

WTC 90745-DS

2011-08562

Klamath County, Oregon



00105032201100085620080085

**TRUST DEED,
SECURITY AGREEMENT,
ASSIGNMENT OF
LEASES AND RENTS,
AND FIXTURE FILING**

07/22/2011 03:20:58 PM

Fee: \$87.00

When recorded return to:

Steve Hanlin
1530 Pinecrest
Grants Pass, OR 97526

Grantor: Jaken, LLC
7235 SW Bonita Road
Portland, OR 97224
Trustee: AmeriTtitle
Beneficiary: Steve Hanlin
1530 Pinecrest
Grants Pass, OR 97526

RECITALS

THIS TRUST DEED ("Trust Deed") is made on July 1, 2011, by JAKEN, LLC, whose address is 7235 SW Bonita Road, Portland, OR 97224 ("Grantor"), to PACIFIC NORTHWEST TITLE OF OREGON, INC., having its office at 120 NW 14th Avenue, Suite 100, Portland, Oregon 97209 ("Trustee"), for the benefit of STEVE HANLIN, whose address is 1530 Pinecrest, Grants Pass, OR 97526 ("Beneficiary").

WHEREAS, Beneficiary has made a loan to Grantor in the sum of \$100,000.00, which loan is to be evidenced by a Promissory Note dated July 1, 2011. The loan is due and payable in full on the Maturity Date of the Note. It may not be prepaid without Beneficiary's consent. (The Promissory Note, as it may be modified, extended, or replaced from time to time, is referred to herein as the "Note"); and

WHEREAS, as a condition to the making of the loan to Grantor, Beneficiary has required, and Grantor has agreed to provide, this Trust Deed.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations described in Section 1.1 below, Grantor hereby irrevocably grants, bargains, sells, conveys, assigns, and transfers to Trustee in trust for the benefit and security of Beneficiary, with power of sale, all of Grantor's right, title, and interest in and to the real property located in Klamath County, state of Oregon, and more particularly described in Exhibit A attached hereto and incorporated herein, together with (1) all structures, and other improvements now or hereafter located thereon, (2) all easements, tenements, hereditaments, and appurtenances relating thereto, (3) all awards for any taking of all or any portion thereof, and (4) all insurance proceeds for any damage thereto (collectively, the "Trust Property").

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TO HAVE AND TO HOLD the Trust Property to Trustee and its successors and assigns for the benefit of Beneficiary and its successors and assigns, forever.

PROVIDED ALWAYS, that if all the Obligations shall be paid, performed, and satisfied in full, then the lien and estate hereby granted shall be reconveyed.

This Trust Deed, the Note, and all other agreements executed at any time in connection therewith, as they may be amended or supplemented from time to time, are sometimes collectively referred to as the "Loan Documents."

AGREEMENT

TO PROTECT THE SECURITY OF THIS TRUST DEED, GRANTOR COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1. PARTICULAR COVENANTS AND WARRANTIES OF GRANTOR

- 1.1. **Obligations Secured.** This Trust Deed secures the payment of all indebtedness, including but not limited to principal and interest, and the performance of all covenants and obligations of Grantor, under the Note and this Trust Deed, whether such payment and performance is now due or becomes due in the future (collectively, the "Obligations").
- 1.2. **Property.** Grantor warrants that it holds good and merchantable title to the Trust Property, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims. Grantor covenants that it shall forever defend Beneficiary's and Trustee's rights hereunder and the priority of this Trust Deed against the adverse claims and demands of all persons.
- 1.3. **Further Assurances.** Grantor shall execute, acknowledge, and deliver, from time to time, such further instruments as Beneficiary or Trustee may require to accomplish the purposes of this Trust Deed.
- 1.4. **Maintenance and Improvements.** Grantor shall maintain the Trust Property, and every portion thereof, in good repair and condition, except for reasonable wear and tear, and shall at Beneficiary's election restore, replace, or rebuild the Trust Property or any part thereof now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any condemnation. Grantor shall not commit or suffer any waste to the Trust Property. Grantor may remodel or replace buildings and improvements to meet its needs.
- 1.5. **Liens.** Grantor shall pay when due all claims for labor and materials that, if unpaid, might become a lien on the Trust Property. Grantor shall not create or suffer any lien, security interest, or encumbrance on the Trust Property that may be prior to, or on a parity with, the lien of this Trust Deed.
- 1.6. **Impositions.** Grantor shall pay when due all taxes, assessments, fees, and other governmental and nongovernmental charges of every nature now or hereafter assessed

against any part of the Trust Property or on the lien or estate of Beneficiary or Trustee therein (collectively, the "Impositions"); provided, however, that if by law any such Imposition may be paid in installments, Grantor may pay the same in installments, together with accrued interest on the unpaid balance thereof, as they become due. Grantor shall furnish to Beneficiary promptly on request satisfactory evidence of the payment of all Impositions. Beneficiary is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

1.7. Insurance

- (1) **Property and Other Insurance.** Grantor shall obtain and maintain during the term of this Trust Deed all-risk property insurance in an amount not less than the full remaining principal balance of the Note or, if greater, in the amount of the full replacement cost of the Trust Property, without reduction for coinsurance.
- (2) **Insurance Companies and Policies.** All insurance shall be written by a company or companies reasonably acceptable to Beneficiary; shall contain a long- form mortgagee endorsement in favor of Beneficiary with proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed; shall require 10 days' prior written notice to Beneficiary of cancellation or reduction in coverage; and shall contain a waiver of subrogation. Grantor shall annually furnish to Beneficiary a certificate evidencing the coverage required under this Trust Deed and upon request a copy of each policy.
- (3) **Beneficiary.** If Grantor is in default under this section, Beneficiary may purchase the required insurance and Grantor will reimburse Beneficiary on demand for the reasonable cost of such insurance.

1.8. Casualty/Loss Restoration

- (1) After the occurrence of any casualty to the Trust Property, whether or not covered by insurance, Grantor shall give prompt written notice thereof to Beneficiary. Beneficiary may make proof of loss if it is not made promptly and to Beneficiary's satisfaction by Grantor.
- (2) All insurance proceeds with respect to the Trust Property shall be payable to Grantor solely for restoration of the Trust Property.

ARTICLE 2. LEASES AND RENTS

Grantor assigns to Beneficiary all leases, rental contracts, and other agreements now or hereafter relating to the Trust Property or any portion thereof (the "Leases") and all rents and income derived therefrom (the "Rents"). Beneficiary shall have the right, but shall not be obligated, after the occurrence of an uncured Event of Default, to notify any and all obligors under any of the Leases that the same have been assigned to Beneficiary; to discount, compromise, enforce, and collect the Leases and Rents; and to exercise any and all other rights and remedies of the lessor

in connection with any of the Leases and Rents. Beneficiary shall have the right to use and apply any Rents received (1) for any costs and expenses incurred in connection with enforcing this assignment and collecting Rents; (2) for the maintenance of the Trust Property; and (3) for reduction of the Obligations in such order as Beneficiary shall determine. Beneficiary hereby gives Grantor a revocable license to collect and receive the Rents. Such license may be revoked by Beneficiary, without notice to Grantor, on the occurrence of any Event of Default under this Trust Deed. Grantor agrees not to collect any Rents more than 30 days in advance. This assignment shall not operate to place responsibility for the care, maintenance, or repair of the Trust Property on Beneficiary.

ARTICLE 3. SECURITY AGREEMENT AND FIXTURE FILING

To secure the Obligations, Grantor hereby grants to Beneficiary a security interest in all fixtures located on the Trust Property. This Trust Deed shall constitute a security agreement and fixture filing under the Uniform Commercial Code statutes of the state of Oregon. The mailing address of Grantor and the address of Beneficiary from which information may be obtained are set forth in the cover sheet of this Trust Deed.

ARTICLE 4. EVENTS OF DEFAULT; REMEDIES

4.1. **Events of Default.** Each of the following shall constitute an Event of Default under this Trust Deed and under each of the other Loan Documents:

- (1) **Nonpayment.** Failure of Grantor to pay any of the Obligations on or within 15 days after the due date.
- (2) **Breach of Other Covenants.** Failure of Grantor to perform or abide by any other covenant included in the Obligations, including without limitation those covenants in the Note or in this Trust Deed.
- (3) **Other Default.** The occurrence of any other event of default under the Note.
- (4) **Other Indebtedness, Secondary Financing.** Grantor's default beyond applicable grace periods in the payment of any other indebtedness secured by all or any portion of the Trust Property.
- (5) **Bankruptcy.** The occurrence of any of the following with respect to Grantor, any guarantor of the Obligations, or the then-owner of the Trust Property: (a) appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium, or insolvency law; (d) inability to pay debts when due; or (e) any general assignment for the benefit of creditors.
- (6) **Transfer; Due-on-Sale.** Any sale, gift, conveyance, contract for conveyance, transfer, or assignment of the Trust Property, or any part thereof or any interest therein, either

voluntarily, involuntarily, or by the operation of law (a "Transfer"), without Beneficiary's prior written consent.

4.2. **Remedies in Case of Default.** If an Event of Default shall occur, Beneficiary or Trustee, as the case may be, may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

- (1) **Acceleration.** Beneficiary may declare all or any portion of the Obligations immediately due and payable.
- (2) **Rents.** Beneficiary may revoke Grantor's right to collect the Rents, and may collect the Rents. Beneficiary shall not be deemed to be in possession of the Trust Property solely by reason of exercise of the rights contained in this subsection (2).
- (3) **Power of Sale.** Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Property by advertisement and sale under applicable law.
- (4) **Foreclosure.** Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Trust Property.
- (5) **Fixtures and Personal Property.** With respect to any fixtures or other property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

4.3. **Cumulative Remedies.** All remedies under this Trust Deed are cumulative. Any election to pursue one remedy shall not preclude the exercise of any other remedy. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of any Event of Default.

4.4. **Application of Proceeds.** All proceeds from the exercise of the rights and remedies under this Article IV shall be applied (1) to costs of exercising such rights and remedies; (2) to the Obligations, in such order as Beneficiary shall determine in its sole discretion; and (3) the surplus, if any, shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled thereto.

ARTICLE 5. GENERAL PROVISIONS

- 5.1. **Time Is of the Essence.** Time is of the essence with respect to all covenants and obligations of Grantor under this Trust Deed.
- 5.2. **Reconveyance by Trustee.** At any time on the request of Beneficiary, payment of Trustee's fees, if any, and presentation of this Trust Deed, without affecting the liability of any person for payment of the Obligations, Trustee may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

- 5.3. **Notice.** Except as otherwise provided in this Trust Deed, all notices shall be in writing and may be delivered by hand, or mailed by first-class certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given on the date of mailing; notices given by hand shall be deemed to have been given when actually received.
- 5.4. **Substitute Trustee.** In the event of dissolution or resignation of Trustee, Beneficiary may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).
- 5.5. **Trust Deed Binding on Successors and Assigns.** This Trust Deed shall be binding on and inure to the benefit of the heirs, legatees, personal representatives, successors, and assigns of Grantor, Trustee, and Beneficiary.
- 5.6. **Indemnity.** Grantor shall, to the fullest extent allowed by law, hold Beneficiary and Trustee and, if either is a corporation or other legal entity, their respective directors, officers, employees, agents, and attorneys harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Trustee's or Beneficiary's interests and rights under this Trust Deed.
- 5.7. **Expenses and Attorney Fees.** Grantor shall pay all fees and expenses, taxes, assessments, and charges arising out of or in connection with the execution, delivery, and recording of this Trust Deed. If Beneficiary refers any of the Obligations to an attorney for collection or seeks legal advice following a default; if Beneficiary is the prevailing party in any litigation instituted in connection with any of the Obligations; or if Beneficiary or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to bankruptcy, eminent domain, or probate proceedings), and a lawyer is employed by Beneficiary to appear in any such proceeding or seek relief from a judicial or statutory stay, or otherwise enforce Beneficiary's interests, then in any such event Grantor shall pay reasonable attorney fees, costs, and expenses incurred by Beneficiary in connection with the above mentioned events and any appeals. Such amounts shall be secured by this Trust Deed and, if not paid on demand, shall bear interest at the rate specified in the Note.
- 5.8. **Applicable Law.** This Trust Deed shall be governed by the laws of the state of Oregon.
- 5.9. **Person Defined.** As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.
- 5.10. **Severability.** If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, the other provisions of this Trust Deed shall not be affected.
- 5.11. **ORS 93.040 Warning.** THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS

INSTRUMENT, THE PERSON ACQUIRING FREE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

ARTICLE 6. DEMOLITION

Seller will completely demolish the structure on the Property and leave it in broom clean condition ready for construction in accordance with the Demolition Plan attached to Purchase and Sale Agreement executed contemporaneously herewith. If Seller fails to complete the project, the principal amount of the Note will be reduced by the cost of completing the Demolition Plan.

GRANTOR:

JAKEN, LLC

By: 

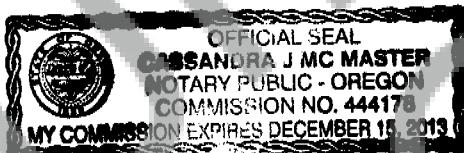
Jason Redding, President

STATE OF Oregon)

County of Washington) ss.

The foregoing instrument was acknowledged before me this 20th day of July, 2011, by Jason Redding as the President of Jaken, LLC.

[SEAL]




Notary Public for State of Oregon
My commission expires: Dec 15, 2013

EXHIBIT "A"
Property Description

Lot 1 of GARDEN TRACTS, according to the official plat thereof on file in
the office of the County Clerk of Klamath County, Oregon.

Unofficial
Copy