

2012-008088

Klamath County, Oregon



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After recording, return to:

Tim Jackle  
Foster Denman, LLP  
3521 East Barnett Road  
Medford, OR 97504

**ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made this 23rd day of July, 2012 by and between THOMAS C. DICKERT, having an address at P.O. Box 966, Klamath Falls, OR 97601 as assignor ("Assignor"), and JERRY ANDREWS (formerly known as Gerard Andrew Abramoske and Gerard Abramoski) and PHYLLIS ANDREWS (formerly known as Phyllis Abramoske and Phyllis Abramoski), or the survivor, having an address at 780 Diamond Elk Road, Tiller, OR 97484, as assignee ("Assignee").

**Recitals:**

A. Assignee has made a loan to Assignor (the "Loan"), as evidenced by the Promissory Note dated this date by Assignor in the principal amount of Seventy-Five Thousand Dollars (\$75,000.00) (together with any modifications, amendments, replacements, substitutions, extensions, or renewals thereof, the "Note").

B. The Note shall be secured in part by a Trust Deed dated this date by Assignor to Assignee, granting a first-priority lien on the land described in Exhibit A to this Assignment and all improvements situated thereon (such land and improvements are collectively called the "Property"), which Trust Deed is intended to be recorded immediately prior to this Assignment among the land records of Klamath County, Oregon (together with any modifications, amendments, or supplements thereto, the "Trust Deed").

C. As a condition precedent to making the Loan, Assignee has required that Assignor further secure the payment and performance of all the obligations of Assignor in connection with the Loan by entering into this Assignment.

**Agreement**

In consideration of the foregoing and to induce Assignee to make the Loan to Assignor, Assignor hereby covenants, warrants, represents, and agrees with Assignee as follows:

1. **Defined Terms.** The capitalized terms used but not defined in this Assignment shall have the meanings given to them in the Trust Deed.

2. **Assignment.** Assignor hereby absolutely and presently grants, transfers, and

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assigns to Assignee, its successors, and assigns, all of the right, title, interest, and estate of Assignor in and to (a)(i) all leases, subleases, licenses, concessions, use agreements, occupancy agreements, or tenancies, whether or not specifically listed in this Assignment and whether or not executed or in effect on the date hereof or subsequent hereto, and relating to or affecting the Property; (ii) any modifications, amendments, renewals, supplements, and extensions thereto; (iii) all credits, deposits (security, escrow, or otherwise), and advance payments made or given thereunder; and (iv) any guarantees of the tenants', licensees', concessionaires', users', or occupants' obligations thereunder (items (i) through (iv) are collectively referred to as the "Leases"); and (b) all rents, issues, profits, fees, income, and revenues from the Leases, including, without limitation, claims for the recovery of damages to the Property by proceeds of any insurance policy or otherwise, claims for damages resulting from acts of insolvency or bankruptcy, lump sum payments, or the cancellation or termination of any Lease, awards payable by reason of condemnation action or the exercise of any right of first refusal or option to purchase, and the proceeds of any rental insurance carried by Assignor on the Property (collectively, the "Rents").

3. **Security.** This Assignment is for the purpose of securing (a) payment of the indebtedness evidenced by the Note; (b) payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of this Assignment or under the provisions of any other document evidencing or securing the Loan (this Assignment, the Note, the Trust Deed, and such other documents evidencing or securing the Loan, together with any amendments, modifications, and supplements thereto, are collectively called the "Loan Documents"); and (c) performance and fulfillment of each and every term, covenant, and condition set forth in the Loan Documents.

4. **Performance of Leases.** With respect to each of the Leases, Assignor (a) shall faithfully abide by, perform, and fulfill each and every term, covenant, and condition of the Leases to be performed or fulfilled by Assignor; (b) at the sole cost and expense of Assignor, shall enforce or secure the performance of each and every material term, covenant, and condition of the Leases to be performed or fulfilled by Assignor; (c) shall not modify, extend, or in any way alter any material term, covenant, or condition of any of the Leases, without the prior written consent of Assignee; and (d) shall not accept payment of Rents more than one (1) month in advance as payable under any of the Leases, or waive, excuse, condone, or in any manner release or discharge any tenants, licensees, concessionaires, users, and occupants of any part of the Property (including, but not limited to, all parties claiming an interest under any of the Leases) (collectively, the "Tenants") of or from the terms, covenants, or conditions to be performed or fulfilled by such party, including the obligation to pay any Rents in the manner and at the place and time specified therein.

5. **Defense of Actions.** Assignor, at Assignor's sole cost and expense, shall appear in and defend any action or proceeding arising out of or in any manner connected with any of the Leases or the obligations, duties, or liabilities of Assignor or of any of the Tenants, and shall pay all costs and expenses of Assignee, including actual attorneys' fees and expenses, in any such action or proceeding to which Assignee may be a party.

6. **Protection of Security.** Upon the occurrence of a default under any of the Loan Documents and upon Assignor's failure to cure such default within any applicable cure period or

grace period (an "Event of Default"), at Assignee's option, and without releasing Assignor from any obligation under this Assignment or the other Loan Documents, Assignee may make or do such acts in such manner and to such extent as Assignee may deem necessary to protect the security of this Assignment, including specifically, without limiting its general powers, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights, privileges, or powers of Assignee, and also performing and discharging each and every term, covenant, and condition of Assignor set forth in any of the Leases, and, in exercising any such powers, may pay the costs and expenses thereof, employ counsel, and incur and pay attorneys' fees and expenses.

7. **Payment of Expenses.** Assignor shall immediately reimburse Assignee upon demand all sums expended by Assignee under the authority of this Assignment, together with interest thereon at the Default Rate set forth in the Note.

8. **Absolute Assignment; Rights of Assignor Before Event of Default.** This Assignment is intended to be and shall constitute an unconditional, absolute, and present assignment by Assignor to Assignee of all of Assignor's right, title, and interest in and to the Leases and Rents (subject to the terms and conditions hereof), and not an assignment in the nature of a pledge of such Leases and Rents or the mere grant of a security interest therein. Notwithstanding that this Assignment is effective immediately, so long as there shall exist no Event of Default, Assignor shall have the privilege under a revocable license to collect as they become due, but not prior to accrual, all Rents from the Property, and to receive and hold the same. Assignor shall receive and hold such Rents in trust as a fund to be applied to the payment of real estate taxes, insurance, maintenance, repair, and Lease obligations with respect to the Property, and to the payment of interest, principal, and other sums becoming due under the Note, before retaining or disbursing any part of the Rents for any other purpose.

9. **Rights of Assignee Upon Event of Default.**

(a) Upon or at any time after the occurrence of an Event of Default, Assignee may do any or all of the following: (i) revoke Assignor's license to collect, retain, use, and enjoy the Rents and to exercise any other rights of Assignor under the Leases, as provided by Section 8; (ii) declare all sums secured by this Assignment immediately due and payable and, at its option, without notice and without regard to the adequacy of security for the indebtedness hereby secured, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage, and operate the Property or any part thereof; (iii) make, cancel, enforce, or modify any of the Leases; (iv) obtain and evict Tenants, and fix or modify any of the Rents; and (v) perform any acts which Assignee deems proper to protect the security of this Assignment, and either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive the Rents, including those past due and unpaid, and apply the Rents, less costs and expenses of operation and collection, including just and reasonable compensation for all its employees and other agents (including, but not limited to, attorneys' fees and expenses and management and rental commissions), to any indebtedness secured by this Assignment. The exercise of any or all such rights by Assignee as provided by this Section 9(a) shall not cure or waive any Event of Default or waive, modify, or affect notice of default under the Loan Documents, or invalidate any act done pursuant to such notice, and Assignee may continue to exercise any or all of such rights

until such Event of Default has been cured. Assignee may exercise its rights and privileges under this Assignment whenever any Event of Default has occurred.

(b) If Assignee receives any Rents as provided by this Assignment, Assignee shall apply such amounts on account of the Loan in the order provided by the Note.

(c) Assignee shall not be obligated to maintain or repair the Property but shall be entitled to do so upon the occurrence of an Event of Default, to the extent Assignee determines it to be necessary or appropriate, in its discretion. Such maintenance or repair may include, without limitation, the purchase of furniture, equipment, and other personal property used in connection with the Property, and the costs thereof including all taxes imposed thereon or therefor shall be part of the costs and expenses of operation. Assignee shall not be obligated to perform or fulfill, nor does it hereby undertake to perform or fulfill, any term, condition, or covenant under the Leases, or under or by reason of this Assignment.

(d) Assignee may act upon any notice, request, consent, demand, statement, note, or other paper or document believed by it to be genuine and to have been signed by the party or parties purporting to sign the same. Assignee shall not be liable for any error of judgment, or for any act done or step taken or omitted, or for any mistake of law or fact, or for anything which it may do or refrain from doing in good faith. Assignee shall not have any accountability under this Assignment except for its own willful default or gross negligence.

(e) Any default by Assignor in the performance of any term, covenant, or condition of this Assignment and not cured within any applicable cure period provided in this Assignment shall constitute and be deemed to be an Event of Default under the Loan Documents, entitling Assignee to every and all rights, privileges, and remedies set forth therein.

(f) Assignor, on its own behalf and that of any successors or assigns, hereby authorizes and directs all Tenants to pay Rents directly to Assignee, and to treat Assignee as the other party under the applicable Lease, with all of the rights, powers, and privileges granted by Assignor to Assignee under this Assignment or by such Tenant to Assignor under the applicable Lease, after receiving written instructions to do so from Assignee, notwithstanding any instructions to the contrary from Assignor. Assignor, on its own behalf and that of any successors or assigns, hereby further authorizes all Tenants to recognize the claims and demands of Assignee under this Assignment without investigating (i) the reason for any action taken by Assignee or the validity or the amount of indebtedness owing to Assignee; (ii) the existence of any Event of Default; or (iii) the application to be made by Assignee of any sums to be paid to Assignee. The sole signature of Assignee shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of Assignee for any sums received shall be a full discharge and release therefor to any Tenant. Checks for all or any part of the Rents payable to Assignee under this Assignment shall be drawn to the exclusive order of Assignee.

(g) The rights, powers, privileges, and discretions specifically granted to Assignee by this Assignment are not in limitation of but in addition to those to which Assignee is entitled under any present or future general or local law relating to such assignments in the State of Oregon. The rights, powers, privileges, and discretions (hereinafter collectively called the "rights") to which Assignee may be entitled shall inure to the benefit of its successors and

assigns. All the rights of Assignee are cumulative and not alternative and may be enforced successively or concurrently. Failure of Assignee to exercise any of its rights shall not impair any of its rights nor be deemed a waiver of such rights. No waiver of any of Assignee's rights shall be deemed to apply to any other such rights. No waiver by Assignee shall be effective unless in writing and signed by Assignee.

(h) Upon an Event of Default, Assignee, and not Assignor, shall be deemed to be the creditor of each Tenant in respect of any assignment for the benefit of creditors, bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such tenant.

10. **Indemnity.** Assignor shall indemnify and hold Assignee harmless against and from (a) any and all costs, expenses, liability, loss, or damage which Assignee incurs under any of the Leases or under or by reason of this Assignment; and (b) any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants, or conditions contained in any of the Leases. Should Assignee incur any such liability, loss, or damage under any of the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be secured by this Assignment, and Assignor shall reimburse Assignee therefor immediately upon demand, with interest at the Default Rate set forth in the Note. Upon the failure of Assignor so to reimburse Assignee, Assignee may declare all sums secured by this Assignment to be immediately due and payable.

11. **Subsequent Leases.** Until the indebtedness secured by this Assignment shall have been paid in full, Assignor shall make, execute, and deliver to Assignee, upon demand, any and all instruments that may be necessary to assign to Assignee all subsequent Leases affecting all or any part of the Property, upon the same or substantially the same terms and conditions as are set forth in this Assignment, to the extent that such assignment is not already effected by this Assignment.

12. **Termination.** Upon the payment in full of all indebtedness secured by this Assignment and the termination of the Trust Deed of record, this Assignment shall terminate and become void and of no further effect. The affidavit of Assignee or any officer of Assignee showing any part of such indebtedness to remain unpaid shall be and constitute conclusive evidence, as to any third party, of the validity, effectiveness, and continuing force of this Assignment. Any such third party may and is hereby authorized to rely on such affidavit.

13. **Assignor's Representations.** Assignor hereby represents that (a) Assignor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted, or compromised; (b) Assignor has not done anything which might prevent Assignee from, or limit Assignee in, acting under any of the provisions of this Assignment; (c) to Assignor's knowledge, it has not breached any term, covenant, or condition, of any of the Leases; (d) to Assignor's knowledge, no Tenant has a right of deduction, counterclaim, recoupment, or set-off under any of the Leases; (e) all of the Leases are subject and subordinate to the Loan Documents; (f) Assignor is the sole owner of the entire lessor's interest in the Leases and the Rents thereunder and such interest is free and clear of all

liens and encumbrances; (g) no other assignment of any interest in any of the Leases or Rents is in effect; (h) the Leases submitted to Assignee are true and complete copies of all of the Leases now existing and there have been no material written or oral modifications thereto; (i) Assignor has not received any funds or deposits from any tenant except as expressly provided for in a Lease; (j) no Tenant has a right of first refusal or right of first offer or any similar right to purchase the Property; and (k) to the best of Assignor's knowledge, no Tenant has used or placed on the Property any hazardous materials in violation of any environmental laws.

14. **Notices.** All notices, elections, deliveries, and other communications between the parties required or desired to be given in connection with this Assignment, to be effective hereunder, shall be given as provided by the Trust Deed.

15. **Miscellaneous.**

(a) This Assignment shall not be amended or modified in any manner except by a document in writing executed by Assignee.

(b) Assignor hereby waives trial by jury in any action or proceeding to which Assignor and Assignee or any holder of the Leases may be parties, arising out of or in connection with this Agreement or any of the Leases. This waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this Assignment.

(c) This Assignment, together with the other Loan Documents, is the entire agreement between the parties with respect to the matters set forth herein and therein, and all prior statements, discussions, negotiations, and agreements, oral or written, are superseded by this Assignment and the other Loan Documents and merged herein and therein.

(d) Time is of the essence of this Assignment.

(e) This Assignment shall be governed by the laws of the State of Oregon, excluding any Oregon choice of law principles.

(f) Assignor shall, from time to time, without charge and within five (5) business days after request by Assignee in writing, execute, acknowledge, and deliver, and request each Tenant to execute, acknowledge, and deliver, to Assignee a written statement in form and substance reasonably satisfactory to Assignee, certifying to certain matters relating to the Leases.

(g) If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

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IN WITNESS WHEREOF, Assignor has duly executed and delivered this Assignment of Leases and Rents under seal on the date first written above.

Thomas C. Dickert  
THOMAS C. DICKERT

STATE OF OREGON            )  
  ) ss.  
County of Klamath         )

On this 19 day of July, 2012, personally appeared the above-named THOMAS C. DICKERT and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Adrien Fleek  
Notary Public for Oregon

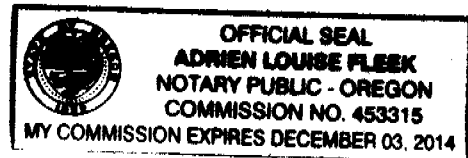


EXHIBIT A  
Description of Property

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

The Southerly 15 feet of Lot 3; the Southerly 15 feet of the Westerly 100 feet of Lot 15; all of Lots 4, 5, 6 and 7; the Westerly 100 feet of Lots 11, 12, 13 and 14; TOGETHER WITH the vacated alley abutting said property; and Lots 8 and 9; TOGETHER WITH the Westerly 10 feet of vacated alley abutting same, all in Block 25, of WEST KLAMATH, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon.