

AFTER RECORDING RETURN TO:

Argo Klamath One, LLC
c/o Argonaut Investments, LLC
770 Tamalpais Drive, Suite 401-B
Corte Madera, CA 94925
Attention: Stephen B. Jaeger

2013-011556

Klamath County, Oregon

10/11/2013 11:15:35 AM

Fee: \$97.00

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

**Klamath Falls Town Center,
Klamath Falls, Oregon**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS ("**Amendment**"), is made and entered into as of October 11, 2013, by and between ARGO KLAMATH ONE, LLC a Delaware limited liability company ("**Klamath One**"), and ARGO KLAMATH TWO, LLC, a Delaware limited liability company ("**Klamath Two**").

RECITALS:

This Amendment is entered into on the basis of the following facts, understandings and intentions of the parties:

A. K Falls One, LLC, an Oregon limited liability company ("**K Falls One**"), recorded that Declaration of Covenants, Conditions and Restrictions and Grant of Easements dated December 1, 2006, and recorded in the Official Records of Klamath County, Oregon, on January 19, 2007 as Document No. 2007-001016 (the "**Declaration**"), encumbering that real property commonly known as the Klamath Falls Town Center (the "**Shopping Center**") and more particularly described in the Declaration and in **Exhibit A** attached hereto.

B. The Shopping Center is shown on the site plan attached hereto as **Exhibit B** (the "**Site Plan**").

C. On or about May 28, 2010, K Falls One transferred fee title to the Shopping Center to Evergreen Environmental Corporation, a Washington corporation ("**Evergreen**").

D. On or about April 30, 2012, Evergreen transferred fee title to the Shopping Center to Argo K Falls, LLC, an Oregon limited liability company ("**Argo K Falls**"), and TRV Properties, LLC, an Oregon limited liability company ("**TRV**"), as tenants-in-common. TRV subsequently transferred its interest in the Shopping Center to Argo K Falls.

E. Immediately prior to the recordation of this Amendment, Argo K Falls transferred to Klamath One that real property located in the Shopping Center and more particularly described on **Exhibit C** attached hereto, and designated as Lots 6, 8, 9, 11 and Parcel 2 on the Site Plan ("Collateral Property").

F. Immediately prior to the recordation of this Amendment, Argo K Falls transferred to Klamath Two that real property located in the Shopping Center and more particularly described on **Exhibit D** attached hereto, and designated as Lots 1, 2, 3, 4, 5, 7, 10, 12, 13, 14, 15, Common Area A and Common Area B on the Site Plan.

G. Klamath One and Klamath Two desire to amend the Declaration as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. Except as otherwise expressly provided herein, all capitalized terms used in this Amendment (including the Recitals) shall have the same meaning given such terms in the Declaration. If a capitalized term used in the Declaration is given a modified definition in this Amendment, then such modified definition shall be used in the interpretation of the Declaration.

2. Revised Site Plan Exhibit. The site plan attached as Exhibit B to the Declaration is hereby superseded and replaced by the Site Plan attached hereto as Exhibit B.

3. Prohibited Uses. Declarant, in its sole discretion, shall have the right to waive any of the use prohibitions contained in Section 3.3 of the Declaration.

4. Declarant. In Sections 4.1.1, 4.4.1 and 5.8.1 (and any other provisions of the Declaration that give approval rights to the Declarant that are not also given to the other Owners), the term “**Declarant**” shall hereafter mean and refer to Klamath One.

5. Modification of Section 5.2.1. The last word in Section 5.2.1 of the Declaration is hereby changed from “Owner” to “Declarant.”

6. Modification of Section 5.4.2. In the second sentence of Section 5.4.2 of the Declaration, both references to the word “Owner” are hereby changed to the word “Owners.”

7. Common Area Ratio. Section 6.1.1 of the Declaration is hereby amended and restated in its entirety as follows:

Common Area Ratio. At all times there shall be independently maintained on each parcel or further subdivision thereof a ratio of developed Common Area to building floor area sufficient to meet all applicable municipal requirements and the requirements of any other governing instruments encumbering the Shopping Center.

8. Liability Insurance. The first three sentences of Section 8.2.1 of the Declaration (commencing with the words “Each Owner shall...” and ending with the words “any single occurrence”) are hereby replaced with the following:

At all times each Owner shall keep in full force and effect a policy or policies of commercial general liability insurance utilizing the ISO occurrence form CG0001, or such substantially equivalent form as is then in use in the insurance industry, providing coverage on an occurrence form basis with limits of not less than One Million Dollars (\$1,000,000.00) each occurrence for bodily injury and property damage combined, and not less than Two Million Dollars (\$2,000,000.00) annual general aggregate (which shall apply on a “per location” basis), with excess liability coverage of not less than Five Million Dollars (\$5,000,000.00). The excess liability coverage must provide that the entire limits specified above must be available for occurrences relating to the Shopping Center. All policies must be concurrent and the excess liability policy must provide coverage that is at least as broad as that provided by the commercial general liability policy. If the commercial general liability insurance or excess liability insurance covers other

locations, then the policy limits specified above must at all times be separately available to the Shopping Center, notwithstanding claims or occurrences at other locations.

The balance of Section 8.2.1 of the Declaration shall remain intact.

9. Correction of Section Reference. In the first line of Section 11.2.1 of the Declaration, the reference to “Section 12.3.1” is hereby changed to “Section 11.3.1.”

10. Environmental. As used in the second paragraph of Section 13.1 of the Declaration, the phrase “Owner responsible for such” shall mean and refer to the Owner who released, used or placed such Hazardous Materials in the Shopping Center or whose agents, employees, contractors or tenants released, used or placed such Hazardous Materials in the Shopping Center.

11. Notices. The notice address for K Falls One in Section 14.1.1 of the Declaration is hereby deleted and replaced with the following:

If to Klamath One:

Argo Klamath One, LLC
c/o Argonaut Investments, LLC
770 Tamalpais Drive, Suite 401-B
Corte Madera, CA 94925
Attention: Stephen B. Jaeger

If to Klamath Two:

Argo Klamath Two, LLC
c/o Argonaut Investments, LLC
770 Tamalpais Drive, Suite 401-B
Corte Madera, CA 94925
Attention: Stephen B. Jaeger

12. Estoppel Certificates. Any Owner may, at any time and from time to time, deliver written notice to any other Owner requesting such Owner to certify in writing that, to the knowledge of the certifying Owner: (i) the Declaration is in full force and effect and a binding obligation of the Owners; (ii) the Declaration has not been amended or modified, either orally or in writing, or, if amended, to identify the amendments; and (iii) the requesting Owner is not in default in the performance of its obligations under the Declaration or, if in default, to describe the nature and amount of any and all defaults. Each Owner receiving such request shall execute and return such certificate within twenty (20) days following the receipt thereof. The Owners acknowledge that such certificate may be relied upon by buyers and other transferees, lenders and sale-leaseback lessors. No Owner shall be liable to the Owner requesting an estoppel certificate on account of any information therein contained, notwithstanding the omission for any reason to disclose correct or relevant information, but each Owner supplying such certificate shall be estopped with respect to such Owner from asserting any right or obligation or utilizing any defense that contravenes or is contrary to any the information that it provided in the estoppel certificate.

13. Coordination of Leases. As used herein, the term “**Existing Leases**” means those leases listed in Exhibit E attached hereto. Immediately prior to the recordation of this Amendment, the landlord under each Existing Lease was the same entity (namely, Argo K Falls). The Owner of the Collateral Property (together with any successors or assigns of all or any portion of the Collateral Property, each a “Collateral Owner”) desire to grant to each other

certain protections in order to avoid a situation in which a Collateral Owner (an “**Adjacent Landlord**”) or its tenant could cause another Collateral Owner to be in default under any Existing Lease in which such other Collateral Owner is the landlord, and to provide remedies to each other in the event of any such situation. Accordingly, the Collateral Owners agree that no Collateral Owner who is the landlord under an Existing Lease shall: (1) take any action or do or allow anything that would cause any other Collateral Owner who is the landlord under an Existing Lease to be in default under such Existing Lease; or (2) permit its tenant under such Existing Lease to take any action prohibited under such Existing Lease that would cause any other Collateral Owner who is the landlord under another Existing Lease to be in default under such Existing Lease. By way of example only, and not limitation, this Section 13 is intended to protect a Collateral Owner whose tenant under such Collateral Owner’s Existing Lease has an exclusive use right that restricts another tenant’s use of its leased premises under an Adjacent Landlord’s Existing Lease, if the tenant under such Adjacent Landlord’s Existing Lease breaches such exclusive use provision. Each Collateral Owner shall have the right to enforce its rights under this Section 13 by all means available at law or in equity, including, without limitation, injunctive relief. The terms of this Section 13 apply only to the Existing Leases and not to any other leases that may be entered into after the date of this Amendment.

14. Covenants Run With the Land. Each restriction, covenant and agreement contained herein shall be appurtenant to and for the benefit of each benefitted parcel of property in the Shopping Center, and shall be a burden on each affected parcel of property in the Shopping Center for the benefit of each benefitted parcel and the mutual benefit of all parcels, and shall run with the land. This Amendment and the restrictions, covenants, benefits and obligations created hereby shall inure to the benefit of each Owner and its successors, transferees and assigns, and shall be binding upon each Owner and its successors, transferees and assigns.

15. Interpretation. The provisions of this Amendment and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Owner. If any clause, sentence or other portion of this Amendment shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions of this Amendment shall remain in full force and effect.

16. Governing Law. This Amendment shall be construed and enforced in accordance with, and governed by, the laws of the State of Oregon.

17. Effect of Amendment. The Declaration is in full force and effect and, except as amended by this Amendment, the Declaration has not been modified or amended.

[SIGNATURES COMMENCE ON NEXT PAGE;
NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

KLAMATH ONE:

ARGO KLAMATH ONE, LLC,
a Delaware liability company,

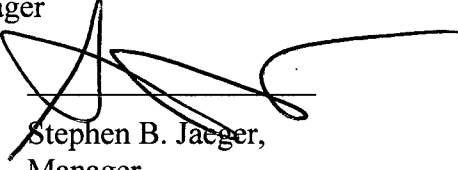
By: Argo K Falls, LLC,
an Oregon limited liability company

Its: Manager

By: Argonaut Investments, LLC,
a Delaware limited liability company
(with respect to Series 10)

Its: Manager

By:



Stephen B. Jaeger,
Manager

KLAMATH TWO:

ARGO KLAMATH TWO, LLC,
a Delaware liability company,

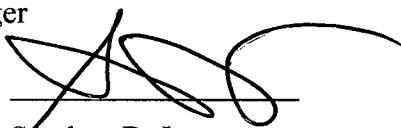
By: Argo K Falls, LLC,
an Oregon limited liability company

Its: Manager

By: Argonaut Investments, LLC,
a Delaware limited liability company
(with respect to Series 10)

Its: Manager

By:



Stephen B. Jaeger,
Manager

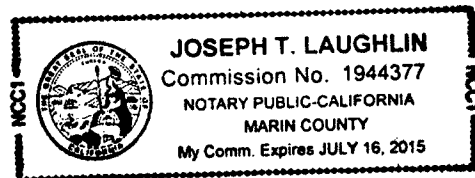
STATE OF CALIFORNIA }
 } ss
COUNTY OF MARIN }

On September 27, 2013, before me, JOSEPH T. LAUGHLIN, a Notary Public, personally appeared STEPHEN B. JAEGER who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joseph T. Laughlin (seal)



STATE OF CALIFORNIA }
 } ss
COUNTY OF MARIN }

On SEPTEMBER 27, 2013, before me, JOSEPH T. LAUGHLIN, a Notary Public, personally appeared STEPHEN B. JAEGER who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joseph T. Laughlin (seal)

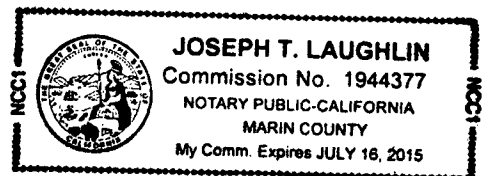


EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER

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

BEGINNING AT THE INITIAL POINT MARKED BY A 5/8" IRON ROD WITH A 1 1/2 " ALUMINUM CAP PER KLAMATH COUNTY SURVEY NO. 1441, RE-MONUMENTED WITH A BRASS SCREW AND WASHER MARKED "W&H PACIFIC", AND LOCATED AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE OF PERSHING WAY WITH THE WESTERLY RIGHT-OF-WAY LINE OF AUSTIN STREET, SAID INITIAL POINT BEARS NORTH 54°55'34" EAST 1860.10 FEET FROM A FOUND 2 1/2" BRASS CAP IN A MONUMENT BOX MARKING THE ONE-QUARTER CORNER COMMON TO SECTIONS 3 AND 4 OF SAID TOWNSHIP AND RANGE; THENCE NORTH 55°53'18" WEST ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE 880.81 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF AVALON STREET; THENCE NORTH 30°35'30" EAST ALONG SAID EASTERLY LINE 1001.49 FEET; THENCE NORTH 89°51'08" EAST 110.58 FEET; THENCE NORTH 00°10'38" WEST 150.05 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SHASTA WAY; THENCE NORTH 89°49'57" EAST ALONG SAID SOUTH LINE 376.79 FEET TO SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 00°19'16" WEST ALONG SAID WESTERLY LINE 1,122.19 FEET TO AN ANGLE POINT IN SAID RIGHT-OF-WAY LINE; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE SOUTH 34°06'49" WEST 465.41 FEET TO SAID NORTHEASTERLY RIGHT-OF-WAY LINE AND THE INITIAL POINT.

ALSO KNOWN AS LOTS 1 THRU 15 AND COMMON AREAS A AND B OF TRACT 1522 KLAMATH MALL; AND PARCELS 2 AND 3 OF LAND PARTITION 70-07, A REPLAT OF ALL THAT PORTION OF TRACTS 32, 33A AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON.

EXHIBIT B

SHOPPING CENTER SITE PLAN

[SEE ATTACHED]

EXHIBIT C

LEGAL DESCRIPTION OF KLAMATH ONE PROPERTY

Real Property in the County of Klamath and State of Oregon described as follows:

PARCEL I:

LOTS 6, 8, 9 AND 11 OF TRACT 1522 KLAMATH MALL; AND PARCEL 2 OF LAND PARTITION 70-07, A REPLAT OF ALL THAT PORTION OF TRACTS 32, 33A AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON.

PARCEL II:

TOGETHER WITH THOSE RIGHTS AS DESCRIBED IN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS RECORDED JANUARY 19, 2007 AS INSTRUMENT NO. 2007-001016 OF OFFICIAL RECORDS.

EXHIBIT D

LEGAL DESCRIPTION OF KLAMATH TWO PROPERTY

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

PARCEL 1:

LOTS 1, 2, 3, 4, 5, 7, 10, 12, 13, 14, 15 AND COMMON AREAS A AND B, TRACT 1522, KLAMATH MALL, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK, KLAMATH COUNTY, OREGON.

PARCEL 2:

PARCEL 3 OF LAND PARTITION 70-07, A REPLAT OF ALL THAT PORTION OF TRACTS 32, 33A AND 36 OF ENTERPRISE TRACTS, SITUATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON.

EXHIBIT E

LIST OF EXISTING LEASES

**Klamath Falls Town Center
Tenant Directory**

Suite #

C	Michael's Stores, Inc.
E-1877	Sherm's Thunderbird Market, Inc.
F-1817	Yan & Ying Qian, dba "QQ Hibachi"
F-1821	Rio Southshore, LLC
F-1823	Truong Nguyen, dba "Solar Nails and Spa"
F-1825	PAJ Inc., dba Great Clips for Hair
F-1831	Red Rain Fitness, LLC
G-1822	B & B Masters,
G-1826	Pac Pizza Store#024730,
N-1891C	Edward D. Jones & Co., D/B/A Edward Jones