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2012-010790

Klamath County, Oregon



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Prepared By and Return To:

FOR RECORDER'S USE ONLY:

McGuireWoods LLP
(Melissa S. Gilbert)
201 North Tryon Street
Charlotte, North Carolina 28202

THIRD AMENDMENT TO LINE OF CREDIT INSTRUMENT
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

BY:

GRANTOR: JWTR OREGON, LLC, an Oregon limited liability company, whose principal place of business is 6400 Highway 66, Klamath Falls, Oregon 97601 (the "Trustor");

BENEFICIARY: GENERAL ELECTRIC CAPITAL CORPORATION, together with its successors and assigns, any other lenders under the Credit Agreement described below and the other Secured Parties (as defined in the Credit Agreement), whose address for all purposes hereunder is 201 Merritt 7, Norwalk, CT 06851, Attn: Account Manager (the "Beneficiary"); and

TRUSTEE: CHICAGO TITLE INSURANCE COMPANY having an address at 1211 SW 5th Avenue, Suite 2150, Portland, OR 97204 (the "Trustee")

ORS 86.155 STATEMENTS:

THE MAXIMUM PRINCIPAL AMOUNT TO BE ADVANCED PURSUANT TO THE CREDIT AGREEMENT IS \$48,144,000.

MATURITY DATE: March 4, 2015, EXCLUSIVE OF OPTION(S) TO EXTEND, IF ANY.

NOTICE TO RECORDER: THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER THE OREGON UNIFORM COMMERCIAL CODE, ORS § 79.0502(3).

Debtor's Organizational Identification Number: 666444-94

THIS AGREEMENT AMENDS THAT CERTAIN LINE OF CREDIT INSTRUMENT DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING RECORDED WITH THE COUNTY CLERK FOR KLAMATH COUNTY, OREGON ON MARCH 4, 2010 AS INSTRUMENT NUMBER 2010-002919, AND ALSO RECORDED WITH THE COUNTY CLERK FOR JACKSON COUNTY, OREGON, ON MARCH 4, 2010 AS INSTRUMENT NUMBER 2010-007265 AND WITH THE COUNTY CLERK FOR LAKE COUNTY, OREGON, ON MARCH 4, 2010 AS INSTRUMENT NUMBER M070021; EACH OF SAID LINE OF CREDIT INSTRUMENTS WAS AMENDED BY THAT CERTAIN AMENDMENT TO LINE OF CREDIT INSTRUMENT DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING RECORDED WITH THE COUNTY CLERK FOR KLAMATH COUNTY, OREGON ON DECEMBER 15, 2011 AS INSTRUMENT NUMBER 2011-013842 AND ALSO RECORDED WITH THE COUNTY CLERK FOR JACKSON COUNTY, OREGON ON DECEMBER 15, 2011 AS INSTRUMENT NUMBER 2011-038879 AND WITH THE COUNTY CLERK FOR LAKE COUNTY, OREGON, ON DECEMBER 15, 2011 IN BOOK 2011, PAGE 001693; AND EACH OF SAID LINE OF CREDIT INSTRUMENTS WAS FURTHER AMENDED BY THAT CERTAIN SECOND AMENDMENT TO LINE OF CREDIT INSTRUMENT DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING RECORDED WITH THE COUNTY CLERK FOR KLAMATH COUNTY, OREGON ON DECEMBER 29, 2011 AS INSTRUMENT NUMBER 2011-014275 AND ALSO RECORDED WITH THE COUNTY CLERK FOR JACKSON COUNTY, OREGON ON DECEMBER 29, 2011 AS INSTRUMENT NUMBER 2011-040396 AND WITH THE COUNTY CLERK FOR LAKE COUNTY, OREGON, ON DECEMBER 29, 2011 AS INSTRUMENT NUMBER 2011-001754.

**THIRD AMENDMENT TO LINE OF CREDIT INSTRUMENT DEED OF TRUST,
ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FINANCING
STATEMENT AND FIXTURE FILING**

***RECORDED (I) AS INSTRUMENT NUMBER 2010-002919, AS AMENDED BY
INSTRUMENT NUMBER 2011-013842, AND BY INSTRUMENT NUMBER 2011-014275,
KLAMATH COUNTY, OREGON, (II) AS INSTRUMENT NUMBER 2010-007265, AS
AMENDED BY INSTRUMENT NUMBER 2011-038879 AND BY INSTRUMENT
NUMBER 2011-040396, JACKSON COUNTY, AND (III) AS INSTRUMENT NUMBER
M070021, AS AMENDED BY AN INSTRUMENT RECORDED IN BOOK 2011, PAGE
001693 AND BY INSTRUMENT NUMBER 2011-001754, LAKE COUNTY, OREGON***

THIS THIRD AMENDMENT TO LINE OF CREDIT INSTRUMENT, DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (this "Agreement"), made effective as of the 28th day of September, 2012, by JWTR OREGON, LLC, an Oregon limited liability company, whose principal place of business is 6400 Highway 66, Klamath Falls, Oregon 97601 (the "Trustor"), in favor of CHICAGO TITLE INSURANCE COMPANY having an address at 1211 SW 5th Avenue, Suite 2150, Portland, OR 97204 ("Trustee"); for the benefit of GENERAL ELECTRIC CAPITAL CORPORATION, together with its successors and assigns, any other lenders under the Credit Agreement described below and the other Secured Parties (as defined in the Credit Agreement), whose address for all purposes hereunder is 201

Merritt 7, Norwalk, CT 06851, Attn: Account Manager- JWTR (herein individually and collectively called "Beneficiary").

W I T N E S S E T H:

WHEREAS, reference is made to that certain Credit Agreement dated as of March 4, 2010, as amended by (i) that certain First Amendment to Credit Agreement dated as of August 23, 2010, (ii) that certain Second Amendment and Waiver to Credit Agreement dated as of December 17, 2010, (iii) that certain Third Amendment and Waiver to Credit Agreement dated as of January 1, 2011, (iv) that certain Waiver, Fourth Amendment and Consent to Credit Agreement dated as of October 28, 2011, (v) that certain Fifth Amendment to Credit Agreement dated as of December 29, 2011, (vi) that certain Waiver, Sixth Amendment and Consent to Credit Agreement dated as of March 23, 2012, and (vii) that certain Seventh Amendment to Credit Agreement dated as of May 21, 2012 (as amended, the "Existing Credit Agreement"), by and among Trustor, as "Borrower", the other Loan Parties signatory thereto and Beneficiary, as "Lender" (as each is defined in the Existing Credit Agreement);

WHEREAS, to secure the Obligations under the Existing Credit Agreement, Trustor executed and delivered to Beneficiary for the benefit of the Beneficiary that certain Line of Credit Instrument Deed of Trust, Assignment of Rents and Leases, Security Agreement, Financing Statement and Fixture Filing dated, made effective and recorded as of March 4, 2010 (i) as Instrument Number 2010-002919 in the County Clerk's Office of Klamath County, Oregon, and as amended by that certain Amendment to Line of Credit Instrument Deed of Trust, Assignment of Rents and Leases, Security Agreement, Financing Statement and Fixture Filing dated as of November 1, 2011 and recorded on December 15, 2011, as Instrument Number 2011-013842, and as further amended by that certain Second Amendment to Line of Credit Instrument Deed of Trust, Assignment of Rents and Leases, Security Agreement, Financing Statement and Fixture Filing dated as of December 29, 2011 and recorded on December 29, 2011, as Instrument Number 2011-014275 (ii) as Instrument Number 2010-007265 in the County Clerk's Office of Jackson County, Oregon, and as amended by that certain Amendment to Line of Credit Instrument Deed of Trust, Assignment of Rents and Leases, Security Agreement, Financing Statement and Fixture Filing dated as of November 1, 2011 and recorded on December 15, 2011 as Instrument Number 2011-038879, and as further amended by that certain Second Amendment to Line of Credit Instrument Deed of Trust, Assignment of Rents and Leases, Security Agreement, Financing Statement and Fixture Filing dated as of December 29, 2011 and recorded on December 29, 2011 as Instrument Number 2011-040396 and (iii) as Instrument Number M070021 in the County Clerk's Office of Lake County, Oregon, and as amended by that certain Amendment to Line of Credit Instrument Deed of Trust, Assignment of Rents and Leases, Security Agreement, Financing Statement and Fixture Filing dated as of November 1, 2011 and recorded on December 15, 2011 in Book 2011, Page 001693, and as further amended by that certain Second Amendment to Line of Credit Instrument Deed of Trust, Assignment of Rents and Leases, Security Agreement, Financing Statement and Fixture Filing dated as of December 29, 2011 and recorded on December 29, 2011 as Instrument Number 2011-001754 (collectively, the "Original Trust Deed") (all capitalized terms used herein without definition shall have the respective meanings given to them in the Original Trust Deed); and

WHEREAS, pursuant to that certain Eighth Amendment to Credit Agreement (the "Eighth Amendment") dated as of the date hereof by and between Trustor, the Guarantors and Beneficiary, Trustor and Beneficiary have agreed to, among other things, (i) extend the maturity date of the loans from the 3rd anniversary of the Closing Date to the 5th anniversary of the Closing Date, (ii) decrease the amount of the Tranche B Commitment (as defined in the Existing Credit Agreement), and (iii) to increase the amount of the Tranche A Loan (as defined in the Existing Credit Agreement)

WHEREAS, and in order to effectuate and secure the Nine Hundred Forty-Four Thousand Dollar (\$944,000.00) increase in the Tranche A Loan, the Trustor has granted, executed and delivered this Agreement to modify the Original Trust Deed as herein provided.

NOW, THEREFORE, in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00) and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and to secure the repayment and performance of the Secured Indebtedness, Trustor and Beneficiary with the consent of Trustee, hereby agree as follows:

1. **Modifications to Trust Deed.** The Original Trust Deed shall be, and the same hereby is, modified and amended to provide as follows:

(a) The last paragraph on the cover page is hereby deleted in its entirety and replaced with the following:

"THE MAXIMUM PRINCIPAL AMOUNT TO BE ADVANCED PURSUANT TO THE PROMISSORY NOTES SECURED BY THIS DEED OF TRUST IS \$48,144,000.00 THE TERM OR MATURITY DATE OF THE PROMISSORY NOTES SECURED BY THIS DEED OF TRUST EXCLUSIVE OF ANY OPTIONS TO RENEW OR EXTEND IS MARCH 4, 2015."

(b) Any references to "Maturity Date" on the cover page shall replace "March 4, 2013" with "March 4, 2015".

(c) Any reference to "Maximum Secured Amount" on the cover page shall replace "53,000,000" with "48,144,000".

(d) The first and second "WHEREAS" paragraphs in the Recitals are hereby deleted in their entirety and replaced with the following:

"WHEREAS, reference is made to that certain Credit Agreement dated as of March 4, 2010, as amended by (i) that certain First Amendment to Credit Agreement dated as of August 23, 2010, (ii) that certain Second Amendment and Waiver to Credit Agreement dated as of December 17, 2010, (iii) that certain Third Amendment and Waiver to Credit Agreement dated as of January 1, 2011, (iv) that certain Waiver, Fourth Amendment and Consent to Credit Agreement dated as of October 28, 2011, (v) that certain Fifth Amendment to Credit Agreement dated as of December 29, 2011, (vi) that certain Waiver, Sixth Amendment and Consent to Credit Agreement dated as of March 23, 2012, (vii) that certain Seventh Amendment to Credit Agreement dated as of May 21, 2012 and (viii) that certain Eighth Amendment to Credit Agreement dated as of

September 28 2012 (as it may hereafter be amended, supplemented, assigned, modified and/or restated, the "Credit Agreement"), by and among Trustor, as "Borrower", the other Loan Parties signatory thereto and Beneficiary, as "Lender" (as each is defined in the Credit Agreement), pursuant to which, subject to certain terms and conditions, Beneficiary has agreed to make a certain Loan to the Trustor;

WHEREAS, the loans and other extensions of credit from time to time by Beneficiary to Borrower are evidenced by the Credit Agreement and those certain Notes in an aggregate principal amount of \$48,144,000.00;"

(e) The term "Notes" as defined in the third "WHEREAS" paragraph in the Recitals is hereby deleted in its entirety and replaced with the following:

"The term "Notes" shall mean, collectively, with respect to the Loan, those certain promissory notes as defined in the Credit Agreement in the aggregate principal amount of FORTY-EIGHT MILLION ONE HUNDRED FORTY-FOUR THOUSAND AND NO/100 DOLLARS (\$48,144,000.00), including that certain Second Amended and Restated Tranche A Note dated as of September 28, 2012 and that certain Amended and Restated Tranche B Note dated as of September 28, 2012 issued from time to time by Trustor as Borrower to Beneficiary under the Credit Agreement, and any other promissory note issued by Trustor to evidence the obligations of Trustor to repay advances made pursuant to the Credit Agreement, and any extensions, renewals, or amendments to, or replacements or restatements of the foregoing;"

2. **References to Trust Deed.** All references to the "Trust Deed" herein and to "Deed of Trust" in the Original Trust Deed shall be to the Original Trust Deed as modified by this Agreement and as further amended, modified, restated, supplemented, extended or renewed from time to time. All references to "Mortgages" in the Credit Agreement shall include the Original Trust Deed as amended hereby.

3. **References to Credit Agreement.** All references to the "Credit Agreement" herein shall be to the Credit Agreement as defined in the first "WHEREAS" paragraph above and as further amended, modified, restated, supplemented, extended or renewed from time to time, which includes all modifications made pursuant to the Eighth Amendment.

4. **Miscellaneous.**

(a) The Trustor acknowledges that the Trustor, as of the date of this Agreement, has no set off, counterclaim, or other defense to the rights of the Beneficiary under the Trust Deed, and the Trustor hereby ratifies and affirms the Trust Deed and its obligations thereunder. The Trustor further acknowledges that, as of the date of this Agreement, there has been no default or event of default under the Trust Deed that has not been cured and there has been no occurrence which, with the lapse of time, would constitute a default or event of default under the Trust Deed.

(b) The Trustor acknowledges that the lien of the Trust Deed secures the Secured Indebtedness, including, without limitation, the Obligations, both as defined in the Trust Deed.

(c) Except as specifically amended, extended or modified herein, all other covenants, terms and conditions of the Original Trust Deed shall remain in full force and effect, and the Trustor hereby acknowledges and confirms its obligations thereunder.

(d) This Agreement shall bind and inure to the benefit of the parties hereto, and their successors and assigns.

(e) The Trustor agrees that nothing herein contained shall impair the security now held or the said Secured Indebtedness, nor shall anything contained herein waive, annul, vary or affect any provision, condition, covenant or agreement contained in the Original Trust Deed except as amended hereby, or affect or impair any priority, security, rights, power or remedies under the Secured Indebtedness, the Original Trust Deed, or any of the Loan Documents. The Trustor further agrees that the Beneficiary reserves all rights and remedies it may have as against all parties liable for repayment of the indebtedness set forth above evidenced by the Secured Indebtedness.

(f) The recitals on pages 1 and 2 of this Agreement and the statements on the face page of this Agreement are incorporated in and made a part of this Agreement.

(g) The Trustor and the Beneficiary acknowledge and agree that (i) the Eighth Amendment does not constitute a novation of the Credit Agreement or the indebtedness described in the Credit Agreement; (ii) the issuance of new Notes in replacement of, and in substitution for, the promissory notes previously delivered pursuant to the Existing Credit Agreement shall not be construed as a novation and shall not affect, diminish or abrogate Trustor's liability under the Trust Deed or the priority of the Trust Deed; and (iii) modifications to the Original Trust Deed set forth in this Agreement do not constitute a novation.

(h) This Agreement shall be governed by, and construed and enforced in accordance with the laws of Oregon.

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY THE LENDER (BENEFICIARY) CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY LENDER (BENEFICIARY) TO BE ENFORCEABLE.

This Agreement may be executed in separate counterparts by the parties hereto and all of which will constitute collectively one executed Agreement.


[Signature Pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal of and the day and year first written above.

ASSIGNOR:

JWTR OREGON, LLC

By: JWTR, LLC, its Manager

By: 
Thomas Ludlow, Vice President

State of Oregon

County of Clatsop

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **Thomas Ludlow**.



(Official Seal)


Catherine Marie Chapel
Notary Public Official Signature

Print or Type Name: Catherine Marie Chapel

My Commission Expires: June 10, 2016

BENEFICIARY:

**GENERAL ELECTRIC CAPITAL
CORPORATION, as Beneficiary**

By: 
Name: David L'Homme
Title: Duly Authorized Signatory

State of Connecticut

County of Fairfield

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **David L'Homme**.

Mary E. Procaccini
Notary Public Official Signature

Print or Type Name:

MARY E. PROCACCINI
NOTARY PUBLIC
MY COMMISSION EXPIRES APR. 30, 2015

(Official Seal)

My Commission Expires: MY COMMISSION EXPIRES APR. 30, 2015