

2007-013951

Klamath County, Oregon



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08/07/2007 03:33:05 PM

Fee: \$91.00

MTC50936

Recording Requested and

When Recorded Return to:

Toyota Motor Credit Corporation

Legal Department, Mail Drop EF12

19001 S. Western Avenue

P.O. Box 2958

Torrance, CA 90509

Attn: Lino J. Lauro

MODIFICATION AGREEMENT NO. 2 OF A TRUST DEED

(Line of Credit Deed of Trust and Subordination Agreement and other
Loan Documents)

The address of the entity holding a lien or other interest by this instrument is Toyota Motor Credit Corporation, a California corporation, as Beneficiary, whose address is 19001 South Western Avenue, P.O. Box 2958, Torrance, California 90509-2958, Attn: Operations Manager

The tax account number of the property subject to the lien or in which the interest is R 5 2 7 3 3 5.

Map 39-09-03CB
Tax Lot 1100

TERM OF CREDIT AGREEMENT: July 1, 2010

MODIFICATION AGREEMENT NO. 2 OF A TRUST DEED
(Line of Credit Deed of Trust and Subordination Agreement and other Loan Documents)
(Klamath Falls)

This Modification Agreement No. 2 of a Trust Deed ("**Modification**") dated as of July 6, 2007 is made and entered into among TOYOTA MOTOR CREDIT CORPORATION, a California corporation ("**TMCC**"), LITHIA REAL ESTATE, INC., an Oregon corporation ("**Borrower**"), and LITHIA KLAMATH, INC., a Oregon corporation ("**Dealer**" or "**Guarantor**"), with reference to the following facts:

A. Borrower and TMCC are parties to the Amended and Restated Revolving Loan and Security Agreement, dated as of May 10, 2002 (as amended or otherwise modified from time to time, the "**Loan Agreement**"), pursuant to which TMCC agreed, subject to the terms and conditions therein contained, to make "Advances" (as defined in the Loan Agreement) to Borrower which could be converted into Term Loans (as defined in the Loan Agreement).

B. Pursuant to the terms of the Loan Agreement, Borrower converted one or more Advances under the Loan Agreement into a single Term Loan in the original aggregate principal amount of FOUR MILLION FOUR HUNDRED TEN THOUSAND AND NO/100 DOLLARS (\$4,410,000.00) (the "**Term Loan**"), as evidenced by the Promissory Note, dated as May 27, 2003, in favor of TMCC or its order (as amended or modified from time to time, the "**Note**").

C. The Term Loan is secured by a first priority lien on real property and improvements more particularly described on Exhibit A attached hereto ("**Property**") under the Line of Credit Deed of Trust, Security Agreement and Financing Statement (Fixture Filing), dated as of May 10, 2002, among Borrower, as grantor, Chicago Title Company, as trustee, and TMCC, as beneficiary, and recorded in the official records of Klamath County, Oregon on May 17, 2002 in Vol. M02, Page 29403, as amended by the Modification Agreement No. 1, dated May 27, 2003 and recorded in the official records of Klamath County, Oregon on June 16, 2003, in Vol. M03, Page 41025 (as amended or modified from time to time, the "**Deed of Trust**").

D. In connection with the Deed of Trust, Guarantor and TMCC entered into the Subordination, Nondisturbance and Attornment Agreement dated May 10, 2002, and recorded in the official records of Klamath County, Oregon on May 17, 2002, in Vol. M02, Page 29437 (as amended or modified from time to time, the "**Subordination**"). The Note, Loan Agreement, the Deed of Trust, Subordination, any hazardous substances indemnity instrument, and all other documents now or hereafter executed which evidence or further secure the Term Loan, as they may from time to time be modified, supplemented, extended or renewed, are herein collectively referred to as the "**Loan Documents**".

E. Borrower has requested the Maturity Date of the Term Loan be extended for an additional twenty-four (24) months as further described herein.

F. TMCC is willing to agree to Borrower's request on the conditions that a new interest rate be established during such additional 24 month period and that the Loan Documents be amended as provided herein.

NOW, THEREFORE, in consideration of the foregoing facts and the mutual covenants and conditions set forth herein, the parties hereto, intending to be legally bound, hereby agree to amend the Note and other Loan Documents as follows:

1. Definitions. All capitalized terms used herein shall have the meanings ascribed to them in the Note unless otherwise specifically defined herein.


2. Maturity Date. The Maturity Date of the Term Loan is hereby modified to be July 1, 2010 ("**Maturity Date**"), at which time all unpaid principal and accrued interest shall be due and payable, unless the Maturity Date is extended in accordance with the terms and conditions set forth therefor in the Loan Agreement.

3. Interest Rate. Effective from and after July 1, 2008 (the "**Interest Change Date**"), the interest rate on the Term Loan ("**Interest Rate**") shall be modified to provide that interest on the unpaid principal balance from time to time outstanding on the Term Loan shall accrue at either (i) the fluctuating monthly per annum rate of (x) the three (3) month London Interbank Offered Rate ("**LIBOR**") plus (y) a per annum margin to be determined by TMCC in its discretion (the "**LIBOR Margin**") or (ii) the fixed rate per annum rate of (x) the five (5) year swap rate published by Bloomberg Financial in effect as of the Interest Change Date as the mid-price "USSWAP 5 Index" (the "**SWAP Index**") plus (y) a per annum margin to be determined by TMCC in its discretion (the "**SWAP Margin**"). On a date which is at least 45, but no more than 60 days prior to the Interest Change Date, the Borrower shall provide TMCC a written request to specify the LIBOR Margin and the SWAP Margin that would apply on the Interest Change Date, and TMCC shall have 10 business days to specify such margins in writing to Borrower. From and after the date that Borrower receives such margins from TMCC, Borrower shall have 10 business days to elect in writing to TMCC whether the Interest Rate shall be based upon LIBOR or the SWAP Index. On the Interest Change Date, the Interest Rate shall automatically be modified to reflect either LIBOR or the SWAP Index, as specified by Borrower, plus either the LIBOR Margin or the SWAP Margin, as applicable, specified by TMCC. If Borrower fails to make any election under this provision in a timely manner, Borrower hereby agrees that TMCC shall determine whether the Interest Rate shall be based upon LIBOR or the SWAP Index plus the LIBOR Margin or SWAP Margin specified by TMCC.

If the new Interest Rate for the Term Loan is based on LIBOR, LIBOR shall be initially determined based on LIBOR in effect on the Interest Change Date and the Interest Rate shall be adjusted, as necessary, on the first calendar day of each month, based on LIBOR in effect as of the last business day of the preceding month.

If the new Interest Rate for the Term Loan is based on the Swap Index, then (i) interest shall be calculated on the basis of a year of 360 days applied to the actual number of days elapsed on the unpaid principal balance and (ii) Borrower further hereby acknowledges the following: THE NEW FIXED INTEREST RATE FOR THIS TERM LOAN IS BASED ON THE 5-YEAR SWAP RATE. IF AFTER THE INTEREST CHANGE DATE BUT PRIOR TO THE MATURITY DATE, THE TERM LOAN IS

EITHER PREPAID (FOR ANY REASON, VOLUNTARILY OR INVOLUNTARILY) OR BORROWER WISHES TO CHANGE THE INTEREST RATE, THEN BORROWER SHALL PAY BREAKAGE COSTS ("**BREAKAGE COSTS**"). BREAKAGE COSTS WILL BE DETERMINED BY (I) COMPUTING THE DIFFERENCE BETWEEN THE 5-YEAR SWAP RATE IN EFFECT ON THE INTEREST CHANGE DATE AND THE SWAP RATE IN EFFECT ON THE DATE THE TERM LOAN IS PREPAID OR OF THE RATE CHANGE (OR AS NEAR AS PRACTICABLE), FOR THE MONTHS REMAINING UNTIL THE MATURITY DATE, AND THEN (II) THE DIFFERENCE BETWEEN THE TWO RATES FOR EACH SUCH MONTH IS MULTIPLIED BY THE OUTSTANDING TERM LOAN BALANCE FOR SUCH MONTH (EACH A "**MONTHLY INTEREST COST**"), AND FINALLY, (III) BREAKAGE COSTS SHALL BE EQUAL TO THE AGGREGATE PRESENT VALUE OF EACH MONTHLY INTEREST COST, USING A DISCOUNT RATE EQUAL TO THE 5-YEAR SWAP RATE IN EFFECT ON THE DATE THE TERM LOAN IS PREPAID OR OF THE RATE CHANGE; PROVIDED, HOWEVER, THAT IF THE AGGREGATE PRESENT VALUE OF SUCH MONTHLY INTEREST COSTS IS ZERO OR LESS, THEN NO BREAKAGE COSTS SHALL BE OWED.

 Borrower's Initials

4. Amortization and Payment Dates. The principal amount of the Term Loan shall continue to be amortized over the remaining portion of the original 240 month amortization period set forth in the Note. If on the Interest Change Date the new Interest Rate for the Term Loan is based on LIBOR, payments of principal based on the amortization set forth above, plus interest calculated at the new Interest Rate and payable in arrears, shall be payable monthly on the first day of each month following the Interest Change Date. If on the Interest Change Date the new Interest Rate for the Term Loan is based on the SWAP Index, equal consecutive monthly payments of principal and interest, calculated at the new Interest Rate, based upon the amortization set forth above shall be due and payable on the first day of each month following the Interest Change Date.

5. Modification to Guaranties. Guarantor agrees that the Continuing and Irrevocable Guaranty (the "**Guaranty**") executed and delivered in favor of TMCC on May 27, 2003 is hereby ratified and confirmed, and is in full force and effect, and Guarantor acknowledges it is fully obligated personally to repay the Term Loan, as modified by this Modification, and all Guaranteed Obligations (as defined in the Guaranty) and to perform all other obligations under the Guaranty. Guarantor represents and warrants to TMCC that no defenses exist to the enforcement of the Guaranty.

6. Conditions to the Effective Date. Provided that the following conditions shall have been satisfied by Borrower or waived by TMCC or as otherwise specifically provided for herein, the amendments provided for herein shall be effective as of June 30, 2007:

a. The title insurance company shall have issued a datedown endorsement to that certain title policy issued to TMCC insuring that the priority of the lien of the Deed of

Trust is not affected by the amendments to the Deed of Trust and the other Loan Documents pursuant to this Modification, if requested by TMCC, in TMCC's sole discretion;

b. Borrower shall have paid all legal fees, title insurance fees, and recording costs incurred in connection herewith;

c. Borrower and Guarantor shall have paid to TMCC all applicable late charges, accrued interest, and other payments due and payable to TMCC under the Loan Documents as of the date hereof; and

d. Borrower and Guarantor shall have executed and delivered such additional instruments and documentation relating to the Term Loan as TMCC may require, in TMCC's sole and absolute discretion.

e. No default or Event of Default, or circumstances which with the passage of time or the giving of notice would constitute a default or Event of Default, shall exist under the Loan Documents.

7. No Defaults. The Borrower hereby represents and warrants to TMCC that, immediately prior to and upon giving effect to this Modification, no default or Event of Default has occurred or is continuing under the Note or the other Loan Documents, as amended hereby, and no circumstances, which with the passage of time or giving of notice would constitute a default or Event of Default, exist.

8. References. All references in the Note, Loan Agreement, Deed of Trust and all other Loan Documents to (a) the Note shall mean the Note as amended by this Modification, (b) the Loan Agreement shall mean the Loan Agreement as amended by this Modification, (c) the Deed of Trust shall mean the Deed of Trust as amended by this Modification and (d) the Subordination Agreement shall mean the Subordination Agreement as amended by this Modification.

9. Representations and Warranties. The Borrower and the Guarantor hereby restate and reaffirm to TMCC all of the representations and warranties contained in the Loan Documents as if made on the date hereof and fully set forth herein.

10. Effect of Agreement. All modifications of the Term Loan and its terms set forth herein shall be deemed to be effective under, and to amend the corresponding provisions of, each of the Note, Loan Agreement, Deed of Trust and other Loan Documents. Except as amended hereby, all of the terms, covenants and conditions of the Note, Loan Agreement, Deed of Trust and other Loan Documents remain in full force and effect. Nothing herein shall be deemed or construed to be an impairment of the lien of the Deed of Trust and the lien of the Deed of Trust shall remain a first lien encumbering the Property. To the extent of any conflict between the provisions of the Note or any Loan Document and the provisions of this Modification, the provisions of the Modification shall prevail and control. Each of Borrower and

Guarantor hereby acknowledges, certifies and reaffirms its obligations under the Loan Documents as modified hereby.

11. Further Documentation. The parties hereto hereby agree to execute such further documents as TMCC may from time to time require in order to give full force and effect to this Modification.

12. Applicable Law. This Modification shall be governed by and construed in accordance with the laws of the State of Oregon.

13. Severability of Provisions. If any provision of this Modification shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate the remainder of such provision or any of the remaining provisions of this Modification.

14. Recitals. The above recitals are true and correct as of the date hereof and constitute a part of this Agreement.

15. Counterparts. This Modification may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which, when taken together, shall constitute one and the same instrument.


16. Consent of Guarantor. Guarantor has joined in this Modification to evidence Guarantor's consent and agreement to the modifications contained herein and to reaffirm and acknowledge that the Guarantor's obligations with respect to the Loan Documents remain in full force and effect as modified by the modifications contained herein. Guarantor further acknowledges that without Guarantor's joinder herein, TMCC would not have entered into this Modification.

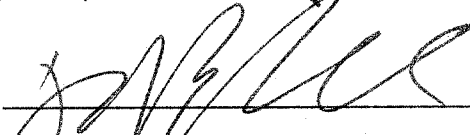
[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Modification to be effective for all purposes as of the date and year first written above.

TMCC:


TOYOTA MOTOR CREDIT
CORPORATION, a California corporation

By: 
Name: Mark Doi
Title: National Dealer Credit Manager

By: 
David E. Pelliccioni
Senior Vice President


BORROWER:

LITHIA REAL ESTATE, INC., an Oregon
corporation

By: 
Name: Jeffrey B DeBoer
Title: Vice President

GUARANTOR:

LITHIA KLAMATH, INC., an Oregon
corporation

By: 
Name: Steve Matthews
Title: Secretary / Treasurer

IN WITNESS WHEREOF, the parties hereto have executed this Modification to be effective for all purposes as of the date and year first written above.

TMCC:

TOYOTA MOTOR CREDIT
CORPORATION, a California corporation

By: _____

Name: _____

Title: _____

BORROWER:

LITHIA REAL ESTATE, INC., an Oregon
corporation

By: _____

Name: _____

Title: _____

GUARANTOR:

LITHIA KLAMATH, INC., an Oregon
corporation

By: 

Name: STEPHEN B. MATTHEWS

Title: SOL

IN ACKNOWLEDGEMENTS

STATE OF Oregon)
) ss.
COUNTY OF Jackson)

On July 5, 2007, before me, the undersigned notary public in and for said County and State, personally appeared Jeffrey DeBeer

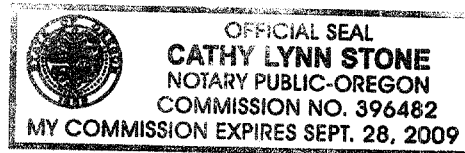
X personally known to me [or]
proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies) and that, by his signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.
WITNESS my hand and official seal.

Cathy Lynn Stone
My commission expires on
Sept 28, 2009

IN ACKNOWLEDGEMENTS

STATE OF _____)
) ss.
COUNTY OF _____)



On _____, 200_, before me, the undersigned notary public in and for said County and State, personally appeared _____

_____ personally known to me [or]
_____ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) _____ subscribed to the within instrument and acknowledged to me that _____ executed the same in _____ authorized capacity(ies) and that, by _____ signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.
WITNESS my hand and official seal.

My commission expires on

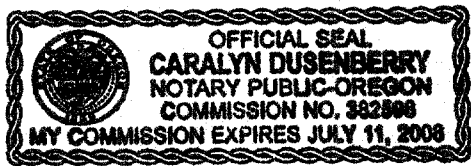
IN ACKNOWLEDGEMENTS

STATE OF OREGON)
) ss.
COUNTY OF JACKSON)

On JULY 25, 2007, before me, the undersigned notary public in and for said County and State, personally appeared STEPHEN B. MATTHEWS,
SECRETARY

☒ personally known to me [or]
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) IS subscribed to the within instrument and acknowledged to me that HE executed the same in HIS authorized capacity(ies) and that, by HIS signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.
WITNESS my hand and official seal.



Caralyn Dusenberry
My commission expires on
07-11-2008

IN ACKNOWLEDGEMENTS

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 200_, before me, the undersigned notary public in and for said County and State, personally appeared _____

_____ personally known to me [or]
_____ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) _____ subscribed to the within instrument and acknowledged to me that _____ executed the same in _____ authorized capacity(ies) and that, by _____ signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.
WITNESS my hand and official seal.

My commission expires on

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

On July 11, 2007, before me, Valerie Lynn Damia, Notary Public, personally appeared David E. Pelliccioni, personally known to me or proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Valerie Lynn Damia

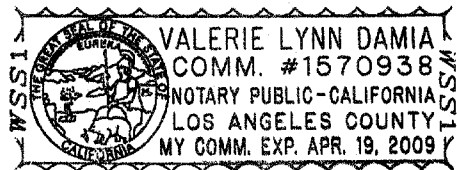


EXHIBIT A
DESCRIPTION OF PROPERTY

[see attached]

EXHIBIT "A"
LEGAL DESCRIPTION

Lot 2 in Block 5 of TRACT 1080 - WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.