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04/10/2012 10:08:09 AM

Fee: \$167.00

SETTLEMENT AGREEMENT AND RELEASE

THIS AGREEMENT is entered into by and among **FERRELL'S FUEL NETWORK, INC.**, an Oregon business corporation ("FFN"), **SPRING STREET, LLC** ("SSLLC"), **EDWIN J. CLOUGH, III**, an individual ("Clough"), **SOUTHWIND LLC**, an Oregon business corporation ("Southwind"), **R.L. SLADE, INC.**, an Oregon business corporation ("RLS"), **RODERICK L. SLADE**, an individual ("Slade"), **Roderick L. Slade, TRUSTEE OF THE ELIZABETH A. SLADE MARITAL TRUST U.T.A.D. JANUARY 26, 1990** (the "ESMT").

RECITALS:

Clough is the owner of that certain parcel of real property which is commonly identified as 977 Spring Street, and is more particularly described as follows (the "**977 Property**"):

Lot 23 in Block 19 of SECOND RAILROAD ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk at Klamath County, Oregon.

FFN has leased the 977 Property from Clough since 1994.

Prior to May 1, 2002, ESMT was the owner of that certain parcel of real property which is commonly identified as 865 Spring Street, and is more particularly described as follows (the "**865 Property**"):

Lots 17, 18 and 19 in Block 19 of SECOND RAILROAD ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk at Klamath County, Oregon.

Prior to May 1, 2002, Slade was the owner of that certain parcel of real property which is commonly identified as 953 Spring Street, and is more particularly described as follows (the "**953 Property**"):

Lots 20, 21 and 22 in Block 19 of SECOND RAILROAD ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk at Klamath County, Oregon.

FFN is wholly owned by Clough's son, James Clough. RLS is wholly owned by Slade. As of June 8, 2004, FFN is indebted to RLS in the amount of \$328,609.27 under a promissory note in the original face amount of \$400,000.00 which was issued on March 15, 1990 (the "**FFN/RLS Note**"). The FFN/RLS Note is personally guaranteed by Clough.

During January, 1999, there was a fuel spill on the 865 Property (the "**865 Spill**"). During May, 1999, there was a fuel spill on the 953 Property (the "**953 Spill**").

During January, 2004, there was a second fuel spill on the 953 Property (the "**Second 953 Spill**"). In this Agreement, the 953 Spill and the Second 953 Spill are referred to collectively as the "953 Spills".

Disputes have arisen between Clough and Slade and ESMT concerning the effect of the 865 Spill and the 953 Spills on the 977 Property.

NOW, THEREFORE, IN CONSIDERATION OF the mutual promises set forth herein, the parties agree as follows:

1. **No Admission Of Liability or Wrongdoing.** This Agreement is entered into solely for the purpose of compromise and settlement and does not constitute an admission of liability or wrongdoing by any party.

2. **Definitions.** As used in this Agreement, the following terms shall have the indicated meanings:

(a) **"Closing"** refers to the simultaneous execution and exchange of documents, and closing of transactions, which is contemplated in Section 3 of this Agreement. **"Closing Date"** refers to the date when Closing occurs.

(b) **"Title Company"** and **"Closing Escrow Agent"** shall refer to First American Title Insurance Company of Oregon, of Klamath Falls, Oregon.

(c) **"Hazardous Materials"** refers to and includes: (i) any and all substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601, et. seq.), the Hazardous Materials Transportation Act (49 USC Section 1801, et. seq.), and the Resource Conservation and Recovery Act (42 USC Section 6901, et. seq.); and (ii) any and all substances which now or in the future are deemed to be pollutants, toxic materials or hazardous materials under any other state or federal law. **"Hazardous Materials Laws"** refers to any and all applicable federal, state and local laws and regulations relating to the regulation and clean up of any contamination of real or personal property by Hazardous Materials. **"NFA Letter"** refers to documentation from the Oregon Department of Environmental Quality (or any other federal or Oregon agency having jurisdiction) which states that no further action will be required in order to remediate a particular incident of contamination of property by Hazardous Materials.

(d) **"977 Lease"** refers to the lease of the 977 Property by Southwind to SSLLC, in accordance with the terms of subsection 3(c) of this Agreement. **"977 Lease Term"** refers to the total term of the 977 lease, as that term is established under subsection 3(c)(1) of this Agreement.

(e) **"Repurchase Option Period"** refers to the period of time which begins on the tenth anniversary after the Closing Date and ends on the twentieth anniversary after the Closing Date.

(f) **"Slade Parties"** refers in the aggregate to Southwind, RLS, Slade and ESMT. **"Clough Parties"** refers in the aggregate to Clough, SSLLC and FFN.

(g) **"Proven Additional Spill"** refers to any fuel spill on the 865 Property or on the 953 Property (other than the 865 Spill or the 953 Spills) which shall be "proven" (either by adjudication of a court of competent jurisdiction or by the mutual agreement of the Slade Parties and the Clough Parties) to have: (i) occurred prior to April 1, 2002, and (ii) resulted in and caused the contamination of the 977 Property. The phrase "Proven Additional Spill" shall not refer to or include any fuel spill which shall not have been "proven" (either by adjudication of a court of competent jurisdiction or by the mutual agreement of the Slade Parties and the

Clough Parties) *prior to* the issuance of a NFA Letter with respect to the 865 Spill and the 953 Spills.

3. **Settlement Agreements.** In compromise and settlement of their various disputes, the parties agree as follows:

(a) **Purchase of 977 Property by Southwind.** At Closing, Southwind agrees to purchase the 977 Property from Clough, and Clough agrees to sell the 977 Property to Southwind, under the following terms:

(1) The aggregate purchase price for the 977 Property will be One Hundred Twenty Seven Thousand and 00/100 Dollars (\$127,000.00) (the "**977 Purchase Price**").

(A) At Closing, Slade and RLS shall cause a down payment of Fifteen Thousand Dollars (\$15,000.00) to be made to Clough with respect to the 977 Purchase Price. This down payment shall be made by reducing the outstanding balance of the FFN/RLS Note by \$15,000. Although the \$15,000 reduction in the outstanding balance of the FFN/RLS Note will not directly benefit Clough, Clough hereby stipulates that there are sufficient indirect benefits resulting to him from this Agreement to constitute adequate consideration for his covenant to accept that \$15,000 reduction in the outstanding balance of the FFN/RLS Note as a down payment against the 977 Purchase Price. Although Slade and RLS will not be receiving any direct benefit from the purchase of the 977 Property by Southwind, Slade and RLS hereby stipulate that there are sufficient indirect benefits resulting to them from this Agreement to constitute adequate consideration for their covenant to reduce the outstanding balance of the FFN/RLS Note, and to allow that reduction to be applied as a down payment against the 977 Purchase Price.

(B) At Closing, Southwind shall issue to Clough a promissory note (the "**977 Promissory Note**") for the \$112,000 balance of the 977 Purchase Price which remains after the \$15,000 down payment referred to in subsection 3(a)(1)(A). The 977 Promissory Note shall: (i) bear interest at the rate of three percent (3%) per annum, (ii) require Southwind to make annual payments to Clough of all accrued interest, with the first annual interest payment to be due and owing on the first anniversary after the Closing Date, and with subsequent annual interest payments to be due and owing at regular one year intervals thereafter on the successive anniversaries after the Closing Date, (iii) require no payments of principal until the tenth anniversary after the Closing Date, and (iv) require payment of the full balance of all principal and accrued interest then outstanding on the tenth (10th) anniversary after the Closing Date. Payment of the 977 Promissory Note shall be personally guaranteed by Slade. The 977 Promissory Note shall be identical in form and substance to the instrument attached hereto as "Exhibit 3(a)(1)(B)". The 977 Promissory Note shall be assignable, provided that any assignee of the 977 Promissory Note shall take that instrument subject to the terms of this Agreement and the 977 Lease. The 977 Promissory Note shall be secured by a Trust Deed on the 977 Property, executed by Southwind as grantor, and naming Clough as beneficiary.

(2) Promptly after the execution of this Agreement, Clough shall cause the Title Company to furnish to Southwind a current preliminary title report with respect to the 977 Property, showing marketable title to the 977 Property vested in Clough and showing Southwind as the proposed insured (the "Current Report"). Southwind shall have until the close of business on the tenth day after receipt of the Current Report within which to notify Clough, in

writing, of Southwind's disapproval of any special exceptions shown in the Current Report; provided, however, that Southwind shall not have the right to disapprove of any easement against the 977 Property which is of record as of June 1, 2004. In the event of Southwind's disapproval of any exception(s), Clough shall have until Closing to remove the disapproved exception(s). The failure by Southwind, on or before the close of business on the tenth day after receipt of the Current Report, to provide Clough with written notice disapproving any exception(s) shown on the Current Report shall be deemed an approval of all exceptions listed in the Current Report which are not so specifically disapproved in writing by Southwind, and all such exceptions so deemed approved (and all easements against the 977 Property which are of record as of June 1, 2004) shall be considered for all purposes to be "Permitted Exceptions". Promptly after Closing, Clough shall cause Title Company to furnish to Southwind, at Clough's expense, a standard Owner's policy of title insurance in the amount of the 977 Purchase Price, showing title to the 977 Property to be good and marketable, and vested in Southwind, subject only to the Permitted Exceptions.

(3) The parties shall establish a closing escrow account with the Closing Escrow Agent upon full execution of this Agreement. Southwind and Clough each shall pay one-half (1/2) of the closing escrow fees charged by the Closing Escrow Agent for the closing of this transaction. Southwind and Clough agree to execute whatever reasonable escrow instructions may be required by Closing Escrow Agent in connection with the consummation of this transaction to the extent consistent with this Agreement and reasonably approved by the parties. In the event of any conflict between those escrow instructions and this Agreement, the terms of this Agreement shall prevail.

(4) Seller warrants to Buyer that there are no mechanic's liens, statutory liens or other unrecorded liens against the 977 Property and that there will be no such liens or claims to any such liens as of the Closing Date. Except as set forth in the preceding sentence, Southwind is entering into this Agreement in reliance upon Southwind's own judgment, and not in reliance upon any statements, representations or warranties made by Clough (or any agent of Clough) other than as set forth in this Agreement. Clough has not made and is not making any direct or indirect representation as to the value, status, condition or state of repair of the 977 Property.

(5) At Closing, Clough shall convey the 977 Property to Southwind by statutory warranty deed, free and clear of all encumbrances other than the Permitted Exceptions, fully executed by Clough and naming Southwind as the grantee. Real property taxes for the current tax year, personal property taxes, operating expenses, rental income, prepaid rents and deposits, and other income and expenses, shall be prorated as of the Closing Date.

(b) **Slade's Indemnification of Clough with respect to 865 Spill and 953 Spills.** Slade shall indemnify, defend, protect and hold harmless Clough from and against any and all criminal and civil claims and causes of action (including but not limited to claims resulting from, or causes of action incurred in connection with, the death of or injury to any person, or damage to any property), liabilities (including but not limited to liabilities arising by reason of actions taken by any governmental agency), penalties, forfeitures, prosecutions, losses and expenses (including reasonable attorney fees) which directly or indirectly arise from or are caused by the 865 Spill, the 953 Spills, or any Proven Additional Spill. Slade's obligations under this subsection 3(b) shall include, but shall not be limited to, the obligation to bear the expense of any and all costs, whether foreseeable or unforeseeable, of any necessary (as required by the Hazardous Materials Laws) repair, cleanup, detoxification or

decontamination of all or any portion of the 977 Property (or any improvements located thereon) in connection with contamination of the 977 Property by the 865 Spill, the 953 Spills or any Proven Additional Spill, and the preparation and implementation of any closure, remedial action or other required plan or plans in connection therewith. Slade's obligations under this subsection 3(b) shall not be deemed to have been fully satisfied unless and until a NFA Letter is received with respect to the contamination of the 977 Property by the 865 Spill, the 953 Spills, and any Proven Additional Spill. Slade's obligations under this subsection 3(b) shall not be released or otherwise affected by any breach of the 977 Lease by FFN.

(c) **Leaseback of 977 Property by Southwind to SLLC.** At Closing, Southwind agrees to lease the 977 Property to SLLC, and SLLC agrees to lease the 977 Property from Southwind, under the terms set forth in the instrument attached hereto as "Exhibit 3(c)" (the "977 Lease").

(d) **Clough Obligation to Repurchase 977 Property from Southwind.** If, at any time prior to the twentieth anniversary after the Closing Date, Clough shall receive notice that a NFA Letter has been issued with respect to the 865 Spill, the 953 Spills and any Proven Additional Spill, then Clough shall be obligated to repurchase the 977 Property from Southwind, under the following terms and conditions:

(1) Clough and Southwind shall be obligated close the repurchase of the 977 Property within ninety (90) days after the date of receipt by Clough of the notice referred to in the first sentence of this subsection (d).

(2) The aggregate repurchase price for the 977 Property shall be One Hundred Twenty Seven Thousand and 00/100 Dollars (\$127,000.00). This \$127,000 purchase price shall be payable by Clough to Southwind as follows

(A) At the closing of the mandatory repurchase pursuant to this subsection (d), Clough shall be obligated to pay to Slade and RLS the sum of Fifteen Thousand Dollars (\$15,000.00) in full repayment and satisfaction of the down payment made by Slade and RLS pursuant to subsection 3(a)(1)(A).

(B) If the closing of the mandatory repurchase pursuant to this subsection (d) occurs prior to payment of any portion of the principal balance of the 977 Promissory Note, then at the closing of the mandatory repurchase pursuant to this subsection (d), Clough shall assign and return to Southwind the 977 Promissory Note. If the closing of the mandatory repurchase pursuant to this subsection (d) occurs after the payment of all or any portion of the 977 Promissory Note, then at the closing of the mandatory repurchase pursuant to this subsection (d), Clough shall: (i) release and discharge any portion of the principal balance of the 977 Promissory Note which has not then been paid by Southwind, and (ii) repay to Southwind the full amount of all payments of principal which shall have been made by Southwind with respect to the 977 Promissory Note.

(3) At the closing of the mandatory repurchase pursuant to this subsection (d), Southwind shall reconvey the 977 Property to Clough by Special Statutory Warranty Deed, free of all encumbrances other than encumbrances of record as of the original Closing Date or encumbrances caused or incurred by, or resulting from the actions or inactions of, FFN.

(4) At the closing of the mandatory repurchase pursuant to this subsection (d), real property taxes, personal property taxes, operating expenses, and other expenses with respect to the 977 Property shall be prorated as of the date of that closing.

(5) If a NFA Letter shall not have been issued with respect to the 865 Spill, the 953 Spills and any Proven Additional Spill prior to the twentieth anniversary after the Closing Date, then Clough thereafter shall have no obligation to repurchase the 977 Property pursuant to this subsection (d).

(e) **Clough Option to Repurchase 977 Property from Southwind.** Clough shall have the option, at any time during the Repurchase Option Period, to repurchase the 977 Property from Southwind, under the following terms and conditions:

(1) Clough shall have no right to exercise the repurchase option granted under this subsection (e) either before or after the Repurchase Option Period. If Clough wishes to exercise its option to repurchase the 977 Property pursuant to this subsection (e), Clough shall be required to deliver to Southwind a written notice which states that Clough's option under this subsection (e) is being exercised, and Clough shall be deemed to have exercised its option to repurchase the 977 Property pursuant to this subsection (e) on the date when the written notice referred to in the preceding sentence is delivered to Southwind.

(2) If, during the Repurchase Option Period, Clough timely exercises its option to repurchase the 977 Property, then:

(A) Clough and Southwind shall be obligated close the repurchase of the 977 Property within thirty (30) days after the date of Clough's exercise of the repurchase option.

(B) The aggregate repurchase price for the 977 Property shall be One Hundred Twenty Seven Thousand and 00/100 Dollars (\$127,000.00). This \$127,000 purchase price shall be payable by Clough to Southwind as follows

((1)) At the closing of the repurchase option pursuant to this subsection (e), Clough shall be obligated to pay to Slade and RLS the sum of Fifteen Thousand Dollars (\$15,000.00) in full repayment and satisfaction of the down payment made by Slade and RLS pursuant to subsection 3(a)(1)(A).

((2)) If the closing of the repurchase option pursuant to this subsection (e) occurs prior to payment of any portion of the principal balance of the 977 Promissory Note, then at the closing of the repurchase option pursuant to this subsection (e), Clough shall assign and return to Southwind the 977 Promissory Note. If the closing of the repurchase option pursuant to this subsection (e) occurs after the payment of all or any portion of the 977 Promissory Note, then at the closing of the mandatory repurchase pursuant to this subsection (e), Clough shall: (i) release and discharge any portion of the principal balance of the 977 Promissory Note which has not then been paid by Southwind, and (ii) repay to Southwind the full amount of all payments of principal which shall have been made by Southwind with respect to the 977 Promissory Note.

(C) At the closing of the repurchase option pursuant to this subsection (e), Southwind shall reconvey the 977 Property to Clough by Special Statutory Warranty Deed, free of all encumbrances other than encumbrances of record as of the original

Closing Date or encumbrances caused or incurred by, or resulting from the actions or inactions of, FFN.

(D) At the closing of the repurchase option pursuant to this subsection (e), real property taxes, personal property taxes, operating expenses, and other expenses with respect to the 977 Property shall be prorated as of that date of closing.

(3) If, prior to the expiration of the Repurchase Option Period, Clough does not exercise its option to purchase the 977 Property, then, from and after the expiration of the Repurchase Option Period, Clough shall not have any further right or option to repurchase the 977 Property pursuant to this subsection (e).

(4) Clough shall have the right to assign to any third party Clough's option to purchase the 977 Property pursuant to this subsection (e).

4. **Limited Release by Clough Parties.** In consideration of the agreements by the Slade Parties as set forth in this Agreement, the Clough Parties (on behalf of themselves and on behalf of their respective agents, administrators, representatives, assigns and successors) hereby fully, finally and irrevocably release, discharge and forgive each and all of the Slade Parties (and their respective representatives, assigns and successors) from any and all claims, controversies, demands, actions, causes of action and other rights of every kind, nature and description relating to or in any way connected with the 865 Spill and the 953 Spill and/or the issues raised in those legal proceedings filed under Case # 01-00355CV which has been filed in the Circuit Court of Klamath County, Oregon. The Clough Parties agree that this is a complete and irrevocable release of all such claims which any of them now has or may hereafter acquire against any one or more of the Slade Parties with respect to the 865 Spill and the 953 Spill and/or the issues raised in those legal proceedings filed under Case # 01-00355CV which has been filed in the Circuit Court of Klamath County, Oregon, and shall apply to all anticipated, unanticipated, contingent, liquidated and/or unliquidated injuries, losses and damages which any of the Clough Parties may have suffered or may suffer in the future, including but not limited to any injuries, damages or losses which may not presently be fully known or may be more numerous or more serious than is now understood or expected.

5. **Attorney Fees In Event Of Dispute.** If action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in that action as set by the trial court, and in the event of an appeal, as set by the appellate courts.

6. **Confidentiality.** The parties agree that the nature and amount of this Agreement is confidential, and that continued and future confidentiality by each of the parties is a material term of the settlement. Each party further agrees that the only statement which will be made to any third party with respect to the transactions, issues and disputes addressed in this Agreement is that: "The matter has been resolved". Each party further agrees that no disparaging, critical or negative statements shall be made concerning any other party with respect to any of the transactions, issues or disputes addressed in this Agreement.

7. **Miscellaneous.** This Agreement shall supersede and integrate all written and oral agreements of the parties previously made or now existing in any form relating to the issues addressed herein. Any modifications, amendments or supplements to this Agreement shall be effective only if executed in writing and signed by all of the parties. The captions set forth in this Agreement are for reference purposes only, and shall not be considered in

construing the meaning of the terms and conditions of this Agreement. Multiple copies of this Agreement may be executed by the parties, each of which shall be deemed to be an original when signed by all of the parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and assigns. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the state of Oregon. Any legal proceedings with respect to this Agreement shall be filed in the appropriate court in Klamath County, Oregon. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then that determination shall not affect any other provisions of this Agreement, and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Agreement is capable of two constructions, only one of which would render the provision valid, then the provision shall have the meaning which renders it valid.

8. **Recording of Document.** By agreement of the parties, this Agreement, or a memorandum hereof, may be recorded in the official records of Klamath County, Oregon.

IN WITNESS WHEREOF, each of the parties has executed this Agreement on the respective dates indicated below.

FERRELL'S FUEL NETWORK, INC.

By James F. Clough
Authorized Agent

11-16-04
Dated

EDWIN J. CLOUGH, III

Edwin J. Clough, III
Edwin J. Clough, III

11-16-04
Dated

SPRING STREET, LLC

By James F. Clough
Authorized Agent

11-16-04
Dated

RODERICK L. SLADE

Roderick L. Slade
Roderick L. Slade

1/16/05
Dated

ELIZABETH A. SLADE MARITAL TRUST U.T.A.D. JANUARY 26, 1990

Roderick L. Slade
Roderick L. Slade, Trustee

1/16/05
Dated

SOUTHWIND LLC

By [Signature]
R. L. Slade, authorized agent

Dated 1/6/05

R.L. SLADE, INC.

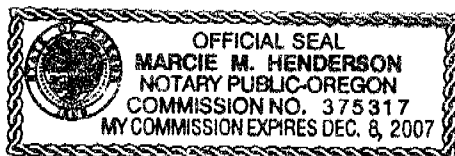
By [Signature]
R. L. Slade, authorized agent

Dated 1/6/05

STATE OF OREGON)
) ss.
County of ~~Jackson~~ Klamath)

The foregoing instrument was acknowledged before me this 16 day of Nov., 2004, by
James F. Clough, in his/her capacity as authorized agent of
FERRELL'S FUEL NETWORK, INC.

WITNESS my hand and official seal.



Marcie M. Henderson
Notary Public
My Commission Expires 12/8/07

STATE OF OREGON)
) ss.
County of ~~Jackson~~ Klamath)

The foregoing instrument was acknowledged before me this 16 day of Nov.,
2004, by EDWIN J. CLOUGH, III.

WITNESS my hand and official seal.

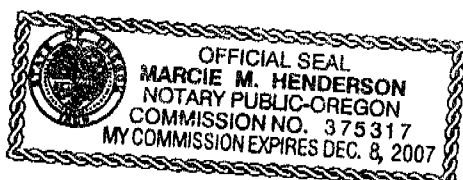


Marcie M. Henderson
Notary Public
My Commission Expires 12/8/07

STATE OF OREGON)
) ss.
County of ~~Jackson~~ Klamath)

The foregoing instrument was acknowledged before me this 16 day of Nov., 2004, by
James F. Clough, in his/her capacity as authorized agent of SPRING
STREET, LLC.

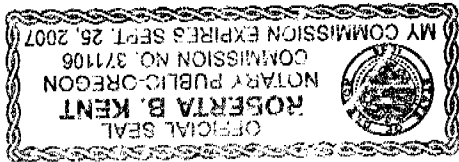
WITNESS my hand and official seal.



Marcie M. Henderson
Notary Public
My Commission Expires 12/8/07

STATE OF OREGON)
) ss.
County of Jackson)

The foregoing instrument was acknowledged before me this 10th day of January, 2004, by RODERICK L. SLADE.

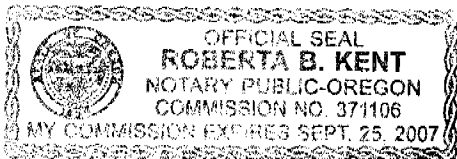


WITNESS my hand and official seal.

Roberta B. Kent
Notary Public
My Commission Expires 9/25/07

STATE OF OREGON)
) ss.
County of Jackson)

The foregoing instrument was acknowledged before me this 6th day of January, 2005, by RODERICK L. SLADE, as Trustee of the ELIZABETH A. SLADE MARITAL TRUST U.T.A.D. JANUARY 26, 1990.

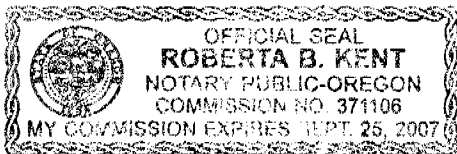


WITNESS my hand and official seal.

Roberta B. Kent
Notary Public
My Commission Expires 9/25/07

STATE OF OREGON)
) ss.
County of Jackson)

The foregoing instrument was acknowledged before me this 6th day of January, 2005, by R. L. SLADE, in his capacity as authorized agent for SOUTHWIND LLO.

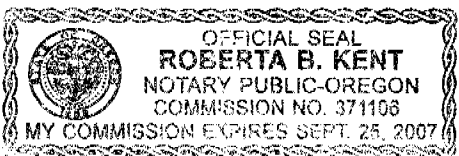


WITNESS my hand and official seal.

Roberta B. Kent
Notary Public
My Commission Expires 9/25/07

STATE OF OREGON)
) ss.
County of Jackson)

The foregoing instrument was acknowledged before me this 6th day of January, 2005, by R. L. SLADE, in his capacity as authorized agent for R.L. SLADE, INC.



WITNESS my hand and official seal.

Roberta B. Kent
Notary Public
My Commission Expires 9/25/07

PROMISSORY NOTE

\$112,000.00

Date of Note: _____

For value received, **SOUTHWIND LLC**, an Oregon limited liability company (the "**Maker**") hereby promises to pay to the order of **EDWIN J. CLOUGH, III**, or assigns (the "**Payee**"), at whatever address Payee may specify in writing from time to time, the sum of One Hundred Twelve Thousand Dollars (\$112,000.00), together with interest accruing thereon from the date hereof until paid in full.

(1) Interest shall accrue on the entire unpaid balance of this Note (as that unpaid balance changes from time to time) at the rate of three percent (3%) per annum. During the period beginning on the date of this Note and ending upon payment in full of the principal balance and all interest accruing hereunder, Maker shall be obligated to make annual payments of all interest accruing hereunder. The first interest payment shall be due and owing on the first anniversary after the date of this Note, and subsequent interest payments shall be due and owing at regular one year intervals thereafter (on the same day of each calendar year) until payment in full of the principal balance and all interest accruing hereunder.

(2) The principal balance of this Note shall be due and payable in a single installment on the tenth anniversary after the date of this Note. Maker shall have the right to prepay all or any portion of the unpaid principal balance at any time, without penalty or premium.

(3) If Maker fails to pay any installment of principal and/or interest due hereunder prior to default, then Maker shall be obligated to pay to Payee a late payment penalty in the amount of ten percent (10%) of that delinquent installment, and in addition Maker shall be obligated to pay interest on that delinquent installment at the rate of twelve percent (12%) per annum with respect to the period beginning on the due date of that installment and ending on the date of eventual payment of that installment. If Maker fails to make any payment required under this Note within ten (10) days after the date when due, then Payee shall have the right, at any time before the default in payment is corrected, to declare (and thereby cause) the entire balance of principal and interest then outstanding under this Note to be immediately due and payable. If Payee exercises any right granted to Payee under this Paragraph (3), that exercise shall not constitute an election of remedies by Payee and shall not otherwise limit any rights or remedies available to Payee which may arise by reason of Maker's breach. Maker waives presentment for payment, demand for payment, notice of dishonor, protest, notice of protest and all other notices or demands in connection with the delivery, acceptance, performance, default or endorsement of the Note.

(4) If either party employs or engages an attorney to enforce any of the provisions of this Note following and during the continuance of a default by the other party, then the party so acting shall be entitled to recover from the other party reasonable attorneys' fees and other costs incurred in connection with those matters, regardless of whether any suit, action, arbitration or legal proceeding is commenced. If any suit, action, arbitration or other legal proceeding is commenced, then the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection therewith, both at trial and on any appeal therefrom or petitions for review thereof.

(5) Roderick L. Slade (hereinafter the "Guarantor") is executing this Note to evidence his agreement to guarantee the full and satisfactory performance of each and every obligation of Maker under this Note. This guarantee shall be unconditional and irrevocable, shall be continuing, and shall terminate only upon the full and satisfactory performance of each and every obligation which is imposed on Maker under this Note. Guarantor specifically agrees that: (a) it shall not be necessary for Payee to initiate any formal legal action against, or exhaust any legal remedies against, Maker as a prerequisite to enforcing the guarantee obligation of Guarantor; and (b) the guarantee obligation of Guarantor may be enforced immediately upon Maker's material default in making any payment or performing any obligation required under this Note; and (c) the guarantee obligations of Guarantor shall not be released, extinguished, modified or in any way affected by the bankruptcy of Maker, by the dissolution of Maker, by the termination of Maker's legal existence, or by any failure on the part of Payee to enforce all of the rights and remedies available to Payee under this Note.

MAKER: SOUTHWIND LLC

GUARANTOR: RODERICK L. SLADE

By _____
R. L. Slade, Manager

Roderick L. Slade

REAL PROPERTY LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into by and between **SOUTHWIND LLC**, an Oregon limited liability company and **SPRING STREET, LLC**, an Oregon limited liability company.

RECITALS:

Ferrell's Fuel Network, Inc. ("**FFN**"), Spring Street, LLC ("**SSLLC**"), Edwin J. Cough, III ("**Clough**"), Southwind LLC ("**Southwind**"), R.L. Slade, Inc. ("**RLS**"), Roderick L. Slade, individually ("**Slade**"), and Roderick L. Slade, as Trustee of the Elizabeth A. Slade Marital Trust U.T.A.D. January 26, 1990, are entering into an agreement entitled "*Settlement Agreement and Release*" (the "**Settlement Agreement**") relating to disputes between the parties involving the contamination of certain parcels of real property by hazardous materials. This Lease Agreement is being executed in connection with the *Settlement Agreement*. A copy of this Lease Agreement is being attached to the *Settlement Agreement* as "Exhibit 3(c)", and a copy of the executed *Settlement Agreement* shall be attached to this Lease Agreement as "Exhibit A".

IN CONSIDERATION OF the mutual promises set forth herein, the parties agree as follows:

1. **Definitions.** In this Agreement, the following terms shall have the indicated meanings:

(a) "**Leased Property**" or "**977 Property**" refers to: (i) the real property commonly referred to as 977 Spring Street, and more particularly described as follows, and (ii) all improvements located on that real property, and (iii) all easements, rights, privileges and appurtenances attaching to that real property:

Lot 23 in Block 19 of SECOND RAILROAD ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk at Klamath County, Oregon.

(b) "**977 Lease**" refers to the lease transaction which is established under this Agreement.

(c) "**977 Lease Term**" shall refer to the entire term of the lease, as that term is specified in Section 3 of this Agreement.

(d) "**Hazardous Materials**" refers to and includes: (i) any and all substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601, et. seq.), the Hazardous Materials Transportation Act (49 USC Section 1801, et. seq.), and the Resource Conservation and Recovery Act (42 USC Section 6901, et. seq.); and (ii) any and all substances which now or in the future are deemed to be pollutants, toxic materials or hazardous materials under any other state or federal law. "**Hazardous Materials Laws**" refers to any and all applicable federal, state and local laws and regulations relating to the regulation and clean up of any contamination of real or personal property by Hazardous Materials. "**NFA Letter**" refers to documentation from the Oregon Department of Environmental Quality (or any other federal or Oregon agency having jurisdiction) which states

that no further action will be required in order to remediate a particular incident of contamination of property by Hazardous Materials.

(e) "Closing", "Closing Date", "865 Spill", "953 Spill", "977 Spill", "FFN/RLS Note", "977 Promissory Note", and "Slade Parties" shall have the meanings indicated in the *Settlement Agreement*.

2. **Lease.** Southwind hereby leases the Leased Property to SLLC, and SLLC leases the Leased Property from Southwind, subject to all of the terms and conditions contained in this Agreement.

3. **Lease Term.** The initial term of the 977 Lease shall be ten (10) years, commencing on the Closing Date and ending on the tenth anniversary after the Closing Date. If, prior to the expiration of that initial 10 year lease term, Slade is not able to obtain a NFA Letter with respect to the 865 Spill and 953 Spills and any Proven Additional Spills, then SLLC shall have the option to cause the term of the 977 Lease to be extended for an additional 10 years (for a total lease term of 20 years), which option shall be exercised (if at all) by a written instrument delivered to Southwind not less than thirty (30) days prior to the expiration of the initial 10 year lease term.

4. **Rental Payments Required.** With respect to the first ten years of the 977 Lease Term, SLLC shall pay to Southwind a base monthly rental amount of \$317.50. If the 977 Lease Term is extended for a second ten year period in accordance with the provisions of the second sentence of Section 3 of this Agreement, then the base monthly rental amount during that second ten year period will be \$0.00.

(a) All amounts of monthly rent shall be paid in advance, with the first rental payment being made on the Closing Date, and with subsequent rental payments being due and owing at regular monthly intervals thereafter on the same day of each calendar month, at whatever address Southwind may specify in writing from time to time. All monthly rental amounts shall be payable in lawful money of the United States and without notice, demand, offset or deduction.

(b) This Lease is intended to be a "triple net lease", and the rent received by Southwind shall be net of all other costs or expenses relating to ownership or operation of the Leased Property.

(c) SLLC agrees that all amounts which SLLC is required to pay under this Agreement (including but not limited to taxes, utility costs, insurance premiums and maintenance expenses) shall be payable as additional rent, and shall be paid promptly when due.

(d) If SLLC fails to pay any installment of rent or other payment required hereunder (including but not limited to taxes, utility costs, insurance premiums and maintenance expenses) within ten (10) days after the date when due, then SLLC shall be obligated to pay to Southwind as additional rent a late fee equal to ten percent (10%) of the past-due amount, together with interest on the past-due amount from the due date of the past-due amount to the date of payment at the rate of twelve percent (12%) per annum. If SLLC fails to pay any utility charge, insurance premium, tax or other cost which is payable by SLLC hereunder within ten (10) days after the date when due, then Southwind may pay that charge for the account of SLLC, and any amount so paid by Southwind (together with a late fee equal to ten percent (10%) of the amount paid by Southwind and interest at the rate of twelve percent (12%) per

annum until paid) shall immediately thereupon become due to Southwind from SLLC as additional rent. The provisions of this subparagraph (d) shall not limit Southwind's right to treat any late payment as an event of default as provided in Paragraph 21.

5. **Utilities.** SLLC shall be responsible for obtaining, and shall pay the cost of, all water, electricity, natural gas, heating oil, telephone service, refuse collection, sewage and other utilities and services provided to the Leased Property, or used on or in connection with the Leased Property, during the 977 Lease Term. Southwind shall not be liable to SLLC in the event of any interruption in the supply of any utility or service to the Leased Property. SLLC shall not be entitled to any abatement of rent in the event of any interruption in the supply of any utility or service to the Leased Property, unless that interruption is caused by Southwind or Southwind's agent. SLLC agrees that it shall not install any equipment which will exceed or overload the capacity of the existing utility facilities supplying the Leased Property. If any equipment installed by SLLC shall require additional utility facilities, those additional facilities shall be installed at SLLC's expense in accordance with plans and specifications approved in advance and in writing by Southwind (with Southwind having the right to refuse to consent to any installation which Southwind believes to be unreasonable).

6. **Taxes On Real And Personal Property.**

(a) SLLC shall pay all real property taxes, general and special assessments, and other taxes and charges which are levied on or assessed during the 977 Lease Term against the Leased Property or improvements located on the Leased Property (all of which taxes, assessments and charges shall hereinafter be referred to as the "Real Estate Taxes"), as those taxes become due and payable, and before delinquency.

(b) SLLC also shall be obligated to pay all personal property taxes and other taxes and charges which are levied on or assessed against leasehold improvements, fixtures, equipment, furniture, inventories, merchandise and any other personal property installed or located on the Leased Property during the 977 Lease Term, as those taxes become due and payable, and before delinquency, and regardless of whether such levy or assessment is made against SLLC or against Southwind, and regardless of whether the property has been installed by SLLC or by Southwind.

(c) SLLC shall make all tax payments directly to the taxing authorities. SLLC shall furnish to Southwind receipts or other proof of payment of all taxes, assessments and charges payable by SLLC hereunder, within ten (10) days after Southwind's written request for such proof.

7. **Use Of Leased Property.** SLLC shall use the Leased Property solely for the purpose of distributing gasoline, oil and other similar products and related equipment. SLLC shall not use or permit the use of the Leased Property for any other purpose without the advance written consent of Southwind, which consent shall not be withheld unreasonably.

(a) SLLC shall not use, or permit any other person or entity to use, the Leased Property in any manner which would create or tend to create waste or a nuisance or would be unreasonably offensive to owners or users of neighboring premises.

(b) SLLC shall refrain from any activity which would make it impossible for SLLC to insure against loss, damage or other casualty to the Leased Property or against personal injury or property damage, or which would significantly increase the cost of insuring the Leased Property against loss or damage by fire or other cause, or which would prevent

Southwind from taking advantage of any ruling of the Oregon Insurance Rating Bureau (or any successor thereto) that would allow Southwind to obtain reduced premium rates for long-term fire insurance policies, unless SLLC pays the additional cost of that insurance.

(c) SLLC shall not overload the floors of the improvements located upon the Leased Property so as to cause any undue or serious stress or strain upon the improvements located upon the Leased Property. SLLC shall not overload the electrical systems of the Leased Property. In the event of a dispute as to the reasonable load capacity of the floors and electrical systems of the Leased Property, that load capacity shall be determined by a competent engineer or architect selected by Southwind.

(d) SLLC shall not intentionally or unintentionally cause or permit any Hazardous Material to spill, leak, be disposed of, be released, or otherwise discharged onto the soil or other surface of the Leased Property, or be discharged into any storm drain, sewer or other waste disposal system located on the Leased Property which is not specifically designed for, and intended to be used solely for, the retention and disposal of that Hazardous Material. SLLC shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous. Upon the expiration or termination of this Lease, SLLC shall remove all Hazardous Materials from the Leased Property which SLLC, or SLLC's agents, employees, guests or invitees, shall have caused or permitted to be placed on the Leased Property.

(e) SLLC shall promptly comply with all statutes, laws, ordinances, orders, judgments, decrees, injunctions, rules, regulations, licenses, directives and requirements of all federal, state, county, municipal and other governments, commissions, boards, courts, authorities, and officials, and any companies or associations insuring the premises, which now or at any time hereafter may be applicable to the Leased Property or any part thereof, or to any use of or condition of the Leased Property or any part thereof. SLLC shall obtain all licenses necessary to use the Leased Property for the purposes permitted under this Agreement (including but not limited to business licenses), and those licenses shall be issued in the name of SLLC. SLLC shall pay when due, and before delinquency, all license fees.

8. **Repairs And Maintenance.**

(a) During the first ten (10) years of the 977 Lease Term, SLLC shall be responsible for maintaining in a safe condition (free and clear of foreign objects, papers, debris, obstructions, standing water, snow and ice), which is suitable for SLLC's business purposes, the structures and improvements constructed on the Leased Property, including but not limited to the roof, exterior walls, interior bearing walls, structural members, floor slabs, foundation, exterior and interior paint, lights, windows, plate glass, plumbing fixtures, electrical fixtures, heating and air conditioning systems, doors, door frames, door closures, floor coverings, showcases and fixtures, wall coverings, floor coverings, flooring, landscaping, sidewalk surfaces, fuel storage facilities, fueling areas, and parking surfaces. Except as necessary to provide a safe and functional environment for its employees and members of the public, SLLC shall have no obligation under the preceding sentence to: (i) improve the Leased Property to a condition of maintenance or repair which is better than the state and condition of the Leased Property at the commencement of the Lease Term, or (ii) maintain the Leased Property or its improvements in any particular state of repair.

(b) During the second ten (10) years of the 977 Lease Term, SLLC shall be responsible for maintaining the Leased Property and all of the structures and improvements constructed thereon (including but not limited to the roof, exterior walls, interior bearing walls,

structural members, floor slabs, foundation, exterior and interior paint, lights, windows, plate glass, plumbing fixtures, electrical fixtures, heating and air conditioning systems, doors, door frames, door closures, floor coverings, showcases and fixtures, wall coverings, floor coverings, flooring, landscaping, sidewalk surfaces, fuel storage facilities, fueling areas, and parking surfaces) in a safe, functional and workable condition, and in a condition of maintenance and repair which is equal to or better than the condition of the Leased Property as of the end of the first ten (10) years of the 977 Lease Term.

(c) Under no circumstances shall Southwind have any responsibility to perform any repairs or maintenance with respect to the Leased Property or any structures or improvements located thereon. Southwind and its authorized agents shall have the right to inspect the Leased Property during regular working hours upon reasonable written notice to SLLC to determine whether SLLC is complying with its obligations under this Agreement. If SLLC shall fail to keep and preserve the Leased Property in the state or condition required under this Paragraph 8, then Southwind may, after ten (10) days written notice to SLLC, make whatever repairs are necessary to keep and preserve the Leased Property in the state or condition required under this Paragraph 8, without liability to SLLC for any loss or damage which may result to SLLC's business by reason of those repairs. In the event of such repairs by Southwind, SLLC shall be obligated to pay to Southwind an amount equal to one hundred fifteen percent (115%) of the total costs and expenses incurred by Southwind in making those repairs, which amount shall be promptly due and owing as additional rent.

9. **No Warranties By Southwind.** Southwind makes no warranty, either express or implied, as to the condition, merchantability or fitness of the Leased Property, or the suitability of the Leased Property for SLLC's purposes or needs. SLLC agrees that neither Southwind nor any agent of Southwind has made any representations or warranties as to any of the following: (i) the suitability of the Leased Property for the conduct of SLLC's business, (ii) the physical condition of the Leased Property or any improvements located thereon, (iii) the expenses of operation of the Leased Property or any improvements located thereon, or (iv) any other matter or thing affecting or relating to the Leased Property except as expressly set forth in this Agreement. Prior to executing this Agreement, SLLC has inspected the Leased Property and has become thoroughly acquainted with the condition of the Leased Property. SLLC agrees to take and accept the Leased Property "AS IS". The taking of possession of the Leased Property by SLLC shall be a conclusive acknowledgment by SLLC that the Leased Property is in a condition which is satisfactory to SLLC as of the date when possession is taken. Southwind shall not be required to make any alterations or improvements of any kind to the Leased Property. Although it is the expectation of the parties that SLLC shall use the Leased Property for the purposes identified in Paragraph 7, it is expressly agreed that the obligations of SLLC under this lease (including but not limited to the obligation to pay rent) shall not be abated, diminished or in any other manner affected by the inability of SLLC for any reason whatsoever to use all or any portion of the Leased Property for those purposes, except as otherwise expressly provided herein.

10. **No Liens.**

(a) SLLC shall not allow the Leased Property to be subjected to any mortgage or other lien, without first obtaining the express written consent of Southwind, which consent may be withheld by Southwind for any reason or for no reason. SLLC shall keep the Leased Property free and clear of all personal property tax liens and encumbrances. SLLC shall pay as due all claims for labor or work done on, and for services rendered or material furnished to, the Leased Property, and SLLC shall keep the Leased Property free from any mechanic's, workman's or materials lien of any kind. SLLC may contest in good faith the

validity or amount of any charge or lien in accordance with the procedures established by applicable statute or administrative rule, as long as Southwind's title to the Leased Property is not jeopardized as a result of the contest. If SLLC receives notice of the filing of any claim or lien against the Leased Property or the commencement of any action which might affect the title to the Leased Property, SLLC shall give prompt written notice thereof to Southwind.

(b) Prior to the expiration of any option or right which is available to Clough under the terms of the *Settlement Agreement* to repurchase the Leased Property from Southwind, Southwind shall not take any action or neglect to take any action which shall cause the Leased Property to be subjected to any mortgage or other lien, without first obtaining the express written consent of Clough, which consent may be withheld by Clough for any reason or for no reason.

11. **Insurance.**

(a) SLLC shall maintain and shall pay all premiums with respect to insurance protecting Southwind and SLLC as the named insureds against loss or liabilities arising from personal injury or death or damage to property caused by any accident or occurrence in connection with the use, operation or condition of the Leased Property, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury or death, and \$1,000,000 per accident or occurrence on account of damage to property, together with a blanket excess liability policy in an amount of not less than \$1,000,000. Any proceeds of the insurance referred to in this subparagraph shall be applied towards extinguishment or satisfaction of the liabilities with respect to which those insurance proceeds are paid.

(b) SLLC shall maintain and pay for all premiums for insurance against loss or damage to the improvements located on the Leased Property by fire, lightning, vandalism, malicious mischief, sprinkler leakage, breakage of plate glass, or other perils or casualties, with an all risk endorsement. All such insurance shall be for the benefit of SLLC and Southwind, as their interests shall then appear.

(c) SLLC hereby releases Southwind and Southwind's agents and employees from responsibility and liability for loss or damage occurring to, or in connection with the use of, the Leased Property, if and to the extent that said loss or damage is covered under any insurance policy maintained by SLLC with respect to the Leased Property, and SLLC waives all right of recovery against Southwind and Southwind's agents and employees for such loss or damage. SLLC agrees to: (i) notify SLLC's insurance carrier(s) of the release and waiver set forth in the preceding sentence, and (ii) obtain from SLLC's insurance carrier(s), at SLLC's sole cost, a written waiver of all subrogation rights against Southwind and Southwind's agents and employees.

(d) Southwind hereby releases SLLC and SLLC's agents and employees from responsibility and liability for loss or damage occurring to, or in connection with the use of, the Leased Property, if and to the extent that said loss or damage is covered under any insurance policy maintained by Southwind with respect to the Leased Property, and Southwind waives all right of recovery against SLLC and SLLC's agents and employees for such loss or damage. Southwind agrees to: (i) notify Southwind's insurance carrier(s) of the release and waiver set forth in the preceding sentence, and (ii) obtain from Southwind's insurance carrier(s), at Southwind's sole cost, a written waiver of all subrogation rights against SLLC and SLLC's agents and employees.

(e) All insurance required to be carried by SLLC under subparagraphs

11(a) and 11(b) shall be issued by responsible insurance companies, qualified to do business in the state of Oregon, and reasonably acceptable to Southwind. Each insurance policy shall name Southwind as an additional insured, as Southwind's interest may appear. No insurance policy shall be subject to cancellation or modification except after ten (10) days prior written notice to Southwind. At least ten (10) days prior to the expiration of any insurance policy, SLLC shall obtain renewals or binders for the issuance of one or more replacement insurance policies.

12. **Destruction Of Improvements.** Except as specifically provided in this Paragraph 12, SLLC shall not be entitled to any abatement of rent on account of any damage to or destruction of improvements on the Leased Property, and no other obligations of SLLC shall be altered or terminated as a result of such damage or destruction.

(a) In the event of any damage or destruction to the improvements located on the Leased Property which causes the fair market value of the improvements located on the Leased Property to be reduced by twenty-five percent (25%) or more, SLLC shall have the right to elect whether to terminate the Lease or to repair the damage.

(1) If SLLC elects to terminate this lease, SLLC shall so notify Southwind by written notice delivered to Southwind within forty-five (45) days after the date of the damage or destruction. If SLLC so notifies Southwind of the termination of the Lease, then the termination shall be effective as of the date of damage or destruction. In the event of any termination of the Lease under this subparagraph, SLLC's right of possession and obligation to pay rent in connection with the tenancy created hereunder shall cease as of the date of termination, and SLLC shall be entitled to reimbursement of any prepaid rent, security deposits or other amounts paid by SLLC and attributable to the portion of the anticipated 977 Lease Term which is subsequent to the termination date.

(2) If SLLC does not elect to terminate this Lease, then SLLC shall proceed to restore the improvements located on the Leased Property to substantially the same form and condition as prior to the damage or destruction, so as to provide SLLC with usable space equivalent in quantity and in character to the space available prior to the damage or destruction. Repairs shall be accomplished with all reasonable dispatch, subject to interruptions and delays from labor disputes and matters beyond the control of Southwind. SLLC's obligation to pay rent shall be abated during any period of time when the premises are so damaged as to not be usable by SLLC for SLLC's normal business purposes.

(b) In the event of any damage or destruction to the improvements located on the Leased Property which causes the fair market value of the improvements located on the Leased Property to be reduced by less than twenty-five percent (25%), Southwind shall be obligated to restore the damaged improvements to substantially the same form and condition as prior to the damage or destruction, so as to provide SLLC with usable space equivalent in quantity and in character to the space available prior to the damage or destruction. Repairs shall be accomplished with all reasonable dispatch, subject to interruptions and delays from labor disputes and matters beyond the control of Southwind. SLLC's obligation to pay rent shall be abated during any period of time when the premises are so damaged as to not be usable by SLLC for SLLC's normal business purposes.

(c) If Southwind shall cause any damage to the Leased Property, then subparagraph 12(a) shall have no application regardless of the extent of that damage, and in that event Southwind shall be obligated to restore the damaged improvements to substantially the same form and condition as prior to the damage or destruction, in the same manner as

provided in subparagraph 12(b).

13. **Eminent Domain.**

(a) If, during the 977 Lease Term, there shall be a total taking of the Leased Property by any public authority under the power of eminent domain, then the leasehold estate of SLLC in and to the Leased Property shall cease and terminate as of the date when the condemning authority takes possession of or title to (whichever occurs first) all or any portion of the Leased Property. For purposes of the preceding sentence, the term "total taking" shall mean the taking of so much of the Leased Property that the remainder of the Leased Property is not suitable to conduct the business which SLLC intends to conduct on the Leased Property.

(b) If, during the 977 Lease Term, there shall be a partial taking of the Leased Property by any public authority under the power of eminent domain, then the leasehold estate of SLLC in and to the portion of the Leased Property so taken shall terminate on the date when the condemning authority takes possession of or title to (whichever occurs first) that portion, but SLLC's leasehold estate shall continue in full force and effect as to the remainder of the Leased Property; in such event, the monthly rent payable by SLLC for the balance of the 977 Lease Term shall be equitably abated by Southwind (based on the ratio between the value of the portion taken and the value of the Leased Property prior to the taking), and Southwind shall be responsible (at Southwind's sole cost and expense) for making all necessary repairs or alterations to the improvements located on the Leased Property in order to continue using the Leased Property for the purposes permitted to SLLC. For purposes of the preceding sentence, the term "partial taking" shall mean the taking of a portion of the Leased Property which does not constitute a total taking as defined in subparagraph (a) of this Paragraph 13.

(c) Sale of all or part of the Leased Property to a purchaser with power of eminent domain, in the face of the threat or probability of the exercise of the power of eminent domain, shall be treated for purposes of this Agreement as a taking by condemnation.

(d) All compensation and damages awarded for the taking of all or any portion of the Leased Property shall be payable to, and shall be the sole property of, Southwind. SLLC shall have the right, at its sole cost and expense, to assert a separate claim in any condemnation proceedings for the value of SLLC's leasehold interest. Whenever notice of a taking of all or any portion of the Leased Property is received by either party, that party shall notify the other party thereof.

14. **Alterations.** SLLC shall not make any construction, reconstruction, alteration, improvement, change, modification, utility installation or other alteration (hereinafter referred to in the aggregate as "Alterations") in, on or to all or any portion of the Leased Property without first providing to Southwind detailed plans, specifications and explanations relating to the proposed Alterations and obtaining Southwind's express written approval to those Alterations (which approval may not be withheld unreasonably). If Southwind shall give its consent to any Alteration, the consent shall be deemed to be conditioned upon SLLC acquiring all necessary permits to do the Alteration prior to commencement of the Alteration, and upon the compliance by SLLC with all of the conditions of those permits in a prompt and expeditious manner. Southwind may require SLLC to provide to Southwind, at SLLC's sole cost and expense, a performance and/or payment bond in an amount equal to one and one-half times the estimated costs of any proposed Alteration, to ensure that the Alteration is completed in a manner satisfactory to Southwind.

(a) All Alterations by SLLC shall be done at the sole cost of SLLC, and shall become the property of Southwind and shall remain on the Leased Property and be surrendered to Southwind upon termination of the 977 Lease Term. Notwithstanding the preceding sentence, Southwind shall have the right at any time prior to the termination of SLLC's lease to require SLLC to remove, prior to the end of the 977 Lease Term, any and all Alterations made to the Leased Property by SLLC, and to repair any damage occasioned by such removal, all at SLLC's expense.

(b) SLLC shall ensure that all work with respect to Alterations is done in a good and workmanlike manner and diligently prosecuted to completion. Any Alterations shall be performed and done strictly in accordance with all applicable laws, ordinances and regulations, and the requirements of all insurance carriers and fire rating bureaus with respect to the Leased Property.

(c) SLLC, at its expense and subject to the other provisions of this Agreement, may install any trade fixtures, equipment and furniture in, on or about the Leased Property as necessary to the furtherance of the business use permitted under this Agreement. All such trade fixtures, equipment and furniture shall remain the property of the SLLC and shall be removed by SLLC at SLLC's expense at the end of the 977 Lease Term. SLLC shall repair all damage to the Leased Property caused by the installation and/or removal of any such trade fixtures.

15. **Indemnification Against Damage Or Injury.** SLLC hereby releases Southwind from, agrees that Southwind shall not be liable for, and agrees to defend, indemnify and hold Southwind harmless from and against, any and all losses, claims, causes of action, damages, liabilities (including, without limitation, strict or absolute liability in tort or imposed by statute), charges, costs, or expenses (including, without limitation, reasonable counsel fees), incurred in connection with or arising out of any loss or damage to property or injury or death to a person or persons, that may be occasioned by any cause whatsoever pertaining to the Leased Property, or arising by reason of or in connection with the occupation or use of the Leased Property or any person's presence on or about the Leased Property (other than the negligent or culpable acts of Southwind, its agents, employees, licensees and invitees). The defense and indemnities provided in this Paragraph 15 shall apply whether or not the loss, claim, cause of action, damage, liability, charge, cost or expense is based upon the breach of a statutory duty or obligation or any theory or rule of comparative liability, subject to any specific prohibition relating to the scope of indemnities imposed by statutory law (and except to the extent that Southwind shall be liable as provided above). If any action or proceeding is brought against Southwind which is or may be subject to SLLC's obligation to indemnify Southwind as set forth under this Paragraph 15, SLLC shall, upon notice from Southwind, defend that claim at SLLC's expense using attorneys and other counsel satisfactory to Southwind.

(a) Notwithstanding any other provision of this Agreement, the obligations of SLLC pursuant to this Paragraph 15 shall remain in full force and effect after the termination of the 977 Lease Term and until the expiration of the latest period stated in any applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters described herein may be brought, and until payment in full or satisfaction of any and all losses, claims, causes of action, damages, liabilities, charges, costs and expenses shall have been accomplished.

(b) In the event of any conflict between the provisions of this Paragraph 15 and Paragraph 23, the provisions of Paragraph 23 shall take precedence. Any loss, liability,

damage, claim or cause of action arising by reason of contamination of the Leased Property by a hazardous substance shall be subject to the indemnification provisions of Paragraph 23, and shall not be subject to the indemnification provisions of this Paragraph 15.

(c) The provisions of this Paragraph 15 shall have no application to the obligation of Southwind and its agents to undertake and complete the remediation actions with respect to the Leased Property which are required under the terms of the *Settlement Agreement*.

16. **Surrender Upon Termination.**

(a) Upon expiration of the 977 Lease Term, or upon earlier termination of the 977 Lease for any reason, SLLC promptly and peaceably shall remove any of SLLC's equipment and property, and shall surrender the Leased Property in good condition. Depreciation and wear and tear from ordinary use permitted under this Agreement need not be restored by SLLC. All repairs for which SLLC is responsible shall be completed prior to the surrender of the Leased Property. If SLLC remains in occupancy of the Leased Property after termination of the 977 Lease Term, then Southwind shall have the option to: (i) treat SLLC as a tenant from month-to-month, subject to all of the provisions of this Agreement except the provisions for rental amounts, term, and renewal, and in that event SLLC shall be obligated to pay monthly rent to Southwind at a rate equal to one and one-half (1.5) times the monthly rental amount in effect as of the last month of the 977 Lease Term, or (ii) eject SLLC from the Leased Property and recover damages caused by SLLC's wrongful holdover. If SLLC fails to surrender the Leased Property in accordance herewith upon termination of the 977 Lease Term, SLLC shall indemnify and hold Southwind harmless from all losses and liabilities, including but not limited to any claims made by any succeeding tenant, which result from or are based upon SLLC's failure to so surrender the Leased Property. Acceptance by Southwind of rent subsequent to termination of the 977 Lease Term shall not result in a renewal of the lease and shall not constitute a waiver of Southwind's right to re-enter the Leased Property, remove SLLC or exercise any other rights available to Southwind under this Agreement or provided by law.

(b) If, within ten (10) days after expiration or earlier termination of the 977 Lease Term, SLLC shall fail or refuse to remove from the Leased Property all of SLLC's furnishings, furniture, trade fixtures and other personal property, then, at Southwind's option: (i) SLLC shall be conclusively deemed to have abandoned that personal property, and Southwind shall thereafter have sole and exclusive right to own, retain and dispose of such personal property, free of any claims of SLLC, and/or (ii) SLLC shall be obligated to reimburse Southwind for the full cost of removing such personal property from the Leased Property, and/or (iii) SLLC shall be treated as a tenant from month-to-month during the period in which SLLC's personal property remains on the Leased Property.

17. **Requirement To Act In Good Faith.** Each party shall act in good faith and in a commercially reasonable manner in discharging the duties and obligations imposed under this Lease.

18. **Sale Of Southwind's Interest.** Subject to the option granted to Clough under the *Settlement Agreement*, Southwind may sell all or any portion of the Leased Property during the 977 Lease Term. Any such sale shall be subject to the terms of this Agreement. SLLC shall continue to pay rent to Southwind until informed in writing of such a sale.

19. **Limitation On Assignment Or Sublease By SLLC.** SLLC shall not voluntarily or by operation of law assign this Agreement or sublease any portion of the Leased Property, or enter into any license agreement, franchise agreement, or concession agreement with respect to the Leased Property, or mortgage, hypothecate or otherwise encumber all or any portion of SLLC's interest in this Agreement or in the Leased Property, or in any other manner permit the occupation of or shared possession of all or any portion of the Leased Property, without obtaining in each instance the written consent in advance of Southwind, which consent may not be withheld unreasonably by Southwind. Consent by Southwind in any one instance shall not constitute a waiver or consent to any subsequent instance. The consent by Southwind to any assignment, sublease, or encumbrance shall not relieve or otherwise affect the continuing primary liability of SLLC under this Agreement, and SLLC shall not be released from performing any of the terms, covenants and conditions of this Agreement. Each assignee, sublessee or transferee of SLLC shall assume all obligations of SLLC under this Agreement and shall be and remain liable jointly and severally with SLLC for the payment of rent and for the due performance of all of the terms, covenants, conditions and agreements required of SLLC under this Agreement. No assignment, sublease or transfer shall be binding on Southwind unless the assignee, sublessee or transferee shall deliver to Southwind an executed instrument in a form which contains a covenant of assumption by the assignee, sublessee or transferee which is satisfactory in form and substance to Southwind. The failure or refusal of any assignee, sublessee or transferee to execute such an instrument of assumption shall not release or discharge the assignee, sublessee or transferee from its liability to Southwind, but shall provide Southwind with an option to terminate said assignment, sublease or transfer.

20. **Landlord's Lien.** SLLC hereby grants to Southwind a lien upon the improvements, trade fixtures and furnishings of SLLC which are affixed and/or attached to the Leased Property, to secure full and faithful performance of all of the terms of this Agreement.

21. **SLLC's Default.**

(a) The following shall be "events of default" under this Agreement, and the terms "event of default" or "default" shall mean, whenever used in this Agreement, any one or more of the following events:

(1) The failure by SLLC to pay or cause to be paid the full amount of the base monthly rent specified in this Agreement, within ten days after the date when due (without any requirement of notice by Southwind to SLLC).

(2) The failure by SLLC to comply with any term or condition, or fulfill any obligation of this Agreement (other than the payment of rent) within thirty (30) days after written notice by Southwind specifying the nature of the default with reasonable particularity and requesting that the default be remedied. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if SLLC begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and good faith to affect the remedy as soon as possible.

(3) An assignment by SLLC for the benefit of creditors which affects the Leased Property, the filing by SLLC of a voluntary petition of bankruptcy, an adjudication that SLLC is bankrupt, the appointment of a receiver for the properties of SLLC, the filing of an involuntary petition of bankruptcy and the failure of SLLC to secure dismissal of the petition within thirty (30) days after filing, or levying of execution upon, SLLC's leasehold interest and

the failure of SLLC to secure release of the levy or execution within ten (10) days after SLLC's actual notice thereof.

(b) Whenever any event of default shall have occurred, Southwind may take any one or more of the following remedial steps:

(1) Declare, by written notice to SLLC, that all unpaid and delinquent installments of rent, and all other unpaid and delinquent charges and payments due under this Agreement shall be immediately due and payable, whereupon those amounts shall become immediately due and payable.

(2) Terminate the lease and all rights of SLLC under this Agreement, by giving written notice of termination to SLLC. In the event of such termination, Southwind shall have the right to re-enter and take possession of the Leased Property and remove all persons and property therefrom by summary proceedings or otherwise, and to recover from SLLC: (i) any unpaid rent earned at the time of termination, *plus* (ii) the fair market value of the amount by which the unpaid rent which would have been earned after termination and prior to the end of the 977 Lease Term exceeds the amount of rent which SLLC proves can reasonably be earned by Southwind during that time, *plus* (iii) any other amount necessary to compensate Southwind for all detriment proximately caused by SLLC's failure to perform its obligations under this Agreement or which in the ordinary course of affairs would be likely to result therefrom, *plus* (iv) all other amounts available to Southwind at law or in equity.

(3) To the extent permitted by law, terminate SLLC's possessory interest in the Leased Property, without terminating SLLC's lease, in which case Southwind shall have the right to enter and take possession of the Leased Property and to remove and exclude SLLC from possession of the Leased Property and to use its best efforts to lease the Leased Property to another person for the account of SLLC; any such entry and other actions shall not operate as a waiver or satisfaction, in whole or in part, of any claim or demand arising out of or connected with any breach or default by SLLC of its obligations under this Agreement. If Southwind re-enters the Leased Property but does not elect to terminate SLLC's leasehold interest, then Southwind may from time to time, without terminating SLLC's lease, either recover from SLLC all rentals as they become due, or relet the Leased Property or any portion thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Southwind in its sole discretion may deem advisable. Any rentals so received by Southwind from such reletting shall be applied as follows: first, to the payment of any damages and indebtedness, other than rent due hereunder, owed by SLLC to Southwind; second, to the payment of any costs of such reletting; third, to the payment of the cost of any alterations and repairs to the Leased Property required in connection with such reletting; fourth, to the payment of rent due and unpaid hereunder; and last, to the payment of any future rent as the same may become due and payable hereunder. If the portion of the rental amount received from reletting which is applied to the payment of rent hereunder is less than the monthly rent payable by SLLC, then SLLC promptly shall pay the deficiency to Southwind. SLLC also shall pay promptly to Southwind any costs and expenses incurred by Southwind in connection with a reletting or in making alterations and repairs to the Leased Property which are not covered by the rental received from reletting.

(4) In the event of any re-entry of the Leased Property following termination of the lease, Southwind may make any suitable alterations or changes in the character or use of the Leased Property, provided that Southwind shall not be required to relet the Leased Property for any use or purpose other than that specified in this Agreement or for

Exhibit 3(c) to *Settlement Agreement*

any use or purpose which Southwind may reasonably consider injurious to the Leased Property. Southwind may relet all or a portion of the Leased Property, either alone or together with other properties, for a term longer or shorter than the term of this Agreement, and upon any reasonable terms and conditions (including the granting of rent-free occupancy or other rent concessions).

(5) In the event of a breach by SLLC, Southwind may sue SLLC periodically to recover damages during the period corresponding to the remainder of the 977 Lease Term, and no action for damages shall bar a later action for damages subsequently accruing.

(c) If there is an event of default by SLLC under this Agreement which is likely to have a material impact on the value of the Leased Property at the end of the 977 Lease Term, then, in addition to the remedies set forth in subparagraph 21(b) of this Agreement, Southwind shall have the option to rescind the purchase of the 977 Property from Clough which is referred to in subsection 3(a) of the *Settlement Agreement*, in which event:

(1) Southwind will reconvey the 977 Property to Clough, by Special Statutory Warranty Deed, free of all encumbrances other than encumbrances of record as of the original Closing Date or encumbrances caused or incurred by, or resulting from the actions or inactions of, SLLC; and

(2) The \$15,000 reduction in the outstanding balance of the SLLC/RLS Note, which is referred to in subsection 3(a)(1)(A) of the *Settlement Agreement*, shall be rescinded, effective as of the date of the applicable breach by SLLC under the 977 Lease, and the amount owing to RLS by SLLC under the SLLC/RLS Note thereupon shall be increased by \$15,000; and

(3) If the rescission pursuant to this subsection (c) occurs prior to payment of any portion of the principal balance of the 977 Promissory Note, then Clough shall assign and return to Southwind the 977 Promissory Note; if the closing of the rescission pursuant to this subsection (c) occurs after the payment of all or any portion of the 977 Promissory Note, then Clough shall: (i) release and discharge any portion of the principal balance of the 977 Promissory Note which has not then been paid by Southwind, and (ii) repay to Southwind the full amount of all payments of principal which shall have been made by Southwind with respect to the 977 Promissory Note; and

(4) The rescission by Southwind pursuant to this subparagraph (c) shall not affect the obligation of Slade under the *Settlement Agreement* to obtain a NFA Letter with respect to any contamination of the 977 Property by the 865 Spill, the 953 Spills or any Proven Additional Spill.

(d) No remedy conferred upon or reserved to Southwind under this Agreement or under the *Settlement Agreement* is intended to be exclusive of any other available remedy, but each and every remedy shall be cumulative and in addition to every other remedy given under this Agreement or under the *Settlement Agreement* or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, and any such right or power may be exercised from time to time and as often as deemed expedient by Southwind. In order to entitle Southwind to exercise any remedy reserved to Southwind, it shall not be necessary to give any notice other than a notice which is expressly required in this Agreement.

22. **Time Of Essence.** Time is of the essence in the performance of all obligations of Southwind and/or SLLC under this Agreement.

23. **SLLC's Responsibility For Contamination By Hazardous Substances.**

(a) SLLC shall at all times during the 977 Lease Term use, sell, store, transport, dispose of and treat hazardous materials in strict accordance with all applicable Hazardous Materials Laws). SLLC shall not intentionally or unintentionally cause or permit any gasoline, motor oil or other fuel product or petroleum based product and/or any other Hazardous Material to spill, leak or be discharged onto the soil or other surface of the 977 Property or be discharged into any storm drain, sewer or other waste disposal system located on the 977 Property which is not specifically designed for, and intended to be used solely for, the retention and disposal of that Hazardous Material. To the extent that it is possible to do so at a commercially reasonable price, SLLC, at SLLC's expense, shall obtain insurance against losses or damages resulting from the contamination of the 977 Property by Hazardous Materials, which insurance shall be issued by one or more insurers reasonably approved by Southwind, shall be in an amount reasonably approved by Southwind, and shall name Southwind as an additional insured.

(b) FFN has leased the 977 Property from Southwind's predecessors in title since 1993. If, at any time subsequent to October 1, 1993 and prior to the end of the 977 Lease Term, there shall have occurred or does occur upon the 977 Property any release, spill, leak or discharge of hazardous materials which is in violation of any of the Hazardous Materials Laws, then SLLC shall be obligated to cause and complete the repair, cleanup, detoxification and/or decontamination of the 977 Property (or any improvements thereon) and the preparation and implementation of any closure, remedial action or other required plan or plans in connection therewith, all as required by the Laws. The preceding sentence shall not apply to any contamination of the 977 Property which shall have been caused exclusively by the 865 Spill or the 953 Spill.

(c) SLLC shall indemnify, defend, protect and hold harmless Southwind and each of the Slade parties and all of the employees, agents, successors and assigns of Southwind and each of the Slade Parties (collectively referred to in this Paragraph 23 as "Southwind"), from and against any and all criminal and civil claims and causes of action (including but not limited to claims resulting from, or causes of action incurred in connection with, the death of or injury to any person, or damage to any property), liabilities (including but not limited to liabilities arising by reason of actions taken by any governmental agency), penalties, forfeitures, prosecutions, losses and expenses (including reasonable attorney fees) which directly or indirectly arise from or are caused by either the presence in, on or about the 977 Property or any improvements located thereon of any hazardous materials, or the use, sale, storage, transportation, disposal, release, threatened release, discharge or generation of hazardous materials to, in, on, under, about or from the 977 Property or any improvements located thereon (excluding, however, any contamination of the 977 Property by the 865 Spill or the 953 Spill). SLLC's obligations under this subparagraph 23(c) shall include, but not be limited to, the obligation to bear the expense of any and all costs, whether foreseeable or unforeseeable, of any necessary (as required by the Hazardous Materials Laws) repair, cleanup, detoxification or decontamination of all or any portion of the 977 Property (or any improvements located thereon), and the preparation and implementation of any closure, remedial action or other required plan or plans in connection therewith.

(d) Notwithstanding any other provision of this Agreement, the obligations of SLLC pursuant to this Paragraph 23 shall remain in full force and effect after the termination

of the 977 Lease Term and until the expiration of the latest period stated in any applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters described herein may be brought, and until payment in full or satisfaction of any and all losses, claims, causes of action, damages, liabilities, charges, costs and expenses for which SLLC is liable hereunder shall have been accomplished.

(e) For purposes of this Paragraph 23, any acts or omissions of or by any one or more employees, agents, assignees, sublessees, franchisees, licensees, permittees, customers, contractors, successors-in-interest or other persons permitted by SLLC to have access to the property (other than Southwind or Southwind's agents) or acting for or on behalf of SLLC (whether or not the actions of such persons are negligent, intentional, willful or unlawful) shall be strictly attributable to SLLC.

(f) If any claim, demand, action or proceeding is brought against Southwind which is or may be subject to SLLC's obligation to indemnify Southwind as set forth under this Paragraph 23, Southwind shall provide to SLLC immediate notice of that claim, demand, action or proceeding, and SLLC thereafter shall defend Southwind at SLLC's expense using attorneys and other counsel selected by SLLC and reasonably acceptable to Southwind. Southwind agrees to cooperate with SLLC in SLLC's defense of Southwind. The indemnification provided under this Paragraph 23 shall apply to any loss of business or other consequential damage suffered by Southwind or any other person.

24. **Notice.** Any notice required or permitted under this Agreement shall be deemed to have been given and delivered when deposited with a carrier for personal delivery or in the United States mail, as certified mail, postage prepaid, and addressed to the last-known address of the party being provided with the notice

25. **Southwind's Obligation to Remediate Existing Contamination.** The obligation which is imposed upon Southwind and the Slade Parties under the *Settlement Agreement* to remediate certain contamination of the Leased Property shall, to the extent reasonably possible, be accomplished in such a manner as to minimize the adverse economic impact on SLLC's business operations.

26. **Document to Be Recorded.** The parties agree to execute a memorandum of this instrument, which may be recorded by either party in the official records of Klamath County, Oregon.

27. **Miscellaneous.** This Agreement shall be governed and performed in accordance with the laws of the state of Oregon. Each of the parties hereby irrevocably submits to the jurisdiction of the courts of Klamath County, Oregon, and agrees that any legal proceedings with respect to this Agreement shall be filed and heard in the appropriate court in Klamath County, Oregon. The paragraph headings set forth in this Agreement are set forth for convenience purposes only, and do not in any way define, limit or construe the contents of this Agreement. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then that determination shall not affect any other provisions of this Agreement, and all such other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Agreement is capable of two constructions, only one of which would render the provision valid, then the provision shall have the meaning which renders it valid. If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party in that suit or action or any appeal therefrom shall be entitled to recover, in addition to any other relief, the sum which the court may judge to be reasonable attorney fees. This Agreement shall inure to the benefit of and shall be binding upon the

Exhibit 3(c) to Settlement Agreement

successors, assigns, heirs and personal representatives of the parties. This Agreement may be executed in multiple counterparts, each of which shall be an original, and all of which shall constitute a single instrument, when signed by the parties. There are no oral agreements or representations between the parties hereto which affect this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, warranties, representations and understandings, if any, between the parties. Nothing contained in this Agreement shall create between the parties hereto, or shall be relied upon by any other person as creating, any relationship of partnership, association, joint venture, principal and agent, or otherwise, and the sole relationship of the parties hereto shall be that of landlord and tenant. This Agreement shall not be recorded in the official records of Klamath County, Oregon, without the written consent of Southwind.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

LESSOR: SOUTHWIND LLC

By _____
R. L. Slade, Manager

Date

LESSEE: SPRING STREET, LLC

By _____
Authorized agent

Date