

After Recording Return To:

Jody M. McCormick.  
WITHERSPOON • KELLEY  
422 W. Riverside Avenue  
Suite 1100  
Spokane, WA 99201-0300

### **WATER SYSTEM EASEMENT AND USE AGREEMENT**

This WATER SYSTEM EASEMENT AND USE AGREEMENT (this "Agreement"), dated December 26, 2013, is between R. KIM SHORT, who is the court appointed receiver for LAKESIDE MOBILE HOME & RV PARK, INC. ("Grantor") and STERLING SAVINGS BANK ("Grantee").

#### **RECITALS**

A. Grantor is the court appointed receiver in the pending Oregon State Court Case of Sterling Savings Bank v. Lakeside Mobile Home & R.V. Park, Inc. and others, Klamath County Case No. 12-02-311CV.

B. Grantor controls real property owned by Lakeside Mobile Home & RV Park, Inc. located at 4850 Wocus Road, Klamath Falls, Oregon, and legally described as Exhibit "A" attached hereto and by this reference incorporated herein (the "Burdened Property").

C. Grantee acquired the real property located at 4851 Highway 97 N, Klamath Falls, Oregon aka 4894 Wocus Road, Klamath Falls, Oregon and legally described as Exhibit "B" attached hereto and by this reference incorporated herein (the "Benefitted Property") at a trustee's sale pursuant to a power of sale granted in that certain deed of trust dated July 17, 2007 from 97 North Storage, LLC recorded on July 19, 2007, in the Records of Klamath County, Oregon under Document No. 2007-012823, as thereafter amended (the "Deed of Trust").

C. The Benefitted Property obtains its water from a well, pump station, associated pumps, pipes and equipment located on the Burdened Property pursuant to an informal arrangement.

D. The parties desire to memorialize the informal arrangement pursuant to the terms and conditions of this Agreement.

## AGREEMENT

For good and valuable consideration the receipt of which is acknowledged, the parties agree as follows:

**1. Incorporation of Recitals.** The above recitals are hereby incorporated as if set forth fully herein.

**2. Water System Use.** Grantor hereby conveys, grants and transfers to Grantee a perpetual non-exclusive right to draw and use water from the well, and to use the pump station, associated pumps, pipes and equipment (collectively, the "Water System") currently existing on the Burdened Property and to use the Water System for the Benefitted Property and to the detriment of the Burdened Property.

**3. Easement.** Grantor hereby conveys, grants and transfers to Grantee a perpetual non-exclusive right of ingress and egress to the Water System (the "Water System Easement") to operate, maintain, repair, replace or remove the Water System. The Water System Easement is limited to that area where Water System presently exists as of the date of execution of this Agreement together with a sufficient amount of land on either side of or around the Water System to allow for access for ingress, egress, construction, operation, maintenance, repair, replacement and removal of the Water System.

**4. Location of Water System Easement.** The Water System Easement is currently located on the Burdened Property in the location depicted on Exhibit "C" hereto.

**5. Purpose of Water System Easement.** The use right and easement granted by this Agreement is for the purpose of providing water to the Benefitted Property and includes the right to inspect, repair, maintain, replace and remove wells or pumps, water lines and related appurtenances deemed necessary by Grantee, its invitees (such as agents and contractors), their successors and assigns, to provide water service to the Benefitted Property.

**6. Ownership of Water System.** The Water System and related appurtenances placed within the Water System Easement shall remain the property of Grantor, or its successors or assigns, with the Grantor retaining authority over the well, line(s), meter(s), valve(s), and appurtenances, if any.

**7. No Interference.** Such entry upon the Water System Easement, Grantee shall not interfere with the day-to-day use, maintenance, occupation, or operation of the Burdened Property. Grantor agrees not to take any action, grant any additional access to the Water System or make any alteration to the Water System that would decrease the water available to the Benefitted Property as of the date of this Agreement.

**8. Free from Obstructions.** Grantee shall keep the Water System Easement free from obstruction, to the extent that such restriction on obstructions does not interfere with the Grantee's use of the Burdened Property.

**9. Usage Fee and Maintenance Costs.** Grantee shall pay a monthly usage fee to Grantor to compensate Grantor for the out of pocket costs associated with operating the Water System determined as follows: \$52.50 payable monthly (\$15.00 for each of the three residential rentals and \$7.50 for the office) plus 7% of the actual costs incurred by the Grantor for water system maintenance, water testing

fees, repair and/or replacement payable within thirty (30) days of request therefore provided such request is accompanied by evidence of such costs. The owner of the Burdened Property shall remain responsible for maintenance of all water lines serving the Burdened Property. The owner(s) of the Benefitted Property shall remain responsible for maintenance of all water lines serving the Benefitted Property.

**10. Termination.** This Agreement shall terminate only upon mutual written agreement between the parties or their successors and assigns or if the Benefited Property discontinues use of the Water System for a continuous period of more than five years.

**12. Binding Effect; Assignment.** This Agreement is binding on and inures to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. Grantor may assign this Agreement or the rights under this Agreement without the need for Grantee's consent. It is the parties intention that the rights provided by this Agreement will run with the Benefitted Property.

**13. Amendments; Construction.** This Agreement may be amended only by an instrument in writing executed by all the parties. The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."

**14. Counterparts; Signatures.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

**15. Further Assurances.** Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as any other party may reasonably request to carry out the intent and accomplish the purposes of this Agreement.

**16. Expenses.** Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.

**17. Governing Law; Venue; Attorney Fees.** This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles. Any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the parties in Klamath County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue. 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.

**18. Injunctive and Other Equitable Relief.** The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that in addition to damages, the other parties will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

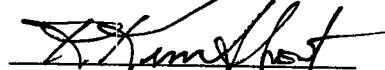
**19. Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be impaired in any way.

**20. Entire Agreement.** This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

The parties enter into this Agreement as of the date first written above.

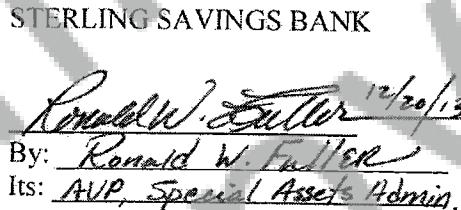
GRANTOR:

LAKESIDE MOBILE HOME & RV PARK, INC.      STERLING SAVINGS BANK



R. Kim Short  
Court Appointed Receiver

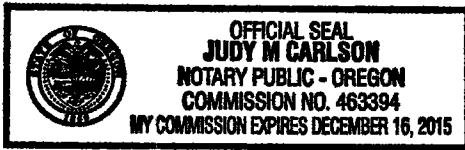
GRANTEE:

  
By: Ronald W. Fuller 12/20/13  
Its: AVP, Special Assets Admin.

STATE OF OREGON )  
County of Lane ) ss.  
)

I certify that I know or have satisfactory evidence that R. Kim Short is the person who appeared before me, and said person acknowledged that he is authorized to sign this instrument as receiver for Lakeside Mobile Home & RV Park, Inc. and acknowledged it to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

DATED: December 26, 2013.

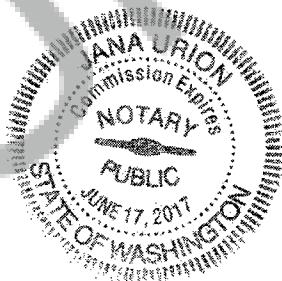


*Judy M. Carlson*  
PRINT NAME: Judy M. Carlson  
NOTARY PUBLIC in and for the State of  
Oregon, residing at Eugene  
My appointment expires: 12/16/2015

STATE OF WASHINGTON )  
County of Spokane ) ss.  
)

I certify that I know or have satisfactory evidence that Ronald W. Fuller is the person who appeared before me, and said person acknowledged that he is authorized to sign this instrument as Asst. Vice President of Sterling Savings Bank and acknowledged it to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

DATED: December 20<sup>th</sup>, 2013.



*Jana Union*  
PRINT NAME: JANA UNION  
NOTARY PUBLIC in and for the State of  
Washington, residing at SPOKANE  
My appointment expires: 6-17-2017

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.

**18. Injunctive and Other Equitable Relief.** The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that in addition to damages, the other parties will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

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The parties enter into this Agreement as of the date first written above.

GRANTOR:

LAKESIDE MOBILE HOME & RV PARK, INC.      STERLING SAVINGS BANK

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R. Kim Short  
Court Appointed Receiver

GRANTEE:

STERLING SAVINGS BANK

*Ronald W. Fuller 12/20/13*  
By: Ronald W. Fuller  
Its: AVP, Special Assets Admin.

STATE OF OREGON )  
                         ) ss.  
County of            )

I certify that I know or have satisfactory evidence that R. Kim Short is the person who appeared before me, and said person acknowledged that he is authorized to sign this instrument as receiver for Lakeside Mobile Home & RV Park, Inc. and acknowledged it to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

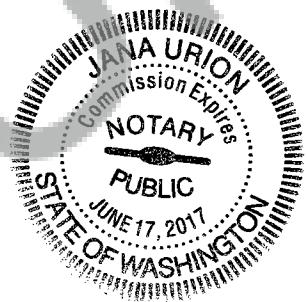
DATED: \_\_\_\_\_, 2013.

PRINT NAME: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Oregon, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
                         ) ss.  
County of Spokane   )

I certify that I know or have satisfactory evidence that Ronald W. Fuller is the person who appeared before me, and said person acknowledged that he is authorized to sign this instrument as Asst. Vice President of Sterling Savings Bank and acknowledged it to be the free and voluntary act of such entity, for the uses and purposes mentioned in the instrument.

DATED: December 20<sup>th</sup>, 2013.



PRINT NAME: JANA UNION  
NOTARY PUBLIC in and for the State of  
Washington, residing at Spokane  
My appointment expires: 6-17-2017

Exhibit "A"  
Burdened Property

The following described property in the NE1/4 NW1/4 of Section 18, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at a point on the Westerly right of way line of the Old Dalles-California Highway which bears North 89° 42' West 770.8 feet; thence South 6° 2' West 343.1 feet from 1/4 corner common to Sections 7 and 18, Township 38 South, Range 9 East of the Willamette Meridian; thence along Westerly line of highway South 6° 2' West 575.3 feet; thence South 16° 26' West 73.8 feet; thence North 89° 42' West 475.4 feet; thence along the forty line North 2° 32' East 643.8 feet; thence South 89° 42' East 528.4 feet to the place of beginning, being a portion of the NE1/4 NW1/4 of Section 18, Township 38 South, Range 9 East of the Willamette Meridian.

EXCEPTING therefrom that portion lying Westerly of the Oregon State Highway described in Volume 272 Page 92, deed records of Klamath County, Oregon.

ALSO SAVING AND EXCEPTING that portion lying within the boundaries of the Oregon State Highway as described in Volume 135 Page 571, deed records of Klamath County, Oregon.

Tax Parcel Number: R431232 and M33047

Exhibit "B"

Benefitted Property

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

A tract of land situated in the NE1/4 NW1/4 of Section 18, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at an iron pin on the westerly right of way line of the original Dalles-California Highway (now known as Wocus Road) which lies North 89° 42' West a distance of 770.8 feet and South 6° 02' West a distance of 181.6 feet from the iron pin which marks the quarter section corner common to Sections 7 and 18, Township 38 South, Range 9 East of the Willamette Meridian and running thence; continuing South 6° 02' West along the westerly right of way line of the original Dalles-California Highway a distance of 161.5 feet to an iron pin; thence North 89° 42' West parallel to the north line of said Section 18 a distance of 528.4 feet to an iron pin on the 40 line; thence North 2° 32' East along the 40 line a distance of 160.7 feet to an iron pin; thence South 89° 42' East parallel to the north line of said Section 18 a distance of 538.1 feet, more or less to the point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the State of Oregon, by and through its State Highway Commission by deed recorded in Volume 135 Page 324, deed records of Klamath County, Oregon.

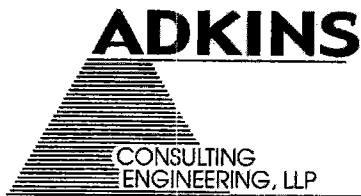
AND EXCEPTING THEREFROM any portion thereof lying west of the relocated The Dalles-California Highway (U.S. Highway 97.)

Exhibit "C"

Location of Water Easement

[See attached Legal Description]

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Engineers ▲ Planners ▲ Surveyors ▲ Testing

#### Water Easement Description

A strip of land situated in the NE1/4 NW1/4 of Section 18, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being a portion of that property described as Parcel 2 in Klamath County Deed Volume M05-62810 lying Easterly of the East right-of-way line of the Dalles-California Highway (U.S. Highway 97) and more particularly described as follows:

Beginning at a point on the Westerly right-of-way line of Wocus Road which bears North 89°42' West 770.8 feet; and South 06°02' West 343.1 feet from the 1/4 corner common to Sections 7 and 18, Township 38 South, Range 9 East of the Willamette Meridian; thence along said right-of-way line South 06°02' West 10.05 feet; thence North 89°42' West 75.00 feet; thence North 00°18' East 10.00 feet to the North line of that property described as Parcel 2 in Klamath County Deed Volume M05-62810; thence along said North line South 89°42' East 76.00 feet to the point of beginning.

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