

Jackson County Official Records **2018-030892**
R-TD **10/03/2018 03:03:10 PM**
Str=10 SHINGLJS
\$55.00 \$10.00 \$5.00 \$8.00 \$11.00 \$60.00 **\$153.00**
\$4.00
I, Christine Walker, County Clerk for Jackson County, Oregon, certify
that the instrument identified herein was recorded in the Clerk
records. Christine Walker - County Clerk

2018-012149
Klamath County, Oregon
10/03/2018 03:29:00 PM
Fee: \$137.00

AmecTitle 246356am-TO

Second Lien

DEED OF TRUST, SECURITY AGREEMENT

**THIS DEED OF TRUST IS TO BE RECORDED IN THE REAL ESTATE RECORDS
OF THE COUNTIES IN WHICH IS SITUATED ANY OF THE REAL PROPERTY
COLLATERAL COVERED HEREBY, TO WIT: JACKSON COUNTY AND KALMATH
COUNTY, STATE OF OREGON**

When recorded return to:

Dilligaf Investments LLC
PO Box 2869
White City, OR 97523

Dated as of October 3, 2018

By

Throop Family Holdings, Inc

as Grantors

To

AmecTitle, Inc

as Trustee

For the Benefit of

Dilligaf Investments, LLC

as Beneficiary

related to the following premises:

and

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

THIS SECOND LIEN DEED OF TRUST and SECURITY AGREEMENT, (this "Deed of Trust"), dated as of ~~May 25, 2007~~ ^{Oct 3, 2018}, is executed and delivered by Throop Family Holding Inc, with an address at 1202 Woodrow Lane Medford OR 97504 ("Grantors"), to Diligat Investments, LLC, having an address at PO Box 2869 White City OR 97503, their successors or substitutes ("Trustee"), for the benefit of Diligat Investments, LLC (together with their successors and assigns, "Beneficiary").

RECITALS

WHEREAS, pursuant to the Second Promissory Note, dated as of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and among Grantors which are parties thereto (collectively, the "Borrowers"), Beneficiary has agreed to make a loan to the Borrowers upon the terms and subject to the conditions set forth therein;

WHEREAS, Grantors are the owners and holders of fee simple title in and to all of the real estate located in Jackson County, State of Oregon and Klamath County, State of Oregon, more fully described in Exhibit A attached hereto (the "Premises"), which Premises are a portion of the Property described below; and

WHEREAS, it is a condition to the obligation of Beneficiary to make a loan to the Borrowers under the Loan Agreement that the Grantors shall have executed and delivered this Deed of Trust to Beneficiary;

NOW, THEREFORE, in consideration of the premises and to induce Beneficiary to enter into the Loan Agreement and to Beneficiary to make a loan to the Borrowers thereunder, Grantors hereby agrees with Beneficiary as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Unless otherwise defined herein, terms defined in the Loan Agreement and used herein have the meanings given to them in the Loan Agreement. As used herein, the following terms shall have the following meanings:

(a) **"Deed of Trust"** has the meaning set forth in the Preamble.

(b) **"First Lien Deed of Trust"** means that certain Deed of Trust, Security Agreement, dated 9-28-18 given by Grantors to Newtek Small Business Finance, LLC, as trustee, for the benefit of Beneficiary, recorded in the Deed Records of JACKSON COUNTY AND KLAMATH COUNTY under File Nos. 2018-030872 2018-012139, as the same may be amended, restated, supplemented or otherwise modified from time to time.

(c) **"Grantors"** means the person or persons named at the beginning of this instrument as Grantor, and any subsequent owner or owners of the Property.

(d) **"Indebtedness"** means (1) the Obligations, and (2) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Grantors or any Loan Party to Beneficiary or any of the Secured Parties pursuant to or in connection with the Loan Agreement. This Deed of Trust secures any future advances under the Loan Agreement.

(e) **"Property"** means all of the described property, rights, privileges, interests and franchises more particularly described in paragraphs (1) through (7) below:

- (1) the Premises;
- (2) all and singular the tenements, hereditaments, easements, appurtenances, passages (and all waters, water courses and riparian rights, if any), pipes, conduits, electrical and other utility lines, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to the Premises, including any other claim at law or in equity as well as any after acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof, and all of the estate, right, title, claim or demand whatsoever of Grantor therein and in the streets, ways and areas adjacent thereto;
- (3) all buildings and other improvements of every kind and description now or hereafter erected or placed on the Premises or any part thereof owned by the Grantor (the **"Improvements"**);

- (4) all of the estate, right, title and interest now owned or hereafter acquired by Grantors in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or in connection with the Premises;
 - (5) all transferable construction and other similar agreements and contracts, written or oral, express or implied, now or hereafter entered into arising or in any manner related to the construction, design, or improvement of the Premises, Fixtures, or Improvements, or any combination thereof, including all performance bonds, construction guaranties, warranties, construction contracts, architects agreements, general contract agreements, design agreements, engineering agreements, technical service agreements, architectural plans and specifications, (the **"Property Agreements"**);
 - (6) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any portion of the Land, Improvements, Fixtures, Personal or Leases (the **"Condemnation Awards"**); and
 - (7) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, but without limitation, proceeds of insurance, and proceeds of condemnation awards and awards for restriction of access to, or change of grade of, streets, and all accessions, replacements and substitutions of the foregoing of every type and all proceeds and products thereof (the **"Proceeds"**). As used in this Deed of Trust, the term "Property" shall mean all or, where the context permits or requires, any portion of the above or any interest of Grantor therein.
- (f) **"Trustee"** has the meaning set forth in the Preamble.

Section 1.2 References to "Sections" shall be to Sections of this Deed of Trust unless otherwise specifically provided. Section headings in this Deed of Trust are included herein for convenience of reference only and shall not constitute a part of this Deed of Trust for any other purpose or be given any substantive effect. The rules of construction set forth in the Loan Agreement shall be applicable to this Deed of Trust mutatis mutandis. If any conflict exists between this Deed of Trust and the Loan Agreement, the Loan Agreement shall govern.

Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

ARTICLE 2

GRANT

Section 2.1 To secure the full, prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Indebtedness, Grantors have GRANTED, MORTGAGED, BARGAINED, ASSIGNED, SOLD AND CONVEYED, and by these presents does GRANT, MORTGAGE, BARGAIN, ASSIGN, SELL AND CONVEY WITH POWER OF SALE, to Trustee, the Property. TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the Trustee, his substitutes or successors, forever, in trust, however, for the benefit of Beneficiary and its successors and assigns, upon the terms, provisions and conditions herein set forth.

ARTICLE 3

REMEDIES

Section 3.1 Grantors specifically agree that after any sale under this Deed of Trust, it, or its successors or assigns, shall be mere tenants at sufferance of the purchaser of the Property, or any part thereof at such Trustee's sale, and that such purchaser shall be entitled to the immediate possession thereof, and upon failure to surrender possession, the purchaser as landlord, shall have the right to go into any Justice of the Peace Court in the precinct and county in which the Property is located, and file an action for forcible entry and detainer, which action shall lie against Grantors, their successors or assigns, as tenants of such purchaser. This remedy is cumulative of any and all other remedies the purchaser may have hereunder or otherwise.

Section 3.2 If an Event of Default shall occur, Beneficiary may require Trustee to sell all or part of the Property, at public auction, to the highest bidder for cash, at the location designated by the Court of the county in which the Property is located or, if no such designation has been made, at the door of the county courthouse of the county in Oregon in which such Property or any part thereof is situated, after giving notice of the time, place, and terms of said sale and of the property to be sold by posting written notice of the sale at the place and/or places designated by the State of Oregon and the County in which the property is located, and by filing a copy of the notice in the office of the county clerk of the county in which the sale is to be made in accordance with the laws of the state of Oregon and the County in which the property is located. In addition, Beneficiary shall, provide any additional notice required by the State of Oregon and in the County in which the property is located.

Section 3.3 The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Trustee or Beneficiary (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law: first, to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (a) receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (b) court costs, (c) reasonable attorneys' and accountants' fees and expenses, and (d) costs of advertisement; and second, as provided in the Loan Agreement.

Section 3.4 Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale thereof, and such purchaser shall not be responsible for the application thereof. The sale or sales by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and, if the proceeds of such sale or sales of less than the whole of the Property shall be less than the aggregate of the indebtedness and the expenses thereof, this Deed of Trust and the lien, security interest, and assignment hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale or sales had been made; provided, however, that Grantors shall never have any right to require the sale or sales of less than the whole of the Property, but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property.

Section 3.5 If an Event of Default occurs, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness due, and if sale is made because of default in the payment of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the indebtedness; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the indebtedness, but as to such matured part this Deed of Trust shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of any indebtedness. At any such sale the purchaser may disaffirm any easement granted, or rental, lease, or other contract made, in violation of any provision of this Deed of Trust, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or lease contract. Beneficiary may bid and become the purchaser of all or any part of the Property at any trustee's or foreclosure sale hereunder, and the amount of Beneficiary's successful bid may be credited on the indebtedness.

Section 3.6 Neither the enforcement of any of the remedies under this Article, the assignment of the Rents and Leases hereunder, the security interests hereunder, nor any other remedies afforded to Beneficiary or the Lenders under the Loan Documents, at law or in equity shall cause Beneficiary or any Lenders to be deemed or construed to be a mortgagee in possession of the Property, to obligate Beneficiary or any Lenders to lease the Property or

attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 4

TRUSTEE

Section 4.1 If the Trustee shall die or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by the Beneficiary to do so, or if, for any reason, the Beneficiary shall prefer to appoint a substitute trustee to act instead of the Trustee herein named, or any substitute trustee previously appointed, the Beneficiary shall have the full power to appoint, by written instrument a substitute trustee, or several substitute trustees in succession, who shall succeed to all of the estate, rights, powers and duties of the Trustee herein named.

Section 4.2 Except for gross negligence or willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by him in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon.

Section 4.3 To the extent that this Deed of Trust or applicable law authorizes or empowers Beneficiary to exercise any remedies set forth herein or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Oregon) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Oregon. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

ARTICLE 5

MISCELLANEOUS

Section 5.1 To the extent that proceeds of the Obligations are used to pay any outstanding lien, charge or encumbrance affecting the Property, such proceeds have been

advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, that the terms and provisions hereof shall govern the rights and remedies of Beneficiary and shall supersede the terms, provisions, rights, and remedies under another lien or liens to which Beneficiary is subrogated hereunder.

Section 5.2 No waiver of any default on the part of Grantors or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the Obligations shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. Acceptance by Beneficiary of partial payments shall not constitute a waiver of the default by failure to make full payments.

Section 5.3 To the extent that Grantors may lawfully do so, Grantors hereby expressly waives any right pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matter to defeat, reduce or affect the right of Beneficiary to sell the Property for the collection of the Obligations (without any or different resort for collection), or the right of Beneficiary to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other person and claimant.

Section 5.4 To the fullest extent permitted by law, Grantors hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantors by virtue of any present or future law or judicial decision exempting the Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any Event of Default or of Beneficiary's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Credit Documents, except as required to be provided under the Loan Agreement; and (c) any right to a sale in inverse order of alienation. Grantors waive any statutory right of redemption and equity of redemption.

Section 5.5 Grantors hereby waive appraisal, or does not waive appraisal, at the option of the Beneficiary, to be exercised at any time prior to or at entry of judgment in any action to foreclose this Deed of Trust. Grantors expressly agree that the Trustee may offer the Property as a whole or in such parcels or lots as the Beneficiary, in its sole discretion elects, regardless of the manner in which the Property may be described. Furthermore, in the event an interest in any of the Property is foreclosed upon pursuant to a judicial or non-judicial foreclosure sale, the Grantors agree that Beneficiary or Trustee, as the case may be, shall be entitled to seek a deficiency judgment from the Grantors and any other party obligated in respect of the Obligations equal to the difference between the amount of the Obligation.

Section 5.6 In the event that the amount secured by the Deed of Trust is less than the Indebtedness, then the amount secured shall be reduced only by the last and final sums that Borrowers repay with respect to the Indebtedness and shall not be reduced by any intervening repayments of the Indebtedness unless arising from the Property. So long as the

balance of the Indebtedness exceeds the amount secured, any payments of the Indebtedness shall not be deemed to be applied against, or to reduce, the portion of the Indebtedness secured by this Deed of Trust. Such payments shall instead be deemed to reduce only such portions of the Indebtedness as are secured by other collateral located outside of the state in which the Property is located or as are unsecured.

Section 5.7 All obligations contained in this Deed of Trust are intended by Grantors and Beneficiary to be, and shall be construed as, covenants running with the Property. As used herein, "Grantors" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Property. All Persons who acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary. In addition, all of the covenants of Grantors in any Loan Document party thereto are incorporated herein by reference and, together with covenants in this Section, shall be covenants running with the land.

Section 5.8 (a) At the time provided in the Loan Agreement, the Property shall be released from the Lien created hereby and this Deed of Trust and all obligations (other than those expressly stated to survive such termination) of the Beneficiary and Grantors hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Property shall revert to the Grantors. At the request of Grantors following any such termination, the Beneficiary shall execute and deliver to Grantors such documents as Grantors shall reasonably request to evidence such termination.

(b) If the Beneficiary shall be directed or permitted pursuant to the Loan Agreement to release any Lien or any portion of the Property, such Property shall be released from the Lien created hereby to the extent provided under, and subject to the terms and conditions set forth in the Loan Agreement. In connection therewith, the Beneficiary, at the request of Grantors, shall execute and deliver to Grantors such documents as Grantors shall reasonably request to evidence such release.

Section 5.9 THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERCEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO.

Section 5.10 By acceptance hereof, Beneficiary agrees that the First Lien Deed of Trust and all amounts secured by the First Lien Deed of Trust (including all future advances secured thereby) shall have priority over this Deed of Trust and the Indebtedness secured hereby. The priorities specified herein shall be applicable irrespective of the time or order of attachment or perfection of security or mortgage interests, the time or order of filing of financing statements or mortgages, the time or order of making advances secured by the First

Lien Deed of Trust, or the giving or failure to give any notice required hereby or thereby, or by law.

EXECUTED as of the date first hereinabove written.

GRANTOR

Throop Family Holdings Inc
[Signature] President

By: _____

Name: _____

Title: _____

State of Oregon }
 }ss.
County of Jackson }

On this 3 day of October, in the year 2018, before me, Melanie Valentine Smith, a Notary Public in and for said state, personally appeared Patrick John Throop known to me to be the President of the Throop Family Holdings, Inc., Corporation, and acknowledged to me that pursuant to a Resolution of the Board of Directors, he/she executed the foregoing in said Corporation name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
Notary Public for the State of Oregon
Residing at: Jackson County
Commission Expires: 11/29/2019

EXHIBIT "A"

246356AM

PARCEL 1:

Lot 10, Block 4 Agate Subdivision Extension No. 1, in Jackson County, Oregon.

PARCEL 2:

Parcel 2 of Land Partition 43-97, being a portion of Lot 2 in Block 4 of Tract 1080-Washburn Park Situated in SW1/4 SW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.