

**2017-008943**

**Klamath County, Oregon**

**08/09/2017 12:11:00 PM**

**Fee: \$87.00**

**COVER SHEET**

After recording return to:

First American Title

200 SW Market Street, Suite 250

Portland, OR 97201

All tax statements should be sent to:

No change

1. Document Title – by ORS 205.234(a):  
Declaration of Restrictions, Grant of Easements and Operating Agreement
2. Grantor/Direct Party – by ORS 205.125(1)(b) and ORS 205.160:  
Washington Federal
3. Grantee/Indirect Party – by ORS 205(1)(a) and ORS 205.160:  
Washington Federal

**First American Title- NCS-721941-A-OR1**

## **DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND OPERATING AGREEMENT**

THE DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND OPERATING AGREEMENT ("Declaration") is made as of the 30th day of November 2015, by **Washington Federal**, a national association ("Declarant" or "Landlord") and **Washington Federal**, a national association ("Tenant"), for the property with Parcel Number **R-3809-34CC-302**, with the address of **1613 Washburn Way** in the City of Klamath Falls, Klamath County, Oregon, the "Property".

### **I. PURPOSE**

The Declarant owns the Property and has leased a portion of the Property to Tenant for the purposes of integrating a drive up ATM (the "ATM Lease") and, therefore, hereby establishes certain restrictions. Whereas "Landlord" is a reference to the record holder of fee simple title to the Property, its heirs, personal representatives, successors and assigns.

### **II. BUILDING AND COMMON AREA DEVELOPMENT**

**2.1 Common Area:** The Common Area may be used for vehicular driving, parking, and pedestrian traffic. No buildings or structures shall be placed or constructed in the Common Area except pylon, monument and directional signs, paving, bumper guards or curbs, landscaping, lighting standards, perimeter walls and fences, utility pads, walkways, sidewalks and, to the extent approved by the Landlord, drive through service facilities.

#### **2.2 Type and Design of Building:**

(a) Each building in The Property, now and in the future, shall be of commercially reasonable construction and architecture.

(b) Common Area improvements on the Property shall be constructed and maintained by and at the expense of the Landlord. All Common Area landscaping shall be served by a master sprinkler irrigation system.

#### **2.3 Construction Requirements**

(a) All work shall be effected in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Property to or from any public right-of-way, or (ii) customer vehicular parking. Staging, including the location of construction sheds or temporary buildings, the storage of building materials, or the parking of related vehicles and equipment shall be limited to that portion of the Property approved in writing by the Landlord. The person contracting for such work ("Contracting Party") shall, at its sole cost and expense, cause to promptly repair and restore to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any liens to stand against the Property for any work done or materials furnished, and within thirty (30) days after receipt of written notice from the Landlord cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Landlord shall have the right, at the Contracting Party's expense, to transfer said lien to bond.

(c) The parties acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or

expansion of buildings, signs and Common Area improvements, all of which are permitted hereunder so long as all activities requiring the use of such facilities are performed in such a manner as to minimize any interference with the use of the improved Common Area or with the normal operation of any business in the Property.

### **III. EASEMENTS**

**3.1 Ingress, Egress and Parking:** Landlord, as grantor, hereby grants to Tenant, its respective, subtenants, contractors, employees, agents, customers, licensees and invites, and there is hereby created and reserved, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Property, except for any area devoted to drive through customer service facilities. The reciprocal rights of ingress and egress set forth in this Section shall apply to the Common Area. The cross-access easements hereby created cannot be terminated or dissolved without Tenant's prior express written consent.

#### **3.2 Utility Lines and Facilities:**

(a) Landlord, as grantor, hereby grants to Tenant, as grantee, and there is hereby created a nonexclusive easement under, through and across the Common Area of the grantor's Property for the installation, operation, maintenance, repair and replacement of public or private utilities. All such utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Property. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, and shall provide as-built plans for all such facilities to the Landlord within thirty (30) days after the date of completion of construction of same.

(b) At any time the Landlord shall have the right to relocate on its Property any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of the Landlord, provided that any such relocation (i) shall be performed only after giving sixty (60) days' notice of the Landlord's intention to the Tenant served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Property served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Tenant, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Landlord performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Tenant pursuant to subsection (a) above.

(c) Landlord agrees to grant such additional easements as are reasonably required by any utility for the purpose of providing the utility lines and facilities described herein, provided such easements are not otherwise inconsistent with the provisions of this Declaration.

### **IV. OPERATION OF COMMON AREA**

**4.1 Parking:** There shall be no charge for parking in the Common Area without the prior written consent of the Tenant or unless otherwise required by law.

#### **4.2 Signs:**

(a) The Landlord (subject to governmental limits) shall have the right to erect a monument sign not exceeding four (4) feet in height or twenty (20) square feet in total size on the Property at a location and of a design approved by the Tenant. The cost of constructing, installing, maintaining, repairing and replacing such monument sign structure shall be paid by the Landlord.

(b) There shall be no other signs, except directional signs, such entry way sign for identification of the Property as the Declarant may determine to erect in the Common Area, an easement for which is hereby granted and recorded, and business identification signs on buildings. No exterior building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

**4.3 Protection of Common Areas:** Landlord shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Area from using the Common Area for ingress, egress and parking.

**4.4 Hazardous Materials:** Landlord nor Tenant shall cause or knowingly permit any "Hazardous Materials" (as hereinafter defined) to be stored, released, disposed of, produced or otherwise to exist in the Property in violation of any law, ruled, regulation, or ordinance, now or at any time in effect. "Hazardous Materials" is herein defined as contaminants or hazardous wastes as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERLA"), Resource Conservation and Recovery Act ("RCRA"), as amended, or any other similar local, state or federal law, rule, regulation or ordinance.

## **V. RESTRICTION ON USE**

No part of the Property shall be used as a bar, tavern, cocktail lounge, adult book or adult video store, or for any other use determined by the Tenant to be incompatible and inconsistent with a first class business park development.

## **VI. COMMON AREA MAINTENANCE**

**6.1 Maintaining the Common Area:** The operation, cleaning, maintenance, repair, replacement and insurance of the Common Area shall be undertaken and effected by the Landlord, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;

(b) Removing all snow, papers, debris and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines; and the Property entry way sign;

(d) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required;

(e) Maintaining all landscaped areas; maintaining, repairing and replacing, when necessary, sprinkler systems and water lines; and shrubs and other landscaping as is necessary;

(f) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility (with the cost of all such items being allocated between the parties serviced by said facilities on the basis of their respective floor areas);

**6.2 Insurance:** In addition, the Landlord shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring the Landlord against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the Common Area. Such insurance shall be written with an insurer licensed to do business in Oregon and all persons who now or hereafter own the Property shall be named on the policy as additional insureds. The limits of liability shall not be less than a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$1,000,000 per occurrence.

**6.3 Taxes:** Landlord shall pay direct to the tax collector when due the real property taxes and other special taxes and assessments assessed against the Landlord's Property, including the portion of the common Area on Landlord's Property; subject, however to the right of Tenant to contest the amount or validity of all or any part of said taxes and assessments.

**6.5 Budget and Reimbursement of Landlord's Expenses:**

(a) At least thirty (30) days prior to the beginning of each calendar year, the Landlord shall prepare an estimated budget ("Budget") for the projected Common Area costs (including the 10% service charge referred to herein below) for operating and maintaining the Common Area. The Budget shall identify separate cost estimates for at least the categories specified in Section 6.1 and 6.2. The Budget may include a reasonable amount for a reserve fund, to pay for future required repairs or replacements of Common Area improvements.

(b) the Landlord shall have the right to make emergency repairs to the Common Area to prevent injury or damage, or to prevent disruption in the use of the Common Area, it being understood that the Landlord shall nevertheless advise Tenant of such emergency condition as soon as reasonably possible, including corrective measures taken and the cost thereof. If the cost of said emergency action exceeds \$1,000, then the Landlord may submit a supplemental billing together with evidence supporting such and Tenant shall pay its share within thirty (30) days. If the emergency cost is less than \$1,000, then such cost shall be included as Common Area costs as provided in this Section.

(c) Tenant shall cause the Landlord to be reimbursed for all its out-of-pocket expenses, plus a service charge of ten percent (10%) of said expenses.

(d) Within ten (10) days prior to the beginning of a calendar year, the Landlord shall submit to Tenant a statement indicating Tenant's pro rata share of all budgeted expenses to be incurred, with the first monthly payment being due on the first day of January. The pro rata share of the total Common Area expenses for any year shall be that ratio which the Tenant leases on Landlord's Property bears to the total site area of the Property. Currently, the pro rata share of the total Common Area expenses shall be the following percentages calculated on the gross square footage as follows:

Landlord – 87.7%;    Tenant – 12.3%,

(e) Within 45 days after the end of each calendar year, the Landlord shall provide Tenant with a statement with the actual Common Area costs paid during the previous year indicating Tenant's share. If the amount paid by Tenant shall have exceeded its share, the Landlord shall refund the excess at the time the statement is delivered, or if the amount is less, Tenant shall pay the balance of its share within thirty (30) days after receipt of such certified amount.

**6.6 Default:** In the event Tenant fails or refuses to pay when due its share of any bill for the Common Area maintenance and insurance expenses described above, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may be instituted against the Tenant for reimbursement plus interest from and after the date said bill was due and payable at a rate equal to eighteen percent (18%).

## **VII. GENERAL PROVISIONS**

**7.1 Covenants Run With the Land:** Each Restriction on the Property shall be a burden on the Property, shall be appurtenant to and for the benefit of the Tenant and each part thereof and shall run with the land.

**7.2 Duration:** The term of this Declaration shall be concurrent with the term of the ATM Lease along with each of its applicable option periods, unless no later than thirty (30) days prior to the expiration of the term then in effect Landlord and Tenant duly execute an agreement terminating this Declaration and record the same in the Official Records of Klamath County, Oregon, in which event, this Declaration shall terminate upon the expiration of the term then in effect.

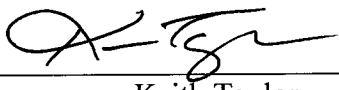
**7.3 Attorney's Fees:** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees and reasonable attorney's fees on any appeal.

**7.4 Indemnification:** Landlord hereby agrees to indemnify, defend and hold harmless the Tenant from and against any and all liability, claims, damages, expenses (including reasonable Attorney's Fees), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in the interior of any building constructed on the indemnifying Landlord's Property, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

**7.5 Recordation:** This Declaration shall be recorded in the office of the recorder of Klamath County, Oregon.

EXECUTED as of the day and year first above written.

WASHINGTON FEDERAL, a national association

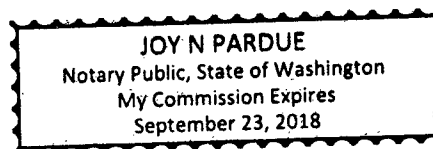
By:   
By: \_\_\_\_\_ Keith Taylor \_\_\_\_\_  
Its: \_\_\_\_\_ SVP \_\_\_\_\_

STATE OF Washington ) ss.  
County of King )

On this 30<sup>th</sup> day of November, 2015, before me the undersigned, personally appeared **Keith Taylor**, known or identified to me to be an authorized member of WASHINGTON FEDERAL, the national association that executed the instrument or the person who executed the instrument on behalf of said national association, and acknowledged to me that such national association executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal, the day and year in this instrument first above written.

*Josh. Pardue*  
Notary Public for Washington  
Residing at Mill Creek, WA  
My Commission Expires: 9.23.2018



## **EXHIBIT A**

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

### **PARCEL I:**

**A PARCEL OF LAND LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 34, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING AT A BRASS CAP MARKING THE SOUTHWEST CORNER OF SECTION 34 AND RUNNING NORTH 00° 28' 30" WEST 168.83 FEET; THENCE NORTH 89° 31' 30" EAST 55.00 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF WASHBURN WAY AND THE POINT OF BEGINNING; THENCE LEAVING SAID RIGHT OF WAY, RUNNING 38.10 FEET ALONG A 35.00 FOOT RADIUS CURVE RIGHT, THE LONG CHORD OF WHICH BEARS NORTH 58° 20' 54" EAST 36.24 FEET; THENCE NORTH 89° 31' 53" EAST 172.03 FEET; THENCE SOUTH 00° 28' 07" EAST 159.15 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF SHASTA WAY; THENCE ALONG SAID RIGHT OF WAY SOUTH 89° 52' 25" WEST 192.87 FEET; THENCE NORTH 48° 08' 20" WEST 13.74 FEET TO THE EASTERLY RIGHT OF WAY LINE OF WASHBURN WAY; THENCE ALONG SAID RIGHT OF WAY NORTH 00° 28' 30" WEST 129.98 FEET TO THE POINT OF BEGINNING.**

### **PARCEL II:**

**ACCESS EASEMENTS AS SHOWN BY INSTRUMENT RECORDED MARCH 15, 1993 IN VOLUME M93 PAGE 5282 AND SUPPLEMENTED BY DECLARATION RECORDED JANUARY 31, 1997 IN VOLUME M 97 PAGE 3079.**