveyance Instrument, whether expressed therein or not, hereby expressly vests in the Trustee the power to bring all actions against such Owner personally for the collection of unpaid amounts due hereunder and the power to enforce any Liens by all methods available for enforcement of such Liens, including judicial and non-judicial foreclosure of Lien Property by an action or proceeding brought in the name of the Trustee or Beneficiaries in the manner provided for in the laws of the jurisdiction where the Lien Property is located for mortgage or deed of trust liens on real property, and Owner expressly grants the Trustee a power of sale of the Lien Property. In connection with a non-judicial foreclosure, and subject to any requirements imposed by applicable law, the Trustee shall:

- a. give notice of default, and notice of the foreclosure sale, to the Owner of the Lien Property;
- b. sell and convey the Lien Property to the highest bidder for cash, with conveyance subject to valid prior liens, and other valid and prior exceptions to conveyance and warranty, and to this Declaration; and
- c. from the proceeds of the sale, pay, in this order:
 - i. expenses of foreclosure, including a commission to the Trustee of 3% of the bid;
 - ii. to a non-profit made pursuant to 12(b), five percent of the sums remaining after deducting 10(c)(i);
 - iii. to Beneficiaries, all sums due and unpaid, in accordance with their respective interest;

- iii. any amounts required by law to be paid before payment to Owner; and
- iv. to the Owner of the Lien Property prior to foreclosure, any balance.

Recitals in any Trustee's deed conveying the Lien Property will be presumed true. Foreclosure of sums due and secured by the Lien shall not discharge this Declaration. Trustee is authorized to undertake any lawful action necessary to effectuate this provision.

11. TRUSTEE RIGHTS. To the maximum extent permitted by law, Beneficiaries jointly and severally grant unto Trustee the right to undertake on behalf of Beneficiaries, as agent thereof, any action Trustee deems reasonably necessary or appropriate to prosecute, defend, administer and exercise rights and obligations arising out of or related to this Declaration, including, but not limited to, the right to:

- a. collect and disburse sums in connection with this Declaration;
- b. undertake or defend, including retaining others to undertake and defend, legal, arbitration and administrative proceedings;
- c. execute Estoppel Certificates and similar documents;
- d. re-file this Declaration (or a document containing the terms and conditions thereof, including any abstract or similar document) if necessary to comply with any statutes (including recording statutes) that limit the duration or validity of, or liability for, this Declaration, provided, however, that the re-filed Declaration shall not extend the original Term. Any Lien arising under the re-filed instrument shall relate back to the most recent of date of recordation in the OPR of (i) this Declaration, (ii) an Estoppel Certificate or (iii) a Substitute Estoppel Certificate.
- e. with respect to each Conveyance retain, as its fee, three percent (3%) of a (i) Reconveyance Fees and (ii) other sums collected by the Trustee pursuant to the terms of this Declaration, together with any reimbursements due Trustee under this Declaration (the Trustee shall not be entitled to collect a fee for the sale of a beneficiary's beneficial interest in this Instrument as described in paragraph 17);
- f. be reimbursed by Beneficiaries (or retain from any sums due Beneficiaries under this Declaration), on a prorata basis in accordance with each Beneficiaries respective ownership interest in this Declaration, amounts necessary to reimburse Trustee for reasonable and necessary expenses incurred in initiating or defending legal proceedings in connection with this Declaration, recordation fees (including fees associated with filing of notice of successor Trustee), and such other fees and expenses as Trustee shall reasonably incur in connection herewith;
- g. decline to undertake action under subsection b of this paragraph 11 until such time as the Beneficiaries have made suitable financial arrangements with Trustee for costs and expenses related to same.

12. TRUSTEE DUTIES. The Trustee shall, to the maximum extent allowed by law, and as agent for Beneficiaries:

- a. hold in trust for, and not more than ninety days from date of receipt pay to, the Beneficiaries, in proportion to their respective ownership interest, all Reconveyance Fees (after permitted deductions and distributions otherwise described herein), arising out of or related to this Declaration;
- b. retain in a separate escrow account five percent (5%) of all Reconveyance Fees and within ninety days from date of receipt of same pay said funds to one or more non-profit or not-for-profit entities ('non-profit' or 'charity') engaged in non-political, non-religious activities for the direct or indirect benefit of the community within which the Property is located, it being the intention of this Declaration, the Beneficiaries and each owner that a portion of the Reconveyance Fee arising from the Property be reinvested in the community for the direct or indirect betterment of the Property and land within the community. The Parties to this Declaration, including each Owner (by acceptance of a Conveyance Instrument) acknowledge, agree and stipulate that (i) non-profit organizations build better communities and enhance property values; (ii) the foregoing allocation is good, independent and sufficient consideration for this Declaration and the Reconveyance Fee due hereunder and (iii) the foregoing touches and concerns the land. In no event shall a non-profit, as a condition of acceptance of funds, be required to segregate or trace the funds to the Property or the community. The Trustee's discretion and determination as to the interpretation and application of this subparagraph "b" shall be conclusive and no Beneficiary shall have a right or claim to the aforementioned funds or authority as to the disbursement of same, provided however that Licensor shall have the superior right (but not the obligation) to designate the non-profit (s) for receipt of funds pursuant to, and for the purposes stated in, this subparagraph "b" and such designation

shall be binding;

- c. exercise the rights and duties assigned hereunder;
- d. maintain records of Trustee's receipts and disbursements related to this Declaration;
- e. execute Estoppel Certificates and similar documents reasonably requested by Requesting Parties;
- f. exercise the Trustee Rights when reasonable or necessary to do so;
- g. comply with any other written agreements between Trustee and Beneficiaries;
- h. accept as agent for each Beneficiary service of process and other notices related to this Declaration; and
- i. have (and is hereby granted) authority to undertake the foregoing as agent for the Beneficiaries.

Notwithstanding the foregoing, Trustee shall have no obligation to (i) issue payment to a non-profit or Beneficiary until the gross sum due and unpaid thereto exceeds One Hundred Dollars \$100.00 or (ii) pay or distribute interest accrued or collected on funds held by Trustee in accordance with this Declaration.

13. CLOSING AGENT ADMINISTRATION. In connection with any Conveyance:

- a. a Closing Agent shall have no obligation to investigate or ascertain the location of a Trustee or any other information related to this Declaration by means other than by reference to the OPR.
- b. if for any reason the Trustee cannot be located by reference to the OPR, a Closing Agent shall (1) remit to each Beneficiary that can be located through reference to the OPR each Beneficiary's prorata portion of the Reconveyance Fee, as determined by reference to the OPR, and (2) administer the balance of the Reconveyance Fee applying applicable state escheatment rules.
- c. upon tender of payment to Trustee of sums due under this Declaration, or upon Closing Agent's written agreement to hold the Estoppel Certificate in trust and unrecorded until tender of payment of such sums to the Trustee, a Closing Agent shall be entitled to and Trustee shall issue an Estoppel Certificate;
- d. where permitted by law a Closing Agent shall be and hereby is entitled to withhold from each Reconveyance Fee paid in connection with a Conveyance, and retain as a fee, the greater of \$100.00 or two percent (2%) of the Reconveyance Fee collected;
- e. when in doubt as to duties or liabilities related to disbursement of funds, a Closing Agent shall (i) deposit said funds with the clerk of any court of competent jurisdiction in Klamath County, and (ii) provide written notice of same to Trustee, and shall thereafter have no liability with respect to the deposited sums;
- f. a Closing Agent shall be entitled to rely solely upon information contained in the OPR and is hereby released as to claims resulting from information not contained in the OPR; and
- g. it is understood that Closing Agent shall be under no obligation to invest any funds deposited with it, nor shall it be accountable for any incidental benefit attributable to the funds which may be received by Closing Agent while it holds such funds.

14. PAYMENT AND NOTICE. Payment shall be deemed made when tendered to the Trustee in good and collected funds. In order to insure proper credit, payment transmittal must reference the recording information of this Declaration. Except as otherwise provided herein, notices, requests and communications of any kind required under or made in connection with this Declaration shall be deemed made when (1) sent by certified mail, return receipt requested to the Trustee or (2) acknowledged in writing by the Trustee. An Estoppel Certificate or similar written acknowledgment of payment shall not be required in order to satisfy the then-existing indebtedness but Trustee shall be authorized to provide same, and in accordance with this Declaration shall do so upon request of a Closing Agent.

15. ADDITIONAL RECONVEYANCE FEES PROHIBITED. During the term of this Declaration no additional Reconveyance Fee or similar fee payable in connection with a Conveyance shall be imposed upon the Property as a covenant running with the land; provided, however, that the foregoing shall not prohibit fees, charges or assessments of whatever kind or of whatever nature payable to and for the benefit of a homeowner's association, governmental entity or non-profit organization.

16. MODIFICATIONS. Trustee shall be entitled to (and upon request of Licensor shall) make technical modifications to this Declaration for the purpose of securing or clarifying rights and obligations intended or contemplated in this Declaration, to correct clerical errors, to clarify ambiguity, to remove any contradiction in the terms hereof, or to make such other changes deemed necessary to comply with applicable law; provided, however,

that no such modification shall (i) result in an increase in the total consideration contemplated in paragraph 5 of this Declaration, (ii) affect Owner's rights or obligations under this Declaration, (iii) extend the term of this Declaration nor (iv) make any modifications to substantive terms that change the general intent of this Declaration. Any modification shall be made by instrument filed in the OPR. In the event the Declarant listed on page one is a beneficial owner at the time of any modification made pursuant to this paragraph 16, said Declarant's consent thereto shall be required. All parties to this Declaration jointly and severally waive any and all claims against Licensor and Trustee which arise out of or which are related to any modification undertaken in good faith pursuant to this section.

17. **BENEFICIARIES.** All rights, interest, ownership and privileges in and to this Declaration, **SAVE AND EXCEPT** "Declarant's Right to Terminate" under paragraph 25, and rights assigned to Licensor, belong to and are hereby vested in the following Beneficiaries, who/which are each hereby declared the owner(s) of an undivided interest in this Declaration in the percentages shown below:

- a. K Falls One, LLC., an Oregon limited liability company, 4260 Galewood Street, Suite A, Lake Oswego, OR 97035 (50%)
- b. FCP Realty Interests II, LLC., a Nevada limited liability company, P.O. Box 6193, Round Rock, TX 78683 (33%)
- c. Doug Yoder, PO Box 4761, San Jose, CA 95150 (10%)
- d. Jeffrey Tablak, PO Box 4761, San Jose, CA 95150 (5%)
- e. Robert Tablak, PO Box 4761, San Jose, CA 95150 (2%)

18. **BENEFICIARY SALE/ASSIGNMENT.** Each Beneficiary is entitled to sell, convey, assign, pledge, subordinate and hypothecate, in whole or in part, their beneficial interest in this Declaration, provided however, that any offer to acquire the beneficial interest described in 17(a), made within five years from the date this Declaration was recorded in the OPR, shall include an equal offer per one percent interest for the remaining beneficial interests described under paragraph 17. Licensor shall have the right (but not the duty) to waive the foregoing provision.

19. **BENEFICIARY DUTIES.** Each Beneficiary shall:

- a. provide notice of a purchase, sale, pledge, assignment or similar conveyance of all or part of Beneficiary's interest in this Declaration by filing notice of same in the OPR, with a copy to Trustee. The foregoing notice shall generally meet the content requirements of a Conveyance Instrument, containing therein a complete description of the parties, the interest conveyed and reference to the recording information of the document by which the grantor/assignor obtained title. Any person, firm or entity who acquires (by sale, assignment or otherwise), in whole or in part, rights in and to this Declaration shall, by taking such assignment, have consented and agreed to the terms of this Declaration.
- b. notify Trustee, in a method and manner reasonably required by Trustee, of any change in Beneficiary's mailing address or other material information and, failing to do, shall be subject to forfeiture to the state of Oregon, applying state escheatment rules, all unpaid sums.

20. **LICENSE.** This Declaration was prepared under license from Freehold Licensing, Ltd., a Texas limited partnership (together with its heirs, successors, predecessors, controlled entities, affiliates, and assigns "Freehold" and "Licensor").

21. **LICENSOR'S AUTHORITY.** If Licensor should discontinue operations and cease to exist, and provided that the rights granted herein to Licensor have not otherwise been assigned by notice of assignment executed by Licensor and filed in the Recorder's Office of Travis County, Texas, then upon written certification of the foregoing made under oath by Trustee, the rights assigned to Licensor shall thereafter be exercisable by Beneficiaries (whether one or more) holding a majority beneficial interest in this Declaration. Upon Trustee's request, all parties to this Declaration shall promptly join in execution of any document necessary to effectuate this provision, but failure to do so shall not impair any action taken pursuant to this provision.

22. **IMPAIRMENT OF CONSIDERATION.** To the extent that Improvements or Property Benefits form, in whole or in part, the basis for consideration for the benefits and burdens imposed by this Declaration, the parties, by acceptance of a Conveyance Instrument, stipulate and agree to the adequacy of said Improvements and Property

Benefits, and further stipulate and agree, by acceptance of a Conveyance Instrument, whether expressed therein or not, that neither destruction nor obsolescence of, nor defect in, said Improvements or Property Benefits shall directly or indirectly diminish, impair or invalidate this Declaration in any way. No party holding rights in and to this Declaration, as a beneficiary thereof, shall have an obligation to construct, maintain, warranty, modify, add to, or transfer additional improvements to the Property beyond the date of recordation of this Declaration, in order for this Declaration to be in full force and effect.

23. **BENEFIT AND BURDEN.** It is the intent of the Parties to this Declaration that this Declaration and the benefits, burdens, premises and promises contained herein run with the land and shall be binding upon and shall inure to the burden and benefit of each Owner and the Beneficiaries, together with their respective successors, heirs and assigns. All burdens and benefits are stipulated to be appurtenant to the land.

24. **SAVINGS CLAUSE.** In the event any provision in this Declaration, including any modification thereto, is adjudicated impermissible or unenforceable, then the offending provision shall be deemed modified to the extent possible and necessary to comply with applicable law and to preserve each Beneficiary's right to compensation equal to compensation originally contemplated under this Declaration.

25. **DECLARANT'S RIGHT TO TERMINATE.** Notwithstanding any provision or term to the contrary herein, this Declaration shall terminate and be rendered null, void and of no force and effect in its entirety with respect to any portion of the Property that is the subject of a Termination (hereinafter defined). As used herein, a "Termination" shall refer to a written document that (i) describes the portion of the Property to be released and exonerated from this Declaration ("Released Property"); (ii) is recorded in the OPR and (iii) is executed SOLELY by Declarant in Declarant's sole and absolute discretion without necessity of joinder of the Beneficiary(ies), the Trustee, an Owner, any non-profit designated in this Declaration or any other party affected by this Declaration (jointly and severally the "Affected Parties"). Declarant shall be free to record a Termination notwithstanding any duty or obligation to the Affected Parties and regardless of any financial or legal effect such Termination may or will have on Affected Parties. Notwithstanding the foregoing, Declarant shall have no right to record a Termination and no Termination shall be valid or effective after the earlier of the sale, conveyance, transfer or assignment of (x) Declarant's interest in the Released Property or (y) Declarant's beneficial interest in this Declaration, whether in whole or in part. Within ten (10) days from date of filing a Termination, Declarant shall provide a copy to Trustee, by certified mail. If a Termination is recorded as provided above, the legal description of the Property, for purposes of this Declaration, shall be deemed amended to exclude the Released Property. Upon Declarant's written request, the Trustee and Affected Parties shall execute any document(s) necessary to effectuate this provision. This right to terminate is personal to the Declarant and cannot be conveyed, assigned or otherwise exercised by another party.

26. **NO GENERAL ASSIGNMENT.** Any purported assignment of rights under this Declaration shall be invalid and of no force and effect unless said assignment specifically references this Declaration and is filed Of Record. In particular, but not by way of limitation, a general assignment by Declarant (whether by Conveyance Instrument, contract for sale, or otherwise), executed in connection with a sale of the Property or otherwise, shall not constitute a valid sale or assignment of Declarant's rights under this Declaration, or invalidate or modify this Declaration in any way.

27. **LOAN REQUIREMENT.** To the extent that any of the provisions of this Declaration shall be found to be contrary to the promulgated rules and regulations of the Federal Housing Administration, the Veterans Administration or any other recognized governmental or quasi-governmental lending institution or agency (public or private) primarily engaged in granting or insuring loans, to such an extent that same unreasonably interferes with a Grantee's or Owner's ability to obtain financing for the Property, Trustee shall have the right and authority to waive or subordinate such provision for purposes of a given loan and, upon request of the Beneficiaries holding a majority interest, shall do so.

28. **CONSTRUCTION.** This Declaration shall be liberally construed in and for the interest, benefit and protection of Beneficiaries.

29. **LIMITATION ON DAMAGES.** Except as otherwise provided herein no party to this Declaration shall be entitled to recover from another party to the Declaration, costs, including attorney fees, incurred in connection with

legal proceedings arising out of or related to this Declaration. Each party to this Declaration, including Owner, Trustee and Beneficiaries, hereby jointly and severally waive all claims against each other for exemplary, punitive, consequential, and emotional damages arising out of or related to this Declaration.

30. APPLICABLE LAW. This Declaration shall be construed according to the laws of the State of Oregon as they exist at the time of filing of this Declaration, provided that should a later created law, ordinance or regulation related to the subject matter of this Declaration provide additional grounds for enforcement of this Declaration then same shall apply. If any provision of this Declaration is found to be in violation or conflict with applicable law then said provision shall be amended only to the extent necessary to comply with the applicable law, but shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, this Declaration is executed on the date indicated below.

DECLARANT

K Falls One, LLC., an Oregon limited liability company

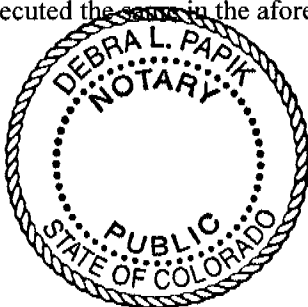
By: Western Development Partners, LLC, a California limited liability company, its managing member

[Signature], Manager
Steve Wilson

STATE OF Colorado §
COUNTY OF Arapahoe §

ACKNOWLEDGMENT

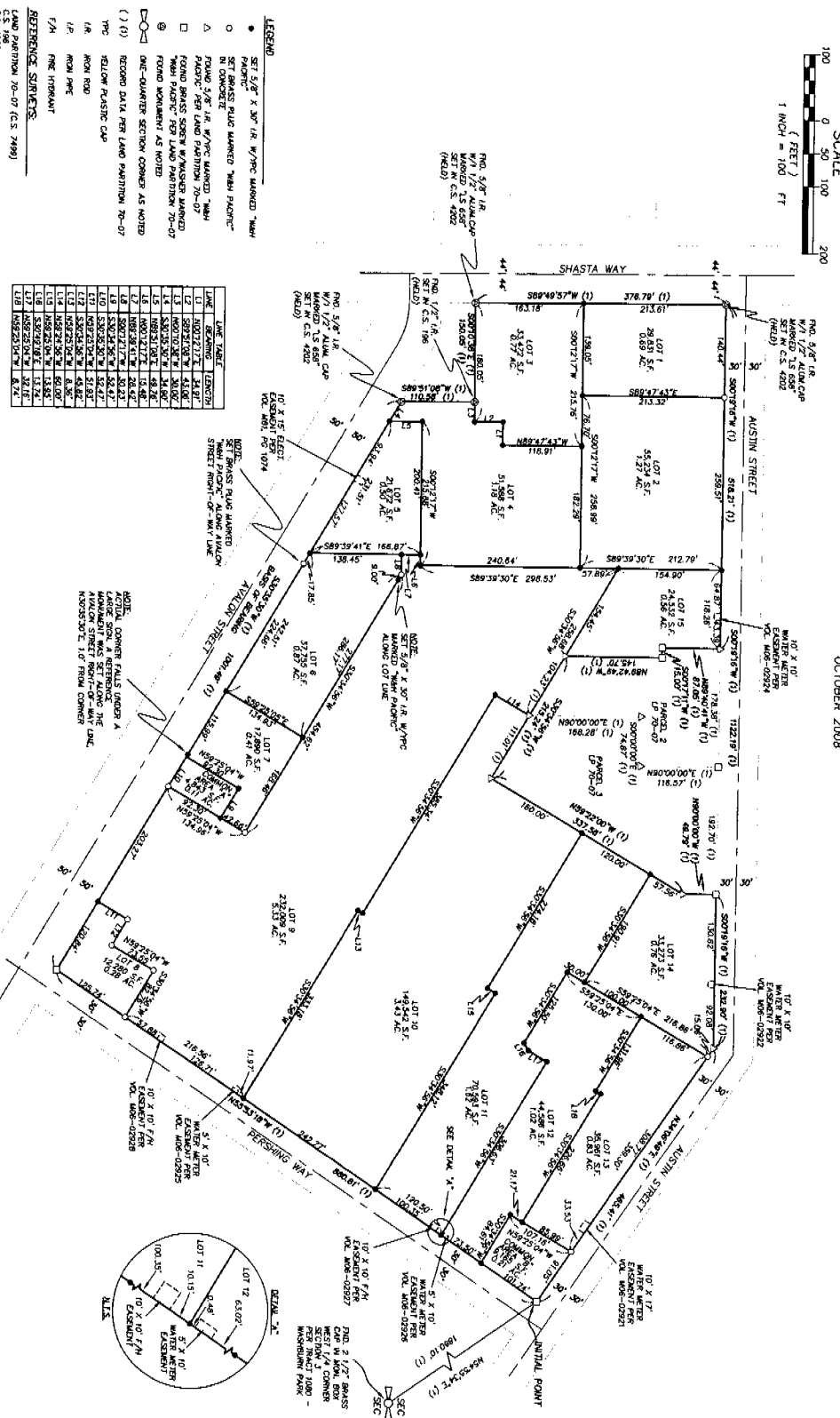
Before me, the Undersigned Notary, on the 15th day of October, 2009, personally appeared Steve Wilson, Manager of K Falls One, LLC, signer of the foregoing instrument, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged that s/he executed the same in the aforementioned capacity for the purposes therein contained.



[Signature]
Notary Public, State of Colorado

AMERITITLE has recorded this Instrument by request as an accommodation only, and has not examined it for regularity and sufficiency or as to its effect upon the title to any real property that may be described therein.

TRACT 1522 - KLAMATH MALL
BEING A REPLAT OF PARCEL 1 OF LAND PARTITION NO. 70-07
SITUATED IN THE NW 1/4 OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF
THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON
OCTOBER 2008



	LAME	BEAMING	LENGTH
L/MC	580.2717°	34.91°	
L/2	580.25107°	34.91°	
L/3	580.15307°	34.90°	
L/4	580.15307°	34.90°	
L/5	580.15307°	34.90°	
L/6	580.15307°	34.90°	
L/7	580.15307°	34.90°	
L/8	580.15307°	34.90°	
L/9	580.15307°	34.90°	
L/10	580.15307°	34.90°	
L/11	580.15307°	34.90°	
L/12	580.15307°	34.90°	
L/13	580.15307°	34.90°	
L/14	580.15307°	34.90°	
L/15	580.15307°	34.90°	
L/16	580.15307°	34.90°	
L/17	580.15307°	34.90°	
L/18	580.15307°	34.90°	

NOTE

THE EASEMENTS SHOWN ON THIS SHEET ARE EXISTING AS REVEALED BY DEED VOLUME AND PAGE. THE DISTANCES SHOWN ARE FROM THE CORRESPONDING LOT CORNER TO THE EDGE OF THE EASEMENT PER THE DEED DESCRIPTIONS. SEE SHEET 3 OF 3 FOR ACTUAL OVERLAPPED EASEMENTS DERIVED BY THIS PLAN.

AT&T ASSOCIATES (US) INC. 5000 W. SAM HOUSTON BLVD.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JACK T. BUTLER
2550

SHEET 3 OF 4
RENEWAL: 12-31-02

WHPacific
1004 Main Street
Marina del Rey, CA 91031
310-446-0042 Fax 310-485-2106