

184 2272205

**RECORDING COVER SHEET**

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON REPRESENTING THE ATTACHED INSTRUMENT FOR RECORDING. ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.

**2014-008602**

**Klamath County, Oregon**

**08/18/2014 12:49:41 PM**

**Fee: \$92.00**

**After Recording Return To:**

**Klamath Falls MOB, LP  
5910 North Central Express Way, Suite 1000  
Dallas, TX 75206**

**1. Title(s) of the Transaction(s) ORS 205.234(a):**

**Property Boundary Agreement**

**2. Direct Party/Grantor(s) and address ORS 205.125(1)(b) and ORS 205.160:**

**Klamath Medical Building, LLC**

**3. Indirect Party/Grantee(s) and address ORS 205.125(1)(a) and ORS 205.160:**

**Klamath Falls MOB, LP**

**4. Send Tax Statements To:**

**No Change**

**5. True and Actual Consideration:**

**N/A**

**6. Deed Reference:**

**N/A**

F.  
97.00

## PROPERTY BOUNDARY AGREEMENT

THIS AGREEMENT is entered into this 15 day of August 2014 by and between Klamath Medical Clinic Building, LLC, an Oregon limited liability company, 1905 Main Street, Klamath Falls, Oregon 97601 (hereinafter referred to as "KMCB"); Klamath Falls MOB, LP a Texas limited partnership, 5910 North Central Express Way, Suite 1000, Dallas, Texas 75206 (hereinafter referred to as "KFMOB"); and Wards Klamath Funeral Home, 1945 Main Street, Klamath Falls, Oregon 97601 (hereinafter referred to as "Wards").

### RECITALS

A. On or about June 17, 2014 KMCB signed a Commercial Property Earnest Money Contract agreeing to sell real property and improvements thereon commonly known as 1905 Main Street, Klamath Falls, Oregon to KFMOB. The situs of the property is more specifically described on the attached Exhibit A and by reference incorporated herein.

B. Wards owns property adjacent to property owned by KMCB which is being sold to KFMOB. Wards property address is commonly known as 1945 Main Street, Klamath Falls, Oregon 97601 and is more specifically described on the attached Exhibit B and by reference incorporated herein. Wards and KMCB currently share a property boundary.

C. As part of the due diligence investigation by KFMOB an A.L.T.A./A.S.C.M. Land and Title Survey of KMCB's property was completed. A copy of said land title survey is attached as Exhibit C and by reference incorporated herein.

D. The land title survey notes that a retaining wall running along the eastern property line of KMCB's property and the western boundary line of Wards property appears to extend into both KMCB's property and Wards' property.

E. The land title survey notes that a landscaped area east of the retaining wall is owned by Wards. KMCB has historically maintained said landscaped area.

F. The land title survey also notes that an electrical power line providing electrical power to KMCB traverses space above Wards property.

G. KMCB, KFMOB and Wards desire to enter into an agreement whereby the parties mutually consent to the encroachment of the retaining wall upon their respective properties and address issues related to the described landscaped area, retaining wall, and power line.

WHEREFORE the parties agree as follows:

1. Retaining Wall Encroachment Acknowledgment. KMCB, KFMOB and Wards each acknowledge they have had the opportunity to review the A.L.T.A./A.C.S.M. Land Title

Survey and acknowledge that the retaining wall on the eastern boundary of KMCB's property and on the western boundary of Ward's property encroaches upon each other's property. The parties hereto agree to allow for the continued encroachment of said retaining wall.

2. Repair of Retaining Wall/Maintenance of Landscaped Area. To the extent a repair of the retaining wall is required KMCB and KFMOB agree to assume the financial responsibility for said repair. KMCB and KFMOB further agree to continue to maintain the landscaped area to the east of the retaining wall.

3. Overhead Power Line Encroachment. KMCB, KFMOB and Wards each acknowledge following review of the A.L.T.A./A.C.S.M. Land Title Survey that an electrical power line servicing KMCB property traverses space above Wards property. Wards agrees to allow the continued encroachment of said lines. The parties hereto nevertheless acknowledge that PacificCorp, the user of said power line, intends to seek an easement across Wards property and/or KMCB property for said power line and that such easement will likely alter the dimensions of the encroached area.

4. Termination of KMCB's Obligation. KMCB's obligations with respect to Sections 1, 2, and 3 of this agreement shall cease upon the sale of its interest in that property described in Exhibit A to KFMOB.

5. Consideration. The consideration for this agreement is receipt of benefits from and acceptance of burdens by each party to the other, and each party's willingness to forbear from enforcing rights each has vis-a-vis the other.

6. Binding Effect. This Agreement is binding on and inures to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.

7. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or may be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

8. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.

9. Construction. 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."

10. Counterparts. 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.

11. Facsimile Signatures. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile transmitted signatures by signing an original document.

12. 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.

13. Time of Essence. Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.

14. 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.

15. Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

16. Governing Law. 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.

17. Attorney Fees. 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 will be entitled to recover, 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. Venue. 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.

20. Exhibits. The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.

21. 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.

22. 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 rule of construction that the agreement shall be construed against the party who drafted the agreement in the event of any ambiguity shall not apply.

23. Memorandum. A Memorandum of this agreement may be recorded in Klamath County Oregon Deed Records at the request of any party hereto, with the cost of recording paid by the party desiring to record.

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**PROPERTY BOUNDARY AGREEMENT**

Final

**Page 4 of 6**

24. Acknowledgment. The parties hereto acknowledge that this agreement was drafted by Melvin D. Ferguson as the attorney for KMCB. All other parties are encouraged to consult with their own legal counsel.

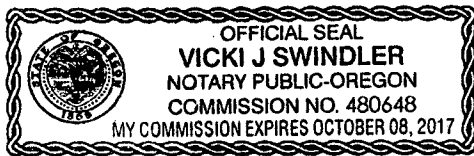
Klamath Medical Clinic Building, LLC,  
an Oregon limited liability company

By: Jerri L. Britsch, M.D.  
Jerri L. Britsch, M.D.

8-13-14  
Date

STATE OF OREGON, County of Klamath ) ss.

Personally appeared the above-named Jerri L. Britsch, M.D., on the 13<sup>th</sup> day of August, 2014, and acknowledged the foregoing instrument to be her voluntary act. Before me:



Vicki Swindler  
Notary Public for Oregon  
My Commission Expires: 10-8-17

Klamath Falls MOB, LP,  
a Texas limited partnership

By: Klamath Falls MOB Managers, LLC  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
Chrisman S. Jackson, Manager

\_\_\_\_\_  
Date

STATE OF TEXAS, County of \_\_\_\_\_ ) ss.

Personally appeared the above-named Chrisman S. Jackson, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and acknowledged the foregoing instrument to be his voluntary act. Before me:

\_\_\_\_\_  
Notary Public for Texas  
My Commission Expires: \_\_\_\_\_

24. Acknowledgment. The parties hereto acknowledge that this agreement was drafted by Melvin D. Ferguson as the attorney for KMCB. All other parties are encouraged to consult with their own legal counsel.

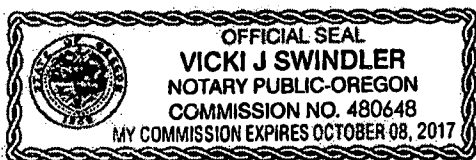
Klamath Medical Clinic Building, LLC,  
an Oregon limited liability company

By: Jerri L. Britsch, M.D.  
Jerri L. Britsch, M.D.

8-13-14  
Date

STATE OF OREGON, County of Klamath ) ss.

Personally appeared the above-named Jerri L. Britsch, M.D., on the 13<sup>th</sup> day of August, 2014, and acknowledged the foregoing instrument to be her voluntary act. Before me:



Vicki Swindler  
Notary Public for Oregon  
My Commission Expires: 10-8-17

Klamath Falls MOB, LP,  
a Texas limited partnership

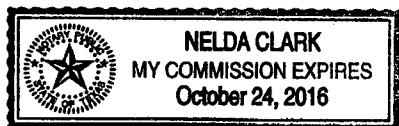
By: Klamath Falls MOB Managers, LLC  
a Texas limited liability company,  
its General Partner

By: Chrisman S. Jackson  
Chrisman S. Jackson, Manager

\_\_\_\_\_  
Date

STATE OF TEXAS, County of Dallas ) ss.

Personally appeared the above-named Chrisman S. Jackson, on the 14<sup>th</sup> day of August, 2014, and acknowledged the foregoing instrument to be his voluntary act. Before me:



Nelda Clark  
Notary Public for Texas  
My Commission Expires: October 24, 2016

Wards Klamath Funeral Home

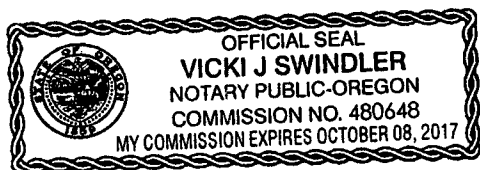
By: \_\_\_\_\_

James Ward

8-13-14  
Date

STATE OF OREGON, County of Klamath ) ss.

Personally appeared the above-named James Ward, on the 13<sup>th</sup> day of August, 2014, and acknowledged the foregoing instrument to be his voluntary act. Before me:



Vicki Swindler  
Notary Public for Oregon  
My Commission Expires: 10-8-17



**Exhibit "A"**

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

A TRACT OF LAND SITUATED IN THE UNPLATTED PORTION OF WILLIAMS ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS SOUTH 89°18' EAST 332.2 FEET ALONG THE NORTH LINE OF MAIN STREET IN SAID CITY FROM THE SOUTHEAST CORNER OF LOT 8, BLOCK 5 OF SAID WILLIAMS ADDITION TO KLAMATH FALLS, OREGON; THENCE NORTH 0°42' EAST 305.20 FEET, MORE OR LESS, TO A POINT IN THE SOUTHERLY LINE OF THE ALLEY; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY LINE OF THE ALLEY, WHICH IS THE ARC OF A 3°20' CURVE TO THE LEFT, 161.6 FEET, MORE OR LESS, TO A POINT SITUATED ON A LINE RUNNING NORTH 0°42' EAST FROM A POINT 150.0 FEET EASTERLY ALONG SAID NORTH LINE OF MAIN STREET FROM THE POINT OF BEGINNING; THENCE SOUTH 0°42' WEST ALONG SAID LAST MENTIONED LINE 254.5 FEET, MORE OR LESS, TO THE SAID NORTH LINE OF MAIN STREET; THENCE NORTH 89°18' WEST ALONG SAID NORTH LINE OF MAIN STREET 150.0 FEET TO THE POINT OF BEGINNING.

ALSO THAT PORTION OF ALLEY VACATED BY ORDINANCE #5008 IN DEED VOLUME 301 AT PAGE 204 WHICH INURES TO ABOVE DESCRIBED PARCEL.

## LEGAL DESCRIPTION

### PARCEL 1:

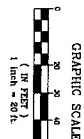
Beginning at a point on the Northerly line of Main Street, which is South 89 degrees 18' East a distance of 862.2 feet along the Northerly line of Main Street from the Southeast corner of Block 57, SECOND HOT SPRINGS ADDITION to the City of Klamath Falls, Oregon; thence North 0 degrees 42' East a distance of 254.5 feet, more or less, to a point which is 20 feet distant Southwesterly at right angles from the Southwesterly line of the U.S.R.S. Canal right of way; thence South 68 degrees 52' East and parallel with the Southwesterly line of said canal right of way and 20 feet distant Southwesterly at right angles therefrom a distance of 52.6 feet, more or less, to a point; thence South 0 degrees 42' West a distance of 234.5 feet, more or less to the Northerly line of Main Street; thence North 89 degrees 18' West along the Northerly line of Main Street a distance of 50 feet to the place of beginning, all in WILLIAMS ADDITION to the City of Klamath Falls, Oregon; and beginning at a point on the Northerly line of Main Street, which is South 89 degrees 18' East a distance of 912.2 feet along the Northerly line of Main Street from the Southeast corner of Block 57, SECOND HOT SPRINGS ADDITIONS to the City of Klamath Falls, Oregon; thence North 0 degrees 42' East a distance of 234.5 feet, more or less, to a point which is 20 feet distant Southwesterly at right angles from the Southwesterly line of the U.S.R.S. Canal right of way; thence South 75 degrees 22 1/2' East parallel with the Southwest line of said canal right of way and 20 feet distant Southwesterly at right angles therefrom a distance of 55 feet, more or less to the Northwest corner of that parcel of land deeded to Dr. A. A. Soule, April 24, 1923; thence in a Southerly direction and parallel to Mortimer Avenue, a distance of 214.8 feet, more or less, to the Northerly line of Main Street; thence Westerly along the Northerly line of Main Street a distance of 50 feet to the place of beginning, all in Williams Addition.

### PARCEL 2:

Beginning at a point which is South 89 degrees 19' East a distance of 1062.2 feet, East along the Northerly line of Main Street from the Southeasterly corner of Block 57 of SECOND HOT SPRINGS ADDITION to the City of Klamath Falls, Oregon; thence North 0 degrees 42' East a distance of 191.25 feet to a point which is 20 feet distant Southwesterly at right angles from the Southwesterly line of the U.S. Reclamation Service Main Canal Right of Way; thence in a Northwesterly direction and parallel with the Southwesterly line of said canal right of way and 20 feet distant at right angles therefrom a distance of 101.25 feet, more or less, to a point; thence South 0 degrees 42' West a distance of 214 feet, more or less to the Northerly line of Main Street; thence South 89 degrees 18' East a distance of 100 feet to the place of beginning lying and being in the unplatted portion of Williams Addition to the city of Klamath Falls, Oregon, and in the South half of the Southeast quarter of the Southwest quarter of Section 28, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

### PARCEL 3:

Beginning at a point which is South 89 degrees 18' East a distance of 1067.2 feet along the Northerly line of Main Street from the Southeasterly corner of Block 57 of SECOND HOT SPRINGS ADDITION to the City of Klamath Falls, Oregon; thence North 0 degrees 42' East a distance of 185.75 feet, more or less, to a point which is 20 feet distant Southwesterly at right angles from the Southwesterly line of the U.S. Reclamation Service Main Canal right of way; thence in Northwesterly direction and parallel with the Southwesterly line of the said canal right of way and 20 feet distant at right angles therefrom a distance of 5.18 feet the the Northeast corner of that piece of land deeded to Eve Soule by Herbert Lang and Jennie Lang, as recorded in Volume 105 at page 47 of Klamath County Deed Records; thence South 0 degrees 42' West a distance of 187.15 feet, more or less, to a point on the Northerly line of Main Street; thence South 89 degrees 18' East along the Northerly line of Main Street a distance of 5.0 feet to the point of beginning, lying and being in the unplatted portion of Williams Addition to the City of Klamath Falls, Oregon, and in the S1/2 SE1/4 SW1/4 of Section 28, Township 38 South, Range 9 East of the Willamette Meridian.



38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MOUNTAINS  
AUGUST 2014

THE PROPERTY SURVEYED AND SHOWN HEREON IS THE SAME PROPERTY AS DESCRIBED IN TITLE COMMITMENT ORDER NO. 7029-2272205, DATED JULY 22, 2014, PREPARED BY FIRST AMERICAN TITLE COMPANY OF OREGON.

TO: KLAMATH MEDICAL CLINIC, KLAMATH FALLS MOB LP, FIRST AMERICAN TITLE  
INSURANCE COMPANY OF OREGON, AND COMMUNITY TRUST BANK:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1.2.3, 4.6(b), 7.0, 7(b)(1), 7(c), 8.9, 10(e), 11.0, 13 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON JUNE 26, 2014.

BY: Marcus D. Green  
PRINT NAME: Marcus D. Green  
DATE OF MAP: 08/12/2014

REGISTRATION NO.: 55508  
WITHIN THE STATE OF: OREGON

A TRACT OF LAND SITUATED IN THE UNPLATTED PORTION OF WILLIAM ADDITION TO THE CITY OF MCMAHON FALLS, OREGON, AND FURTHER DESCRIBED AS FOLLOWS:

[illegible]

GROSS LAND AREA:  
±1.02 AC.  
±48,214 sq.ft.

[illegible]

① GEORGE W. BROWN  
FBI - 411 E. 76

- [illegible]

1. THE BOUNDARY OF RECORD SHOWN IS FROM DEED, RECORD SURVEY INFORMATION, AND RECOVERED MONUMENTS FROM GS 1851.

2. RELATIONS ARE ON THE BASIS OF ACTUAL USE (ECONOMIC RELATIONS, BASED ON MARKET, CASH, CREDIT, OBSERVATIONS, COORDINATES AND RELATIONS ARE PER THE ECONOMIC COMPLEXITY, REFERENCE STRIPED CASH) BOND
3. INTERPERSONAL UTILITIES ARE GIVEN PER RESULT INFORMATION, VISIBILITY, UTILITIES, AND VISIBILITY, MARKERS PER UTILITY LOCATE IDENT 19111596, FIELD SURVEY DATA COLLECTED ON JUNE 28, 2014.
4. (XXX) - SURVEY REFERENCE COUNTY SURVEY (CS)
5. 1851 AND/ OR DATED RECORDS.
6. ENDOCHROMENTS ARE THE BURNING EARTH (OVERHANG) ENDOCHROMENTS APPROXIMATELY 0.36 ONTO THE CITY OF ENDOCHROMENTS WERE FOUND DURING THE COURSE OF THE SURVEY.

LOCATED FROM FIELD SURVEY INFORMATION. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH

UTILITIES IN THE AREA EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

- SET MONUMENT

- |    |                        |    |                   |
|----|------------------------|----|-------------------|
| 7  | 1. SET INDICANT        | 8  | 9. JUNCTION BOX   |
| 2  | 2. BALLAD              | 10 | 10. POWER MOTOR   |
| 3  | 3. STORM SINKER HANDLE | 11 | 11. GAS METER     |
| 4  | 4. CACTO BASIN         | 12 | 12. LUMINARE      |
| 5  | 5. CLEMMOT             | 13 | 13. SON           |
| 6  | 6. POWER POLE          | 14 | 14. TREE, DECIDUO |
| 7  | 7. CLAY WINE           | 15 | 15. TREE, CONEY   |
| 8  | 8. APPLICATION VALVE   | 16 | 16. LANDSCAPE     |
| 9  | 9. WATER METER         | 17 | 17. CONCRETE      |
| 10 | 10. 10. PARSING        |    |                   |
| 11 | 11. STATES AND         |    |                   |
| 12 | 12. CONTACT OR AOA     |    |                   |

1



SHEET NO. \_\_\_\_\_

OREGON

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