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2011-013353

Klamath County, Oregon



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Fee: \$72.00

**THIS INSTRUMENT WAS PREPARED
BY AND WHEN RECORDED
SHOULD BE RETURNED TO:**

Winston & Strawn LLP
101 California St., Suite 3900
San Francisco, CA 94111
Attn: Angela Chan

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (this "**Agreement**") is dated for reference purposes as of November 22, 2011 by **QUAIL PARK OF KLAMATH FALLS, LLC**, a Washington limited liability company, whose address for notice hereunder is 1818 Westlake Avenue North, Suite 310, Seattle, Washington 98109 ("**Assignor**"), to **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation, in its capacity as administrative agent under the Loan Agreement ("**Administrative Agent**"), whose address for notice is 500 West Monroe Street, Chicago, Illinois 60661, Attention: Portfolio Management Program.

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Administrative Agent agree as follows:

1. **Absolute Assignment.** Assignor unconditionally and absolutely assigns to Administrative Agent all of Assignor's right, title and interest in and to: (a) all leases, subleases, occupancy agreements, licenses, concessions, rental contracts and other agreements (written or oral) now or hereafter existing relating to the use or occupancy of the project located on the real property described in **Exhibit A** hereto (said land and project herein collectively referred to as the "**Property**"), together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Assignor of any petition of relief under 11 U.S.C. § 101 et seq., as same may be amended from time to time [the "**Bankruptcy Code**"]), and all related security and other deposits (collectively, the "**Leases**"); (b) all rents, revenues, liquidated damages following defaults under the Leases, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases for using, leasing,

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licensing, possessing, operating from, rendering in, selling or otherwise enjoying the Property (collectively, the "**Rents**"); (c) all of Assignor's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code; and (d) any and all other rights of Assignor in and to the items set forth in subsections (a) through (c) above, and all amendments, modifications, replacements, renewals, proceeds and substitutions thereof. This Agreement is an absolute assignment to Administrative Agent and not an assignment as security for the performance of the obligations under the Loan Documents (defined below), or any other indebtedness, and such absolute assignment is presently and immediately effective. Notwithstanding the foregoing, the absolute assignment contained herein shall not itself reduce the obligations owing to Administrative Agent under the Loan Documents unless and until Administrative Agent actually receives the Rents and such Rents are applied by Administrative Agent to such obligations pursuant to Section 4 below.

2. **Rights of Administrative Agent.** Subject to the provisions of Section 6 below, Administrative Agent shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Administrative Agent and that all Rents are to be paid directly to Administrative Agent, whether or not Administrative Agent has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Assignor under the Leases and exercise any and all rights of Assignor therein contained to the full extent of Assignor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. Assignor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Assignor, to comply with all demands of Administrative Agent under this Agreement and to turn over to Administrative Agent on demand all Rents which it receives.

3. **No Obligation or Liability.** Notwithstanding Administrative Agent's rights hereunder, Administrative Agent shall not be obligated to perform, and Administrative Agent does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Agreement. Administrative Agent shall have no responsibility on account of this Agreement for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Administrative Agent shall not be liable for any loss sustained by Assignor resulting from Administrative Agent's failure to let the Property after an Event of Default (as defined in the Loan Agreement) or from any other act or omission of Administrative Agent in managing the Property after an Event of Default. Nothing herein contained shall be construed as constituting Administrative Agent a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Administrative Agent. In the exercise of the powers herein granted Administrative Agent, no liability shall be asserted or enforced against Administrative Agent, all such liability being expressly waived and released by Assignor.

4. **Right to Apply Rents.** Administrative Agent shall have the right, but not the obligation, to use and apply any Rents received by Administrative Agent pursuant to the terms hereof in such order and such manner as Administrative Agent may determine for:

(a) **Enforcement or Defense.** The payment of costs and expenses of enforcing or defending the terms of this Agreement or the rights of Administrative Agent hereunder, and collecting any Rents;

(b) **Loan Payments.** Interest, principal or other amounts payable pursuant to (i) the Loan Agreement, dated on or about December 1, 2011, (as amended, restated, supplemented and otherwise modified from time to time, the "**Loan Agreement**"), between Borrower and Laurel Court of Eugene, LLC (individually, "**Borrower**," collectively "**Borrowers**"), Administrative Agent, and the financial institutions from time to time signatory thereto as "Lenders"; (ii) the Promissory Note, dated on or about June 30, 2011, in the stated principal amount of \$20,065,000.00, executed by Borrowers, bearing interest and being payable to the order of Lenders (as amended, restated, supplemented and otherwise modified from time to time, the "**Note**"); (iii) the Trust Deed, Assignment of Leases and Rents, Security Agreement and Fixture Filing, on or about December 1, 2011, executed by Assignor for the benefit of Administrative Agent and relating to the Property (as amended, restated, supplemented and otherwise modified from time to time, the "**Mortgage**"); and all other documents and instruments evidencing, governing and securing the loan evidenced by the Note (the "**Loan**") and (iv) any and all modifications, amendments or extensions thereof or replacements or substitutions therefor (the Loan Agreement, the Note, the Mortgage, such other documents and instruments, and such modifications, amendments, extensions, replacements, and substitutions thereof being herein collectively called the "**Loan Documents**"); and

(c) **Operating Expenses.** Payment of costs and expenses of the operation and maintenance of the Property, including (i) rentals and other charges payable by Assignor under any ground lease or other agreement affecting the Property; (ii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property; (iii) insurance premiums; (iv) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents; (v) wages and salaries of employees, commissions of agents and attorneys' fees and expenses; and (vi) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Property.

After the payment of all such costs and expenses and after Administrative Agent has established such reserves as it, in its sole and absolute discretion, deems necessary for the proper management of the Property, Administrative Agent shall apply all remaining Rents received by it to the reduction of the Loan.

5. **No Waiver.** The exercise or nonexercise by Administrative Agent of the rights granted in this Agreement or the collection and application of Rents by Administrative Agent or its agent shall not be a waiver of any default by Assignor under this Agreement or any other Loan Document. No action or failure to act by Administrative Agent with respect to any obligations of Assignor under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of

Administrative Agent's rights and privileges under this Agreement, or discharge, release or modify any of Assignor's duties or obligations hereunder.

6. **Revocable License.** Notwithstanding that this Agreement is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, subject to the terms of this Section 6 and the Cash Management Agreement, Administrative Agent grants to Assignor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license shall be automatically revoked upon the occurrence of any Event of Default and Administrative Agent shall immediately be entitled to receive and apply all Rents, whether or not Administrative Agent enters upon and takes control of the Property; provided, however, that Administrative Agent may at any time, and from time to time, reinstate the revocable license. Prior to such revocation, Assignor shall apply any Rents which it receives to the payment of debt service on the Note and other payments due under the Loan Agreement, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property, insurance premiums, operation and maintenance charges relating to the Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose. Administrative Agent is hereby granted and assigned by Assignor the right, at its option, upon the revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Indebtedness in such priority and proportion as Administrative Agent, in its discretion, shall deem proper.

7. **Term.** This Agreement shall continue in full force and effect until (a) all amounts due under the Loan Documents are paid in full, and (b) all other obligations of Assignor Borrower under the Loan Documents are fully satisfied.

8. **Appointment.** Assignor irrevocably appoints Administrative Agent its true and lawful attorney in fact, which appointment is coupled with an interest, to exercise any or all of the rights or powers described herein with the same force and effect as if exercised by Assignor, and Assignor ratifies and confirms any and all acts done or omitted to be done by Administrative Agent, its agents, servants, employees or attorneys in, to or about the Property.

9. **Liability of Administrative Agent.** Administrative Agent shall not in any way be liable to Assignor for any action or inaction of Administrative Agent, its employees or agents under this Agreement.

10. **Indemnification.** Assignor shall indemnify, defend and hold harmless Administrative Agent, its shareholders, directors, officers, employees and agents (collectively, "**Indemnified Parties**") from and against all liability, loss, damage, cost or expense which it may incur under this Agreement or under any of the Leases, including any claim against the Indemnified Parties, or any of them, by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including attorneys' fees and expenses, but excluding any claim to the extent caused by the gross negligence or willful misconduct of any Indemnified Party. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the

date of demand until the same is paid by Assignor to Administrative Agent at a rate equal to the Default Rate (as defined in the Loan Agreement).

11. **Modification.** This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

12. **Bankruptcy.**

(a) Upon or at any time after the occurrence of a Event of Default, Administrative Agent shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Administrative Agent not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Administrative Agent shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Administrative Agent demands that Assignor assume and assign the Lease to Administrative Agent pursuant to Section 365 of the Bankruptcy Code and (ii) Administrative Agent covenants to cure or provide adequate assurance of future performance under the Lease. If Administrative Agent serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Administrative Agent of the covenant provided for in clause (ii) of the preceding sentence.

13. **Authority.** Assignor represents and warrants that it has full power and authority to execute and deliver this Agreement and the execution and delivery of this Agreement has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property.

14. **Liability.** If Assignor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

15. **Headings, Etc.** The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

16. **Notices.** Any notice required or permitted to be given under this Agreement shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement, and (c) effective in accordance with the terms of the Loan Agreement.

17. **Successors and Assigns.** This Agreement shall inure to the benefit of Administrative Agent and its successors and assigns and shall be binding on Assignor and its successors and assigns.

18. **Governing Law.** The provisions of Section 12.28 (Governing Law) of the Loan Agreement are incorporated herein by reference as though fully set forth herein.

19. **Conflict.** If any conflict or inconsistency exists between the absolute assignment of the Rents and the Leases in this Agreement and the assignment of the Rents and Leases as security in the Mortgage, the terms of this Agreement shall control.

20. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[Signature Page Follows]

EXECUTED as of the date first written above.

"ASSIGNOR":

QUAIL PARK OF KLAMATH FALLS, LLC,
a Washington limited liability company

By: [Signature]
Name: Denis Bryant
Title: Manager

STATE OF Washington)
COUNTY OF King) ss.

I certify that I know or have satisfactory evidence that DENIS BRYANT is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 11-22-2011

[Signature]
(Signature)

My appointment expires: 4-26-2014
(Seal or stamp)

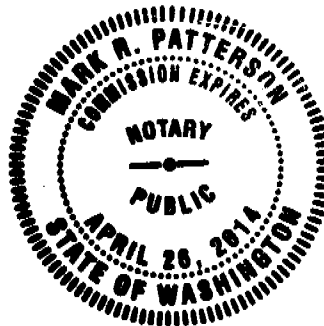


EXHIBIT A

Legal Description

TRACT 1:

PARCEL A:

Parcel 1 of Land Partition 62-00 in the SE1/4 NE1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL B:

Easement as disclosed in Agreement for Reciprocal Access Easement recorded June 8, 2001 in Volume M01, page 27242, Microfilm Records of Klamath County, Oregon.

TRACT 2:

A portion of land situated in the SE1/4 NE1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, as shown by City of Klamath Falls Property Line Adjustment 13-11 Map of Survey, and more particularly described as follows:

Beginning at a point marked by a 5/8 inch iron rod from which the Southwest corner of Parcel 2 of Land Partition 62-00 bears South 15°02'53" East 320.94 feet; thence North 15°02'53" West 45.31 feet to a point marked by a 5/8 inch iron rod; thence North 74°57'07" East 19.29 feet to a point marked by a 5/8 inch iron rod; thence South 15°02'53" East 45.31 feet to a point marked by a 5/8 inch iron rod; thence South 74°57'07" West 19.29 feet to the point of beginning, with bearings based on Klamath County Land Partition 62-00.

TRACT 3:

Easement as disclosed in Perpetual Easement For Utilities and Access recorded October 7, 2011 as Instrument no. 2011-11193, Klamath County Records, Oregon.