

2010-006514

Klamath County, Oregon

**WHEN RECORDED RETURN TO:**

Kimball H. Ferris  
Stephen P. Arnot  
Bullivant Houser Bailey, PC.  
888 SW Fifth Avenue, Suite 300  
Portland, OR 97204-2089



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05/28/2010 12:27:34 PM

Fee: \$62.00

**TAX STATEMENTS SHALL BE SENT  
TO THE FOLLOWING ADDRESS:**

Evergreen Environmental Development  
Corporation, a Washington corporation  
111 Wall Street  
Spokane, WA 99201

1574683

**NO MERGER DEED IN LIEU OF FORECLOSURE**

The Grantor, K FALLS ONE LLC, an Oregon limited liability company ("**Grantor**"), conveys and warrants to EVERGREEN ENVIRONMENTAL DEVELOPMENT CORPORATION, a Washington corporation ("**Grantee**"), the real estate (the "**Property**") legally described as:

**See attached Exhibit "A" and incorporated herein by reference**

1. Grantee is the owner and holder of the following:

1.01 Promissory Note dated November 17, 2005, with principal amount of \$20,700,000.00 (the "**2005 Note**"); the Note has been modified and all references to the 2005 Note shall be to the 2005 Note, as so amended.

1.02 The Deed of Trust, Assignment of Rents and Security Agreement (and Fixture Filing) recorded on November 18, 2005, in the records of Klamath County, Oregon, as instrument number 2005-69441 (the "**First Trust Deed**"), securing the 2005 Note.

1.03 The Assignment of Leases and Cash Collateral recorded on November 18, 2005, in the records of Klamath County, Oregon, as instrument number 2005-69442 (the "**Assignment of Leases**"), securing the 2005 Note.

1.04 Modifications of 2005 Note and First Trust Deed, recorded July 9, 2008, as Instrument No. 2008-009932, and all references shall be to the First Trust Deed, as so amended.

1.05 Promissory Note dated October 30, 2006, with the principal sum of \$925,000 (the "**2006 Note**"); the 2006 Note has been modified and all references to the 2006 Note shall be to the 2006 Note, as so amended.

1.06 The Deed of Trust, Assignment of Rents and Security Agreement (and Fixture Filing) recorded on December 8, 2006, in the records of Klamath County, Oregon, as instrument number 2006-024379 (the "**Second Trust Deed**"), securing the 2005 Note.

1.07 The Assignment of Leases and Cash Collateral recorded on December 8, 2006, in the records of Klamath County, Oregon, as instrument number 2006-024380 (the "**Assignment of Leases**"), securing the 2006 Note.

1.08 Modifications of 2006 Note and Second Trust Deed, recorded July 9, 2008, as Instrument No. 2008-009931, and all references shall be to the Second Trust Deed, as so amended.

2. Grantor is in default under the Notes and the Trust Deeds, because Grantor failed to pay the entire amount owing pursuant to the 2005 and 2006 Notes on the maturity date thereof.

3. This Deed is absolute in effect and conveys fee simple title of the Property to Grantee, and does not operate as a mortgage, trust conveyance, or security of any kind.

4. Grantor, by executing this Deed, and the Grantee, by accepting and recording this Deed, do not intend a merger of the fee title herein conveyed with Grantee's interests under the Trust Deed. Rather, it is the intention of the parties that the Property shall remain subject to the lien of the First and Second Trust Deed, and the fee ownership of the Property and the lien of the First and Second Trust Deed shall remain separate and distinct.

5. The consideration for this No Merger Deed in Lieu of Foreclosure includes, but may not be limited to, Grantor's benefit from remaining in possession of the Property until relinquished at the time of this conveyance, and Grantee's covenant described in paragraph 6 below.

6. By accepting this No Merger Deed in Lieu of Foreclosure, Grantee covenants and agrees that it shall forever forbear from taking any action whatsoever to collect from the Grantor or any Guarantor(s), for any amounts owing on the 2005 and 2006 Notes or on any promissory note or other obligation secured by the First and Second Trust Deeds, other than by foreclosure of the Trust Deed, and that in any proceeding to foreclose the Trust Deeds, Grantee shall not seek, obtain, or permit any deficiency judgment against Grantor or any Guarantor, whether for any amount of any debt secured by the Trust Deed, costs, attorney fees, or any other amount.

7. Grantee may retain all payments previously made on the debts secured by the Trust Deed, with no duty to account therefore.

8. Grantor waives, surrenders, conveys, and relinquishes to Grantee any equity of redemption and statutory rights of redemption concerning the Property and the Trust Deed.

9. Grantor is not acting under any misapprehension as to the effect of this No Merger Deed in Lieu of Foreclosure, nor under any duress, undue influence, or misrepresentation of Grantee, Grantee's agent or attorney, or any other person. Grantor declares that it is executing this No Merger Deed in Lieu of Foreclosure voluntarily, in good faith, and without duress or undue influence. Grantor has had an opportunity to consult or has consulted with legal counsel and accountants of its own choice regarding the meaning, interpretation and effect hereof, and Grantor fully understands that its execution hereof will extinguish its entitlement to foreclosure, and its right to exercise redemption rights and other rights available generally to debtors. Grantor further understands that the execution and delivery of this Deed may result in income or other tax liability to Grantor.

10. Grantor is in possession of the Property, and except as previously disclosed to Grantee in writing, Grantor does not have any knowledge of facts indicating that any other person or entity is in possession of the Property.

11. This No Merger Deed in Lieu of Foreclosure shall be accepted by Grantee only when it is actually recorded.

12. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

[SIGNATURES ON FOLLOWING PAGE]

K FALLS ONE LLC, an Oregon limited liability company

By: Western Development Partners, LLC, a California  
limited liability company, Member and Manager

Dated: May 22, 201

By: [Signature]  
Steven E. Wilson, Member and Manager

Colorado  
STATE OF OREGON )  
County of Arapahoe ) ss.

The foregoing instrument was acknowledged before me this 22 day of  
May, 2010, by Steven E. Wilson, member and manager of Western  
Development Partners, LLC., a limited liability company organized under the laws of the State  
of California, on behalf of the company.



[Signature]  
Notary Public for State of Colorado  
My commission expires 1-30-11

**Exhibit "A"**

Real property in the County of Klamath , State of Oregon, described as follows:

**PARCEL 1:**

ALL THAT PORTION OF TRACTS 32, 33A AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST 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 THE POINT OF INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY OF PERSHING WAY AND THE NORTHWESTERLY RIGHT-OF-WAY OF AUSTIN STREET, SAID POINT BEING A 5/8" IRON ROD WITH A 1½" ALUMINUM CAP PER KLAMATH COUNTY SURVEY NO. 1441; THENCE ALONG SAID NORTHWESTERLY RIGHT-OF-WAY OF SAID AUSTIN STREET, NORTH 34° 06' 49" EAST, 465.40 FEET TO AN ANGLE POINT IN SAID RIGHT-OF-WAY; THENCE ALONG THE WESTERLY RIGHT-OF-WAY OF SAID AUSTIN STREET, NORTH 00° 19' 19" EAST, 722.25 FEET; THENCE NORTH 89° 39' 15" WEST, 629.50 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY OF AVALON STREET; THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY, SOUTH 30° 34' 36" WEST, 667.21 FEET TO THE MOST NORTHERLY CORNER OF A TRACT DESCRIBED AS PARCEL 3 IN DEED VOLUME 256, PAGE 96, KLAMATH COUNTY DEED RECORDS; THENCE ALONG THE NORTHEASTERLY LINE OF SAID TRACT, SOUTH 59° 24' 29" EAST, 150.02 FEET; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID TRACT, SOUTH 30° 44' 43" WEST, 59.15 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY OF SAID PERSHING WAY; THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY, SOUTH 55° 53' 18" EAST, 730.63 FEET TO THE POINT OF BEGINNING.

**PARCEL 2:**

ALL THAT PORTION OF TRACTS 32 AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST 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 THE POINT OF INTERSECTION OF THE WESTERLY RIGHT-OF-WAY OF AUSTIN STREET AND THE SOUTHERLY RIGHT-OF-WAY OF SHASTA WAY, SAID POINT BEING A 5/8" IRON ROD WITH A 1½" ALUMINUM CAP PER KLAMATH COUNTY SURVEY NO. 4202; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY, SOUTH 89° 49' 57" WEST, 376.78 FEET TO THE NORTHEAST CORNER OF A TRACT DESCRIBED IN DEED VOLUME M83, PAGE 265, KLAMATH COUNTY DEED RECORDS; THENCE ALONG THE EASTERLY LINE OF SAID TRACT, SOUTH 00° 10' 38" EAST, 150.05 FEET; THENCE ALONG THE SOUTHERLY LINE OF SAID TRACT, SOUTH 89° 51' 08" WEST, 110.47 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY OF AVALON STREET; THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY, SOUTH 30° 38' 16" WEST, 284.40 FEET; THENCE LEAVING SAID SOUTHEASTERLY RIGHT-OF-WAY, SOUTH 89° 39' 15" EAST, 629.50 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF SAID AUSTIN STREET; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY, NORTH 00° 19' 10" EAST, 399.95 FEET TO THE POINT OF BEGINNING.

NOW KNOWN AS PARCELS 2 AND 3 OF LAND PARTITION 70-07, A REPLAT OF ALL THAT PORTION OF TRACTS 32, 33A AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9, EAST OF THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON AND LOTS 1 THROUGH 15 AND COMMON AREAS A AND B OF TRACT 1522, KLAMATH MALL, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK, KLAMATH COUNTY, OREGON.

**PARCEL 3:**

A PART OF TRACT 36 OF ENTERPRISE TRACTS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT MARKING THE INTERSECTION OF THE SOUTHEASTERLY LINE OF AVALON STREET WITH THE NORTHEASTERLY LINE OF PERSHING WAY, WHICH POINT BEARS SOUTH  $0^{\circ} 00' 1/2''$  EAST A DISTANCE OF 542.44 FEET AND SOUTH  $55^{\circ} 50' 1/2''$  EAST A DISTANCE OF 961.79 FEET FROM THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON; THENCE NORTH  $30^{\circ} 38' 1/2''$  EAST, ALONG THE SOUTHEASTERLY LINE OF AVALON STREET, A DISTANCE OF 50.0 FEET TO A POINT; THENCE SOUTH  $59^{\circ} 21' 1/2''$  EAST AT RIGHT ANGLES TO AVALON STREET, A DISTANCE OF 150.0 FEET TO A POINT; THENCE SOUTH  $30^{\circ} 38' 1/2''$  WEST, PARALLEL WITH AVALON STREET, A DISTANCE OF 59.3 FEET, MORE OR LESS, TO THE NORTHEASTERLY LINE OF PERSHING WAY; THENCE NORTH  $55^{\circ} 50' 1/2''$  WEST, ALONG THE NORTHEASTERLY LINE OF PERSHING WAY, A DISTANCE OF 150.28 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

NOW KNOWN AS PORTION OF LOTS 8 AND 9 OF TRACT 1522 KLAMATH MALL, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK, KLAMATH COUNTY, OREGON.