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2012-003811

Klamath County, Oregon



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Fee: \$87.00

WHEN RECORDED
RETURN TO:

Royce Ann Simmons
Harvest Capital Company
PO Box 579
Canby, OR 97013

(space above reserved for recorder's use)

**CONSENT TO TRANSFER, ASSUMPTION, AND RELEASE AGREEMENT
(2005 Loan)**

28th This CONSENT TO TRANSFER, ASSUMPTION, AND RELEASE AGREEMENT is made this day of March, 2012, by and between MARTIN C. YACOOBIAN, JR. (individually), MARTIN C. YACOOBIAN, JR., as Trustee of the MCY III TRUST U/T/A/ dated July 11, 1996, MARTIN C. YACOOBIAN, JR., as Trustee of the MARTIN CHARLES YACOOBIAN, III TRUST U/T/A dated March 20, 1996, and YACOOBIAN RANCH, LLC, an Oregon limited liability company ("**Original Borrower**"), at PO Box 550, Agoura Hills, CA 91376-0550, JUNIPER RIDGE ESTATES LLC, an Oregon limited liability company ("**Assuming Borrower**"), at PO Box 550 Agoura Hills, CA 91376-550, and HARVEST CAPITAL COMPANY, an Oregon corporation ("**Lender**") at PO Box 579, Canby, OR 97013. Original Borrower and Assuming Borrower are referred to collectively herein as the "**Borrowers.**"

RECITALS

A. Original Borrower obtained a loan in the original principal amount of \$2,700,000 (the "**2005 Loan**") from Lender. The 2005 Loan is evidenced by a Promissory Note in the original principal amount of \$2,700,000 dated September 14, 2005 made by Original Borrower to the order of Lender (the "**Note**"). The Note, and the 2005 Loan evidenced thereby, are secured by, among other things:

- a. A Mortgage, Assignment of Rents and Security Agreement and Fixture Filing dated September 14, 2005, and recorded September 21, 2005 in Volume M 05, Page 64769, Microfilm Records of Klamath County, Oregon (the "**2005 Mortgage**"), as modified by that certain Partial Release of Mortgage recorded November 14, 2011 as Instrument No. 2011-012693, Official Records of Klamath County, Oregon (the "**Partial Release**"). As modified, the Partial Release, the 2005 Mortgage encumbers the real property described on attached Exhibit A, and certain related personal property;
- b. A UCC-1 Financing Statement from the Original Borrower, as debtor, to Lender, as secured party, filed with the Oregon Secretary of State on September 22, 2005 as No. 7046253 (the "**Oregon Financing Statement**"); and
- c. A UCC-1 Financing Statement from the Original Borrower, as debtor, to Lender, as secured party, filed with the California Secretary of State on October 10, 2005, as No. 05-7043599850 (the "**California Financing Statement**").

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- d. A Mortgage, Assignment of Rents and Security Agreement and Fixture Filing dated November 2, 2011, and recorded November 14, 2011 as Instrument No. 2011-012689, Official Records of Klamath County, Oregon, encumbering that certain real property described on attached Exhibit B (the "**2011 Mortgage**," and together with the 2005 Mortgage, the "**Mortgages**").

The Mortgages, the Oregon Financing Statement, and the California Financing Statement are referred to collectively as the "**Security Documents**." The real and personal property encumbered by the Security Documents is referred to herein as the "**Property**."

B. The 2005 Loan is cross-defaulted with a loan made by Lender to Original Borrowers and MARTIN C. YACOOBIAN, JR., as Trustee of the YACOOBIAN FAMILY TRUST U/T/A dated July 21, 2005 (collectively, the "**2008 Borrower**"), as evidenced by a promissory note dated September 17, 2008 (the "**2008 Loan**"). The 2005 Loan and the 2008 Loan are collectively referred to as the "**Loans**."

C. Original Borrower has requested the Lender's consent to (i) the acquisition of the Property by the Assuming Borrower (the "**Acquisition**"), and the assumption of the 2005 Loan by Assuming Borrower (the "**Assumption**"), and (ii) the release (the "**Release**") of Yacoubian Ranch, LLC, an Oregon limited liability company ("**Yacoubian Ranch**") from the obligations under the Note, the 2005 Loan, Mortgages, and documents executed in connection therewith (collectively, the "**Loan Documents**").

D. Lender has agreed to the Acquisition, Assumption, and Release, on the terms, covenants, and conditions described below.

AGREEMENT

1. Confirmation of the 2005 Loan. All of the Loan Documents are hereby confirmed by the Original Borrower as being in full force and effect and the Original Borrower acknowledges that it has no defenses or offsets to any of its obligations thereunder, and that Lender has performed all of its obligations to this date.

2. Lender's Conditional Consent to Assignment. Subject to satisfaction of all of the following conditions (the "**Closing Conditions**"), Lender hereby consents to the Acquisition:

(a) Lender's receipt of a true and correct copy of all of the executed documents by which the Acquisition was effected;

(b) Lender's receipt of this Agreement without modification executed by Original Borrower and Assuming Borrower;

(c) Lender's receipt of an assumption fee of \$1,000.00 (the "**Assumption Fee**");

(d) Lender's receipt of all Expense Reimbursements, as defined below;

(e) Lender's receipt of Assuming Borrower's property and liability insurance certificates, as required by the Mortgages;

(f) Lender's receipt of true and complete copies of Assuming Borrower's Articles of Organization and Operating Agreement, and a certificate executed by a member of Assuming Borrower certifying the identity of its current members; and

(g) At the time conditions (a) through (f) are satisfied, no default exists under the Loan Documents.

Lender's consent under this Section 2 is expressly conditioned upon satisfaction of the Closing Conditions on or before April 16, 2012, or such later date as Lender may agree to in writing, in Lender's sole discretion. The date on which such conditions are satisfied shall be the "**Closing Date**."

3. Lender's Conditional Covenant to Release. Upon (i) satisfaction of all of the Closing Conditions, and (ii) delivery to Lender of such documentary evidence of Yacoubian Ranch's dissolution as Lender requires, in Lender's sole discretion (the "**Dissolution Documents**"), Lender shall release Yacoubian Ranch from all obligations arising under the Note, Mortgages, and other Loan Documents. Lender's covenant under this Section 3 is expressly conditioned upon timely satisfaction of the Closing Conditions, AND delivery to Lender of the Dissolution Documents.

4. Assuming Borrower's Assumption. Assuming Borrower hereby assumes and agrees to pay and perform the Note and all of Original Borrower's unperformed past, current and future obligations evidenced by, or under, the Loan Documents and this Agreement, as and when due. Assuming Borrower agrees with Lender that this assumption specifically includes, without limitation, all of Original Borrower's covenants and indemnities regarding the Property as well as the obligation to repay the 2005 Loan.

5. Continuing Liability of Original Borrower. Subject to Lender's covenant to release Yacoubian Ranch upon satisfaction of the conditions described in Section 3 above, nothing herein releases Original Borrower from its personal liability under the Loan Documents. Original Borrower hereby acknowledges and affirms its continuing personal liability under the Loan Documents for all obligations thereunder.

6. Release of Lender. As part of the consideration for this Agreement, Original Borrower and Assuming Borrower, on behalf of themselves and their successors and assigns, hereby each acknowledge that they have no claims of any nature against Lender in connection with the 2005 Loan and forever release, waive, and discharge Lender from, and covenant not to bring any suit against Lender for, any such claim, cause of action, demand, suit, cost or expense they may have, of whatsoever nature and kind, based on any facts existing prior to the date of this Agreement. Said releasing parties acknowledge that this release extends to known and unknown claims.

7. Obligations Secured. The Security Documents shall continue to secure the entire principal and interest of the Note, and shall continue to secure the other obligations stated in the Security Documents. Assuming Borrower acknowledges that it is acquiring the Property subject to the Security Documents and hereby grants to Lender as additional security for the 2005 Loan a security interest in the personal property described in the Mortgages, and the proceeds thereof, which are or hereafter become located upon or used in connection with the Property and all replacements, accessions and additions thereto as described in the Mortgages. Said security interest and Lender's rights with respect thereto shall be governed by the terms of the Mortgages, which for such purpose are incorporated herein by this reference, and shall be perfected by the filing by the Lender of an amendment to the existing Financing Statement, and/or at Lender's election, a new financing statement in which Assuming Borrower is identified as debtor. The Mortgages constitute fixture filings under the Uniform Commercial Code and for this purpose the following information regarding Assuming Borrower is provided:

State of Organization: Oregon

Organization Number: 829710-95
Type of Organization: limited liability company

8. Borrower's Representations and Warranties. As of the date of this Agreement, the Borrowers hereby jointly and severally represent and warrant to Lender as follows:

(a) Consequences of Loan Structure. Each of the Borrowers understands and agrees that:

(i) all of the Property will secure the entire amount of the 2005 Loan under the Note and the other Loan Documents regardless of its vested ownership;

(ii) a default by any or all of the Borrowers under any of the Loan Documents will constitute a default under all of the Loan Documents, and also a default under the 2008 Loan and any of the documents evidencing or securing the 2008 Loan (the "**2008 Loan Documents**");

(iii) no Borrower will be entitled to the release of Lender's security interest in any portion of the Property owned by any Borrower until the indebtedness of the 2005 Loan has been paid in full;

(iv) all of the Property, regardless of the form by which it is encumbered, shall be security for the repayment of the Note, and shall be available to satisfy the obligations incurred in connection with the 2005 Loan;

(v) the 2005 Loan is cross-defaulted with the 2008 Loan such that a default under the Note or any other Loan Documents evidencing or securing the 2005 Loan, or under the 2008 Loan Documents, could result in the sale of some or all the Property securing the 2005 Loan, and the application of the proceeds from such sale to complete or only partial satisfaction of the joint and several obligations of the Borrowers under the Note or Loan Documents; and

(vi) due to the common ownerships and business relationships among Borrowers there is a community of interests among the Borrowers such that the benefits of the 2005 Loan to any one Borrower also benefits the other Borrowers. The benefit of the 2005 Loan to each of the Borrowers constitutes the reasonably equivalent value of the aggregate transfers made and the aggregate obligations incurred by each of the Borrowers in connection with the 2005 Loan. The transfers made and obligations incurred by each Borrower in connection with the assumption of the 2005 Loan are not made with the intent to hinder, delay or defraud any person to which any Borrower was, is, or hereinafter will become, indebted.

(b) Insolvency. No Borrower is insolvent as of the date of this Agreement. None of the Borrowers will become insolvent as a result of the obligations incurred and transfers made in connection with the Assignment and the assumption of the 2005 Loan as provided herein. None of the Borrowers is, or is about to be, engaged in a business or transaction for which such Borrower will have an unreasonably small amount of capital after the closing of the transfer and the assumption. None of the Borrowers have incurred, or contemplates incurring, debts beyond such Borrower's ability to pay as such debts become due.

(c) Authority. Execution, delivery and performance of this Agreement and any and all other Loan Documents or other documents executed and/or delivered in connection herewith have been authorized by each of the Borrowers.

(d) No Default. No default or event of default under any of the Loan Documents has occurred that remains uncured, and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default or an event of default under any of the Loan Documents.

(e) Additional Representations and Warranties. All of the warranties and representations contained in the Loan Documents are true, correct, complete and accurate on the date of this Agreement, except as may be amended or changed due to this Agreement.

9. Expense Reimbursements. Borrowers shall reimburse Lender upon demand for all title premiums, title search charges, escrow fees, documentary stamps, recording fees and other costs, expenses and attorneys' fees incurred by Lender in connection with this Agreement or the satisfaction of any of the Closing Conditions (the "**Expense Reimbursements**"), regardless of whether the Acquisition, Assumption, or Release contemplated by this Agreement are consummated.

10. Assuming Borrower's Address. From and after the Closing Date, the Lender shall send all notices it gives to Assuming Borrower under the Loan Documents to the Assuming Borrower at the following address:

Juniper Ridge Estates LLC
PO Box 550
Agoura Hills, CA 91376-0550

11. Consent Limited; No Waiver. Lender's consent in this Agreement is limited to this transaction only, and this Agreement shall not constitute a waiver or modification of any terms, provisions or requirements of the Loan Documents in any respect except as herein specifically set forth or as otherwise expressly agreed to by the Lender in writing, including any conditions to or fees which may be imposed for, and the right of Lender to require payments in the 2005 Loan in full upon, any future transfer or conveyance of the Property or any interest in Assuming Borrower.

12. No Implied Modifications. Except as otherwise stated in this Agreement, nothing herein contained shall be considered as modifying, releasing, altering or affecting the Loan Documents, the original priority of the Security Documents, or the rights, benefits, duties or obligations of the parties thereto.

13. Attorneys' Fees. The prevailing party in any arbitration or litigation concerning this Agreement shall be entitled to be paid its court costs and attorneys' fees by the party against whom judgment is rendered, including such costs and fees as may be incurred on appeal.

14. Assignments Prohibited. This Agreement may not be assigned by Original Borrower or Assuming Borrower in whole or in part, voluntarily or involuntarily (including a transfer to a receiver or bankruptcy estate), without the prior and express written consent of the Lender in each instance. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns.

15. Time of Performance. Time is of the essence of each and every term, covenant and condition hereof.

16. Waiver of Jury Trial. Each of the parties hereto waives any rights to a trial by jury in any action or proceeding to enforce or defend any rights (a) under this Agreement or any Loan Document, or (b) arising from any lending relationship existing in connection with this Agreement or

any Loan Document, and each of such parties agrees that any such action or proceeding shall be tried before a judge and not before a jury.

17. Construction. This Agreement shall be construed in accordance with the laws of the State of Oregon (excluding choice-of-law principles). The terms of this Agreement have been mutually negotiated with each party having the opportunity to seek the advice of legal counsel and shall not be construed against any party. The headings in this Agreement are inserted solely for the purpose of convenience and shall not affect the interpretation of the provisions hereof. If any portion of this Agreement is held to be invalid by any court of competent jurisdiction, such ruling shall not affect the remaining terms hereof unless and to the extent it includes a specific determination that the fundamental purposes of this Agreement are thereby significantly impaired. The capitalized terms in this Agreement that are not otherwise defined herein shall have the meanings given to them in the Loan Documents. All sums referred to in this Agreement shall be calculated by and payable in the lawful currency of the United States. The Assuming Borrower's obligations under this Agreement are secured by the Security Documents and any default under this Agreement shall constitute a default under the Loan Documents.

18. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto regarding the subject matter hereof, and no oral understandings, written agreements or representations exist which are in addition to or contradict or expand upon the terms herein set forth. No amendments, variations, waivers, modifications or changes to this Agreement shall be effective unless in writing and signed by each of the parties hereto subsequent to the date hereof.

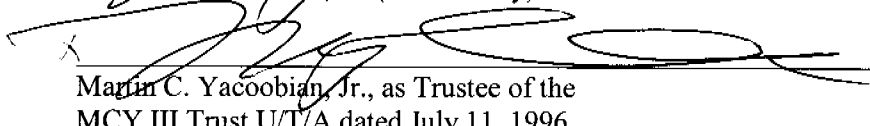
19. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall constitute but one and the same instrument. The signature pages of exact copies of this Agreement may be attached to one copy to form one complete document. Each executed counterpart of this Agreement shall be deemed an original and may be recorded in any county in which any portion of the Property is located.

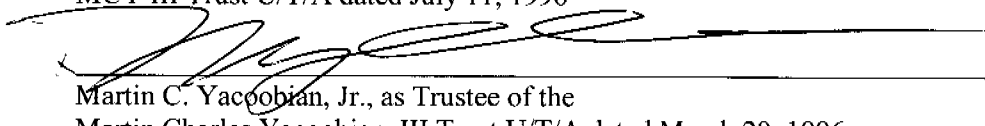
[signatures on following page]

In witness whereof, the parties execute this Agreement as of the date first written above:

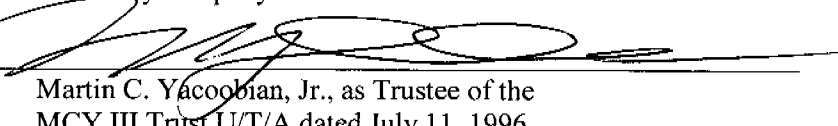
ORIGINAL BORROWER

X 
Martin C. Yacoobian, Jr. (individually)

X 
Martin C. Yacoobian, Jr., as Trustee of the
MCY III Trust U/T/A dated July 11, 1996

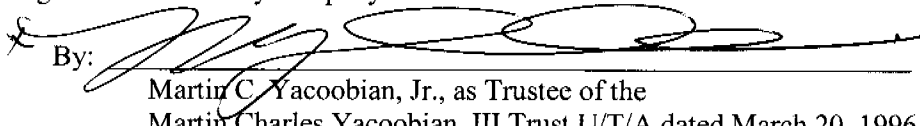

Martin C. Yacoobian, Jr., as Trustee of the
Martin Charles Yacoobian, III Trust U/T/A dated March 20, 1996

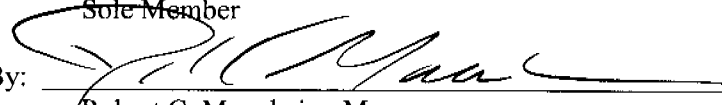
YACOOBIAN RANCH, LLC
an Oregon limited liability company

X By: 
Martin C. Yacoobian, Jr., as Trustee of the
MCY III Trust U/T/A dated July 11, 1996,
Sole Member and Manager

ASSUMING BORROWER

JUNIPER RIDGE ESTATES, LLC
an Oregon limited liability company

X By: 
Martin C. Yacoobian, Jr., as Trustee of the
Martin Charles Yacoobian, III Trust U/T/A dated March 20, 1996,
~~Sole Member~~

By: 
Robert C. Mannheim, Manager

LENDER

HARVEST CAPITAL COMPANY
an Oregon limited liability company

By: 

Printed Name: Brian L. Field

Its: President

ACKNOWLEDGMENTS

STATE OF OREGON)
County of Klamath)ss.

This instrument was acknowledged before me on March 28, 2012, by Martin C. Yacoubian, Jr.



Kristi L. Redd
Notary Public for Oregon
My commission expires: 11/16/2015

STATE OF OREGON)
County of Klamath)ss.

This instrument was acknowledged before me on March 28, 2012, by Martin C. Yacoubian, Jr., as Trustee of the MCY III Trust U/T/A dated July 11, 1996.



Kristi L. Redd
Notary Public for Oregon
My commission expires: 11/16/2015

STATE OF OREGON)
County of Klamath)ss.

This instrument was acknowledged before me on March 28, 2012, by Martin C. Yacoubian, Jr., as Trustee of the Martin Charles Yacoubian, III Trust U/T/A dated March 20, 1996.



Kristi L. Redd
Notary Public for Oregon
My commission expires: 11/16/2015

STATE OF OREGON)
County of Klamath)ss.

This instrument was acknowledged before me on March 28, 2012, by Martin C. Yacoubian, Jr., as Trustee of the MCY III Trust U/T/A dated July 11, 1996, sole member and manager of Yacoubian Ranch, LLC, an Oregon limited liability company.



Kristi L. Redd
Notary Public for Oregon
My commission expires: 11/16/2015

STATE OF OREGON)
County of Klamath)ss.

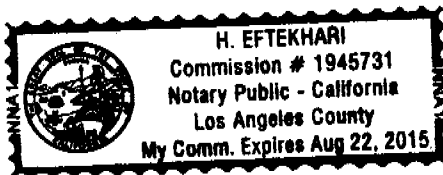
This instrument was acknowledged before me on March 28, 2012, by Martin C. Yacoubian, Jr., as Trustee of the MCY III Trust U/T/A dated July 11, 1996, sole member of Juniper Ridge Estates LLC, an Oregon limited liability company.



Kristi L. Redd
Notary Public for Oregon
My commission expires: 11/16/2015

STATE OF ~~OREGON~~ California
County of Los Angeles)ss.

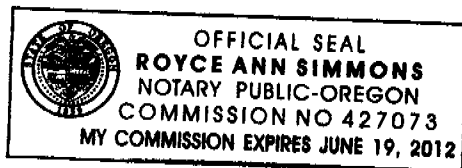
This instrument was acknowledged before me on March 30, 2012, by Robert C. Mannheim, Manager of Juniper Ridge Estates LLC, an Oregon limited liability company.



H. Eftekhari
Notary Public for Oregon California
My commission expires: 08/22/2015

STATE OF OREGON)
County of Clackamas)ss.

This instrument was acknowledged before me on April 4, 2012, by Brian L. Field, as President of Harvest Capital Company, an Oregon corporation.



Royce Ann Simmons
Notary Public for Oregon
My commission expires: 6/19/12

EXHIBIT A

2005 Mortgage Property

TRACT I:

Parcel 1: INTENTIONALLY OMITTED.

Parcel 2: INTENTIONALLY OMITTED.

Parcel 3: INTENTIONALLY OMITTED.

TRACT II:

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

PARCEL 1:

The East 120 feet of the NE 1/4 NW 1/4 of Section 13, Township 40 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, EXCEPTING THEREFROM any portion lying within the right of way of the Bonanza-Malin Highway.

PARCEL 2:

Township 40 South, Range 11 East of the Willamette Meridian

Section 13: The W1/2, excepting therefrom the East 120 feet of the NE1/4 NW1/4; Also that portion of the SW1/4 NE1/4 and the W1/2 SE1/4 lying Westerly of new Poe Valley-Malin Highway

Section 14: NE1/4 NE1/4; S1/2 NE1/4; SE1/4; S1/2 SW1/4;

Section 23: N1/2 NE1/4; N1/2 NE1/4 NW1/4, excepting therefrom that portion of the SW1/4 NW1/4 NE1/4 lying Southerly of the fence as it exists along the roadway through Section 23, as described by instrument recorded August 6, 1992 in Volume M92 Page 17492, records of Klamath County, Oregon.

Section 24: N1/2 NW1/4; that portion of the NW1/4 NE1/4 and North 180 feet of SW1/4 NE1/4 lying West of the West line of Harpold County Road No. 1097.

PARCEL 3

A Parcel of land situate in the SW1/4 of Section 12, Township 40 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at the Southwest corner of said Section 12; thence North along the Section line a distance of 26 feet to an existing fence line; thence following said fence line in an Easterly direction approximately 1012 feet to its intersection with the Southerly line of Section 12; thence Westerly along said Section line to the point of beginning.

PARCEL 4

A Parcel of land situate in Section 23, Township 40 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: That portion of the SE1/4 NE1/4 NW1/4 of said section which lies Northerly of the fence as it exists along the roadway.

TRACT III: INTENTIONALLY OMITTED.

EXHIBIT B

2011 Mortgage Property

Parcels 1, 2 and 3 of Land Partition 75-06 being situated in the N1/2 of Section 3, Township 40 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon