

2015-006241

Klamath County, Oregon

Prepared by and Return to After Recording:

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Fee: \$92.00

AMENDED LEASEHOLD MORTGAGE

THIS AMENDED LEASEHOLD MORTGAGE ("Security Instrument"), dated this 4th day of February, 2015, is made by and between the Klamath Tribes Economic Development Corporation, doing business as Crater Lake Junction Travel Center, ("Borrower") whose address is P.O. Box 1230, Chiloquin, Oregon, 97624, and Native American Bank, National Association, a National Banking Association ("Lender") located at 999 18th Street, Suite 2460, Denver, Colorado 80202.

Borrower owes Lender up to the principal sum of Two Million Two Hundred Thousand and 00/100 Dollars (\$2,200,000.00) as evidenced by the Borrower's Note of even date herewith, which provides for monthly payments. This Security Instrument secures to Lender: (a) payment of the debt as evidenced by the Note, with interest, and all renewals, extensions, and modifications of the Note; (b) the payment of all other sums, with interest advanced under Paragraph 1 herein to protect the security evidenced by this Security Instrument; and (c) the performance of Borrower's covenants and agreements made pursuant to this Security Instrument and the Borrower's Note. For this purpose, Borrower hereby mortgages, grants and conveys to Lender the leasehold estate, created pursuant to a Lease Agreement dated on or about July 18, 2009, by and between the Klamath Tribes of Oregon as Lessor and Borrower as Lessee, in the following described real property:

The premises leased to the Borrower by the Klamath Tribes of Oregon and approved by the Bureau of Indian Affairs, pursuant to Business Lease 140-11 T3009, all of which is located in Klamath County, State of Oregon, containing twelve (12) acres, more or less, in the SW portion of 140-11 BIA Tract Number T3009, lying east of U.S. Hwy 97, subject to any prior, valid, existing rights-of-way; and

TOGETHER WITH all improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the Property, purchased with proceeds from the Loan, to the extent of Borrower's ownership or interest in such improvements, easements, appurtenances and fixtures. All replacements and additions owned by Borrower shall also be covered by this Security Instrument. All of the foregoing is hereinafter referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that that Borrower is lawfully seized of a leasehold interest in the Property hereby conveyed and has the right to mortgage, grant and convey the Property; the Property is free from all encumbrances except for encumbrances of record; that Lender shall quietly enjoy and possess the same; and that Borrower will warrant and defend the leasehold interest to the Property against all claims and demands, subject to any encumbrances of record.

COVENANTS

Notwithstanding anything to the contrary contained in the Note and in any addition thereto, Borrower and Lender further covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal and interest on the debt evidenced by the Note and any late charges due thereunder.

2. **Charges; Liens.** Borrower shall pay when due all applicable taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument and leasehold payments, if any. Borrower shall furnish to Lender receipts evidencing the payments upon request by Lender.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to the Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Interest. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender shall give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take at least one of the actions set forth above within forty-five (45) days of receipt of notice.

3. **No Subordination of Lease.** Borrower represents and warrants that there are no existing mortgages, charges, encumbrances, or other liens on the leasehold estate or on the trust land underlying the leasehold estate except those identified in the related Bureau of Indian Affairs Title Status Report and/or related title insurance policy and, so long as the leasehold estate is subject to this Security Instrument, Borrower shall not subordinate the lease to any mortgage or lien that may hereafter be placed on the leasehold estate or on the trust land or restricted land underlying the leasehold estate.

4. **Lease Assignment.** Borrower shall not assign the leasehold estate without the prior written approval of the Lender. Upon Lender's request upon the occurrence of a default by Borrower under this Security Instrument, Borrower shall assign to Lender, by written instrument satisfactory to Lender, the leasehold estate or deliver possession of the leasehold estate, including any improvements thereon, to

Lender without the Lessor's or the Secretary's consent. Nothing in the lease shall prevent Lender, without the Secretary's consent, from foreclosing or instituting other proceedings under appropriate law in the event of default under this Security Instrument.

5. **Klamath Tribes' Right of First Refusal.** Subsequent to Borrower's breach of any covenant or agreement in this Security Instrument, and upon the expiration of any applicable cure period provided Borrower under Paragraph 20, the Lessor shall have the right of first refusal to acquire Borrower's leasehold estate (subject to all valid liens and encumbrances) upon either payment in full of all sums secured by this Security Instrument or assumption of the loan evidenced by the Note, as amended, and this Security Instrument and execution of an assumption agreement acceptable in all respects to Lender. Such assumption agreement shall include, without limitation, a limited waiver of sovereign immunity, duly authorized by the Lessor, with respect to any action to collect any or all sums due or obligations owed by the Lessor to the Lender pursuant to the assumption, or to enforce any of the Lender's other rights and/or remedies in connection with the assumption. The Lessor's right of first refusal may be exercised at any time within fifteen (15) business days of the date of Lender's written notice to the Lessor of Borrower's failure to cure the default in accordance with the terms of Lender's acceleration notice to Borrower pursuant to Paragraph 14 of this Security Instrument. Notwithstanding the Lessor's right of first refusal to acquire Borrower's interest in the leasehold estate, such right of first refusal shall be subject to any right Borrower may have under the Security Instrument or by law to reinstate after acceleration and to bring a court action to assert the non-existence of a default or any other defense to acceleration and sale or foreclosure.

The estate acquired by the Lessor through exercise of the right of first refusal shall not merge with any other estate or title held by the Lessor as long as the leasehold estate and/or any improvements on the leasehold estate, or any interest therein, are subject to this Security Instrument.

6. **Default Under Lease or Sublease.** Borrower shall not attempt to terminate the lease, whether by default or otherwise, during any initial or renewal term if, and as long as, the lease and/or improvements on the Property or any interest therein, are subject to this Security Instrument, unless written consent is given by Lender and the Secretary of the Interior. A default by Borrower under the Lease shall constitute a default under this Security Instrument.

Upon the occurrence of an event of default under the lease, Lender shall have the right to postpone and extend the specified date for the termination of the lease for a period sufficient to enable Lender to acquire Borrower's leasehold estate by either foreclosure or assignment.

7. **Preservation, Maintenance, and Protection of the Property.** Borrower shall not destroy, damage, or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is initiated

that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in Paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

8. **Insurance.** Borrower shall keep all buildings, improvements and fixtures now existing or hereafter erected on the Property insured in accordance with Section 6.2 of the Loan Agreement, as amended. The Borrower or insurance carrier shall provide the Lender with written notice within thirty (30) days of the cancellation, non-renewal, termination, or change in coverage.

If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall promptly give notice of such damage to the insurance carrier and shall give notice to the Lender within thirty (30) days. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the damaged Property, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible and Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within sixty (60) days of receipt of notice from the Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or pay the sums secured by this Security Instrument, whether or not then due. The sixty (60) day time period will begin when the notice is deemed to have been received by the Borrower in accordance with Paragraph 14.

Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payment referred to in Paragraph 1 or change the amount of the payment. In the case of a judicial foreclosure, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to such judicial foreclosure shall pass to the Lender to the extent of the sums secured by this Security Instrument immediately prior to such foreclosure.

9. **Inspection.** Lender or its designated agent may make reasonable entries upon and inspections of the Property. Except in emergency situations, the Lender shall give Borrower twenty four (24) hours' written notice of its intent to inspect the Property.

10. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly

affect Lender's rights in the Property, then Lender may act in any manner necessary to protect the value of the Property and Lender's rights in the Property.

Any amounts disbursed by Lender under this Paragraph 10 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Amended Note rate and shall be payable, with interest, within forty-five (45) days following notice from Lender to Borrower requesting payment.

11. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, shall be assigned and paid to Lender, and shall be applied in the manner described below.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the property is abandoned by the Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within sixty (60) days after the date the notice is deemed to have been received in accordance with Paragraph 14, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Borrower and Lender otherwise agree in writing, any application of proceeds to the principal shall not extend or postpone the due date of the payment referred to in Paragraph 1 or change the amount of such payments.

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification or amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original

Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Successors and Assigns Bound.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 17.

14. **Notice.** Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower upon delivering a copy of the notice directly to the Borrower or on the third day after the notice is mailed to Borrower by first class mail, unless the third day is a Saturday, Sunday, or legal holiday, in which case notice shall be deemed to have been given on the next day which is not a Saturday, Sunday, or legal holiday as legal holiday is defined in the Federal Rules of Civil Procedure.

Any notice to Lender shall be deemed to have been given to Lender by mailing it by first class mail to Lender's address designated herein.

15. **Governing Law; Severability.** This Security Instrument shall be governed by the Uniform Commercial Code, or in its absence, applicable federal law, or in its absence, then Oregon law, including the Oregon Uniform Commercial Code. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note, as amended, which can be given effect in the absence of the conflicting provision. To this end the provisions of this Security Instrument and the Amended Note are declared severable.

16. **Sovereign Immunity.** The Limited Waiver of Sovereign Immunity provision of the Loan Agreement, as amended, Section 9.5, is incorporated herein by reference. In no event, however, shall any of the Tribes' trust resources be subject to attachment, execution or similar process in connection with any of the Borrower's obligations arising under this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower; Assumption.** If all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, and following the dispute resolution processes set forth in the Loan Agreement, as amended, require immediate payment in full of all sums secured by this Security Instrument. Lender shall not exercise this option if such exercise by Lender is prohibited by federal law as of the date of this Security Instrument. Nor shall Lender exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; (b) Lender reasonably determines that such person meets Lender's requirements

for credit approval, that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender; and (c) such person otherwise qualifies under the law of the Klamath Tribes and Lessor consents to an assignment of the lease described above. If the foregoing conditions are satisfied, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, then Lender shall release Borrower in writing from all obligations under this Security Instrument and the Amended Note.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to retain all the covenants and agreements contained in the Amended Note and in this Security Instrument. Borrower will continue to be obligated under the Amended Note and this Security Instrument unless Lender executes a written release.

If Lender exercises such option to require immediate payment in full, Lender shall give Borrower notice of acceleration thereby providing a period of not less than sixty (60) days from the date the notice is deemed to have been received in accordance with Paragraph 14 within which Borrower must pay all sums secured by this Security Instrument and shall explain the remedies available to Lender if Borrower fails to pay such sums prior to the expiration of such period. If Borrower fails to pay such sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower; provided, however, Lender's right to invoke any remedies under this Security Instrument after the expiration of this period shall be subject to the Lessor's right of first refusal under the lease to acquire Borrower's interest in the leasehold estate.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to entry of judgment enforcing this Security Instrument. To satisfy these conditions, Borrower must: (a) pay Lender all sums which then would be due under this Security Instrument and the Amended Note as if no acceleration had occurred; (c) cure any default of any other covenants or agreements; (c) pay all expenses reasonably incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) take such action as Lender may reasonably require to assure that the lien of this Security Instrument shall continue unchanged. These requirements may be modified upon written agreement of the parties. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Paragraph 20.

19. **Sale of Note; Change of Loan Servicer.** Participation interests in the Amended Note or a partial interest therein (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale will not result in a change in the entity ("Loan Servicer") that collects

payments due under the Amended Note and this Security Instrument; in the event of a sale of participation interests in the Amended Note or a partial interest therein, the Lender will continue to act as the Loan Servicer.

20. **Acceleration; Remedies.** If a default occurs, the parties shall promptly meet or correspond and attempt in good faith to negotiate a resolution. Each Party agrees that it will use its best efforts to negotiate an amicable resolution of any default. The parties agree to the use of the informal and alternative dispute resolution processes described in the Amended Loan Agreement prior to initiating foreclosure of this Security Instrument. Lender shall give notice to Borrower, the Klamath Tribes, the Sublessor, if any, and the Bureau of Indian Affairs, prior to acceleration following Borrower's breach of any covenant or agreement in this Security Interest. The notice shall specify the following: (a) the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is received by the Borrower, by which the default must be cured or negotiations toward a resolution initiated; (d) and that failure to cure the default or pursue resolution on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and foreclosure by judicial proceedings. The notice shall further inform the Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding, the non-existence of a default or any other defense of Borrower to acceleration and foreclosure.

If the default is not cured on or before the date specified in the notice or negotiations toward a resolution initiated, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceedings.

In the event of default by Borrower, before any sale of the leasehold estate, Lender shall provide to the Lessor and the Bureau of Indian Affairs notice of the same character and duration as is required to be given to Borrower pursuant to the Loan Documents, as amended, and the laws of the Klamath Tribes. Lender shall be entitled to seek all reasonable expenses incurred in pursuing the remedies provided in this Paragraph 20, including, but not limited to, reasonable attorneys' fees, and costs of title evidence. The parties agree to strive to keep enforcement-related expenses to a minimum.

21. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

IN TESTIMONY WHEREOF, Borrower has hereunder set its hand the day and year first above written.

BORROWER:

140-76

Vivian S Kimbol

President



STATE OF Oregon)
COUNTY OF Klamath :SS

On this 27 day of February, 2015, before me, the undersigned officer, personally appeared Vivian Kimbol known to me or satisfactorily proven to be the persons whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Brandi Rae Hatcher
NOTARY PUBLIC
My commission expires: 8-6-2018

LEASOR

Vivian S Kimbol
Klamath Tribes of Oregon

STATE OF Oregon)
COUNTY OF Klamath :SS

On this 4th day of February, 2015, before me, the undersigned officer, personally appeared Vivian Kimbol, known to me or satisfactorily proven to be the persons whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Brandi Rae Hatcher
NOTARY PUBLIC
My commission expires: 8-6-2018



CERTIFICATE OF APPROVAL

Pursuant to Secretarial Redlegation Order 209 DM 8, 230 DM 1 and 3 IAM 4, the foregoing LEASEHOLD MORTGAGE is hereby approved subject to the terms and provisions of the lease

President

STATE OF _____)
:SS
COUNTY OF _____)

On this _____ day of _____, 2015, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the persons whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC
My commission expires: _____

LEASOR

Vivian St. James
Klamath Tribes of Oregon

STATE OF Oregon)
:SS
COUNTY OF Klamath)

On this 4th day of February, 2015, before me, the undersigned officer, personally appeared Vivian St. James, known to me or satisfactorily proven to be the persons whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Brandi Rae Hatcher
NOTARY PUBLIC
My commission expires: 8-6-2018

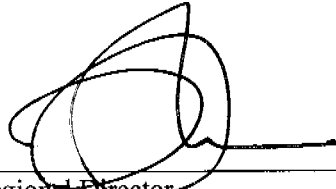


CERTIFICATE OF APPROVAL

Pursuant to Secretarial Redelelegation Order 209 DM 8, 230 DM 1 and 3 IAM 4, the foregoing LEASEHOLD MORTGAGE is hereby approved subject to the terms and provisions of the lease

described therein and the regulations of the Secretary of the Interior relating to the leasing of Tribal and individually owned trust or restricted lands and upon the condition that said Mortgage relates only to the leasehold estate and is not to be construed as an encumbrance or lien against the Tribe's or individual owners' beneficial interest in the land involved.

Dated this 12th day of May, 2015



Regional Director
Bureau of Indian Affairs