

NTC 86563

2012-010791

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 ASSIGNMENT OF LEASES AND RENTS**

**BY:**

**ASSIGNOR:** JWTR OREGON, LLC, an Oregon limited liability company, whose principal place of business is 6400 Highway 66, Klamath Falls, Oregon 97601 (the "Assignor"), and

**LENDER:** 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 "Lender")

THIS AGREEMENT AMENDS THAT CERTAIN ASSIGNMENT OF LEASES AND RENTS RECORDED WITH THE COUNTY CLERK FOR KLAMATH COUNTY, OREGON ON MARCH 4, 2010 AS INSTRUMENT NUMBER 2010-002920, AND ALSO RECORDED WITH THE COUNTY CLERK FOR JACKSON COUNTY, OREGON, ON MARCH 4, 2010 AS INSTRUMENT NUMBER 2010-007266 AND WITH THE COUNTY CLERK FOR LAKE COUNTY, OREGON, ON MARCH 4, 2010 AS INSTRUMENT NUMBER M0700133; EACH OF SAID ASSIGNMENTS OF LEASES AND RENTS WAS AMENDED BY THAT CERTAIN AMENDMENT TO ASSIGNMENT OF LEASES AND RENTS RECORDED WITH THE COUNTY CLERK FOR KLAMATH COUNTY, OREGON ON DECEMBER 15, 2011 AS INSTRUMENT NUMBER 2011-013843 AND ALSO RECORDED WITH THE COUNTY CLERK FOR JACKSON COUNTY, OREGON ON DECEMBER 15, 2011 AS INSTRUMENT NUMBER 2011-038880 AND WITH THE COUNTY CLERK FOR LAKE COUNTY, OREGON, ON DECEMBER 15, 2011 IN BOOK 2011, PAGE 001694; EACH OF SAID ASSIGNMENTS OF LEASES AND RENTS WAS FURTHER AMENDED BY THAT CERTAIN SECOND AMENDMENT TO ASSIGNMENT OF LEASES AND RENTS RECORDED WITH THE COUNTY CLERK FOR KLAMATH COUNTY, OREGON ON DECEMBER 29, 2011 AS INSTRUMENT NUMBER 2011-014276 AND ALSO RECORDED WITH THE COUNTY CLERK FOR JACKSON COUNTY, OREGON ON DECEMBER 29, 2011 AS INSTRUMENT NUMBER 2011-040397 AND WITH THE COUNTY CLERK FOR LAKE COUNTY, OREGON, ON DECEMBER 29, 2011 AS INSTRUMENT NUMBER 2011-001755

### **THIRD AMENDMENT TO ASSIGNMENT OF LEASES AND RENTS**

***RECORDED (I) AS INSTRUMENT NUMBER 2010-002920, AS AMENDED BY INSTRUMENT NUMBER 2011-013843, AS AMENDED BY INSTRUMENT NUMBER 2011-014276 KLAMATH COUNTY, OREGON, (II) AS INSTRUMENT NUMBER 2010-007266, AS AMENDED BY INSTRUMENT NUMBER 2011-038880, AS AMENDED BY INSTRUMENT NUMBER 2011-040397 JACKSON COUNTY, OREGON AND (III) AS INSTRUMENT NUMBER M0700133, AS AMENDED BY AN INSTRUMENT RECORDED IN BOOK 2011, PAGE 001694, AS AMENDED BY INSTRUMENT NUMBER 2011-001755 LAKE COUNTY, OREGON.***

THIS **THIRD AMENDMENT TO ASSIGNMENT OF LEASES AND RENTS** (this "Agreement"), made effective as of the 28<sup>th</sup> 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 "Assignor"), to **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 "Lender").

### **WITNESSETH:**

**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 Assignor, as "Borrower", the other Loan Parties signatory thereto and Lender, as "Lender" (as each is defined in the Existing Credit Agreement);

**WHEREAS**, to secure the Secured Indebtedness under the Existing Credit Agreement, Assignor executed and delivered to Lender that certain Assignment of Leases and Rents dated, made effective and recorded as of March 4, 2010 (i) as Instrument Number 2010-002920 in the County Clerk's Office of Klamath County, Oregon, and as amended by that certain Amendment to Assignment of Leases and Rents dated as of November 1, 2011 and recorded on December 15, 2011 as Instrument Number 2011-013843, and as further amended by that certain Second Amendment to Assignment of Leases and Rents recorded on December 29, 2011 as Instrument Number 2011-014276, (ii) as Instrument Number 2010-007266 in the County Clerk's Office of Jackson County, and as amended by that certain Amendment to Assignment of Leases and Rents dated as of November 1, 2011 and recorded on December 15, 2011, as Instrument Number 2011-

038880, and as further amended by that certain Second Amendment to Assignment of Leases and Rents recorded on December 29, 2011 as Instrument Number 2011-040397 and (iii) as Instrument Number M0700133 in the County Clerk's Office of Lake County, Oregon, as amended by that certain Amendment to Assignment of Leases and Rents dated as of November 1, 2011 and recorded on December 15, 2011 in Book 2011, Page 001694, and as further amended by that certain Second Amendment to Assignment of Leases and Rents recorded on December 29, 2011 as Instrument Number 2011-001755 (as so amended, the "Original Assignment") (all capitalized terms used herein without definition shall have the respective meanings given to them in the Original Assignment); and

**WHEREAS**, pursuant to that certain Eighth Amendment to Credit Agreement (the "Eighth Amendment") dated as of the date hereof by and between Assignor, the Guarantors and Lender, Assignor and Lender have agreed to (i) extend the maturity date of the loans from the 3<sup>rd</sup> anniversary of the Closing Date to the 5<sup>th</sup> 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); and

**WHEREAS**, in order to effectuate and secure the Nine Hundred Forty-Four Thousand Dollar (\$944,000.00) increase in the Tranche A Loan, the Assignor has granted, executed and delivered this Agreement to modify the Original Assignment 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, Assignor and Lender hereby agree as follows:

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

(a) 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 Assignor, as "Borrower", the other Loan Parties signatory thereto and Lender, as "Lender" (as each is defined in the Credit Agreement), as to the Loan (as defined herein below and in the

Credit Agreement), pursuant to which, subject to certain terms and conditions, Lender has agreed to make a certain Loan to Assignor;

**WHEREAS**, Assignor and Lender hereby agree that, as used hereinafter in this Agreement, the term "Notes" shall mean, collectively, 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 Assignor to Lender, and any other promissory note issued by Assignor to evidence the obligations of Assignor to repay advances made under the loan pursuant to the Credit Agreement, and any extensions, renewals, or amendments to, or replacements or restatements of the foregoing (hereinafter referred to as the "Loan");"

2. **References to Assignment.** All references to the "Assignment" herein and to "this Agreement" in the Original Assignment shall be to the Original Assignment as modified by this Agreement and as further amended, modified, restated, supplemented, extended or renewed from time to time.

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 Assignor acknowledges that the Assignor, as of the date of this Agreement, has no set off, counterclaim, or other defense to the rights of the Lender under the Assignment, and the Assignor hereby ratifies and affirms the Assignment and its obligations thereunder. The Assignor further acknowledges that, as of the date of this Agreement, there has been no default or event of default under the Assignment 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 Assignment.

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

(c) Except as specifically amended, extended or modified herein, all other covenants, terms and conditions of the Original Assignment shall remain in full force and effect, and the Assignor 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 Assignor 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 Assignment except as amended hereby, or affect or impair any priority, security, rights, power or remedies under the Secured Indebtedness, the Original Assignment, or any of the Loan Documents. The Assignor further agrees that the Lender 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 Assignor and the Lender 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 Assignor's liability under the Assignment or the priority of the Assignment; and (iii) modifications to the Original Assignment 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 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 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.

**TRUSTOR:**

**JWTR OREGON, LLC**

By: JWTR, LLC, its Manager

By:   
Thomas Ludlow, Vice President

State of Oregon

County of Klamath

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

**LENDER:**

**GENERAL ELECTRIC CAPITAL  
CORPORATION, as Lender**

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: \_\_\_\_\_

(Official Seal)

**MARY E. PROCACCINI**  
**NOTARY PUBLIC**  
My Commission Expires: \_\_\_\_\_ **MY COMMISSION EXPIRES APR. 30, 2015**