

2010-006257

Klamath County, Oregon



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05/24/2010 10:09:01 AM

Fee: \$107.00

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 90501

MODIFICATION AGREEMENT NO. 4 OF TRUST DEED

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

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 R527335 Map 39-09-03CB
Tax Lot 1100

TERM OF AGREEMENT: May 1, 2015

MODIFICATION AGREEMENT NO. 4 OF A DEED OF TRUST
(Line of Credit Deed of Trust and Subordination Agreement and other Loan Documents)
(Klamath Falls)

This Modification Agreement No. 4 of a Trust Deed ("**Modification**") dated as of April 19, 2010 (the "**Effective Date**") is made and entered into among TOYOTA MOTOR CREDIT CORPORATION, a California corporation ("**TMCC**"), LITHIA REAL ESTATE, INC., an Oregon corporation ("**Borrower**"), LITHIA KLAMATH, INC., an Oregon corporation ("**Dealer**") and LITHIA MOTORS, INC., an Oregon corporation ("**Lithia**"; each of Dealer and Lithia being referred to herein as a "**Guarantor**" and, collectively, "**Guarantors**"), 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 of 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 Jackson County, Oregon on May 17, 2002 in Volume M02 at 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 Volume M03 at Page 41025, as amended by the Modification Agreement No. 2, dated July 6, 2007 and recorded in the official records of Klamath County, Oregon on August 7, 2007 in Volume 2007 at Page 013951, as amended by the Rate Modification dated on or about July 1, 2008, and as amended by the Modification Agreement No. 3, dated August __, 2009 ("**Third Modification**") (as amended or modified from time to time, the "**Deed of Trust**").

D. In connection with the Deed of Trust, Borrower, Dealer and TMCC entered into the Subordination, Nondisturbance and Attornment Agreement dated May 10, 2002, which Subordination Agreement was recorded in the official records of Klamath County, Oregon on May 17, 2002 in Volume M02 at 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. Pursuant to the Third Modification, the parties agreed to extend the Maturity Date of the Term Loan to August 1, 2011.

F. Borrower has requested the Maturity Date of the Term Loan be further extended to May 1, 2015 as further described herein.

G. TMCC is willing to agree to Borrower's request on the conditions that (i) a new interest rate be established during the extended term of the Term Loan; and (ii) 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 May 1, 2015 ("**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 the first (1st) day of the month following the Effective Date (the "**Interest Change Date**"), the interest rate on the Loan ("**Interest Rate**") shall be modified to a fixed rate equal to Five and ninety hundredths percent (5.90%) per annum. 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.

4. THE NEW FIXED INTEREST RATE IS BASED ON THE FIVE (5) YEAR SWAP RATE PUBLISHED BY BLOOMBERG FINANCIAL AS THE MID-PRICE "USSWAP 5 INDEX" (THE "**5-YEAR SWAP RATE**"). IF AFTER THE INTEREST CHANGE DATE AND PRIOR TO THE MATURITY DATE THEN IN EFFECT, THE LOAN IS PREPAID (FOR ANY REASON, VOLUNTARILY OR INVOLUNTARILY) OR THE NEW INTEREST RATE IS CHANGED AT BORROWER'S REQUEST, THEN BORROWER WILL PAY A PREPAYMENT FEE DETERMINED BY: (I) COMPUTING THE DIFFERENCE BETWEEN THE 5-YEAR SWAP RATE IN EFFECT ON THE INTEREST CHANGE DATE AND THE 5-YEAR SWAP RATE IN EFFECT ON THE DATE THE LOAN IS PREPAID OR THE RATE CHANGED (OR AS NEAR AS PRACTICABLE), AND THEN (II) MULTIPLYING SUCH DIFFERENCE FOR EACH MONTH UNTIL THE MATURITY DATE THEN IN EFFECT BY THE SCHEDULED OUTSTANDING LOAN BALANCE FOR EACH SUCH MONTH (EACH, A "**MONTHLY INTEREST COST**"), AND THEN (III) SUMMING THE PRESENT VALUES OF THE

MONTHLY INTEREST COSTS USING A DISCOUNT RATE EQUAL TO THE 5-YEAR SWAP RATE IN EFFECT ON THE DATE THE LOAN IS PREPAID OR THE INTEREST RATE CHANGED; PROVIDED, HOWEVER, THAT IF THE AGGREGATE PRESENT VALUE OF THE MONTHLY INTEREST COSTS IS ZERO OR LESS, THEN NO PREPAYMENT FEE WILL BE OWED.

Borrower's initials 

5. 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. 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.

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 on the Effective Date:

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 to TMCC an amendment fee of \$7,500 in connection with this Modification, and shall have paid all legal fees, title insurance fees, and recording costs incurred in connection herewith;

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

d Borrower and Guarantors 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, to effect the purposes of this Modification; and

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. 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 (d) the Subordination shall mean the Subordination as amended by this

Modification, and (e) all other references to Loan Documents shall mean such Loan Documents as amended by this Modification.

8. Representations and Warranties. Borrower and Guarantors hereby represent and warrant to TMCC that, immediately prior to and upon giving effect to this Amendment, no Event of Default has occurred or is continuing under the Loan Documents, as amended hereby, and no event has occurred which with the passage of time or giving of notice would mature into an Event of Default. Borrower and Guarantors 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. In addition, Borrower and Guarantors represent and warrant that (i) Borrower and Guarantors are, to the extent applicable, duly organized and validly existing and registered entities in good standing under the laws of the state of their organization, and that they have full power and authority to consummate the transactions contemplated hereby and by the Loan Documents; and (ii) the execution of this Modification has been duly authorized by Borrower and Guarantors.

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

10. 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.

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

12. 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.

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

14. 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.

15. Consent and Reaffirmation of Guarantors. Each of Dealer and Lithia agrees that the Continuing and Irrevocable Guaranty executed and delivered in favor of TMCC by Dealer on May 27, 2003 and by Lithia on August 21, 2009, respectively (each, a "**Guaranty**"), is hereby ratified and confirmed, and is in full force and effect, and each acknowledges it is fully obligated personally to repay the Term Loan, as modified by this Modification, and all Guaranteed Obligations (as defined in its respective Guaranty) and to perform all other obligations under its respective Guaranty. Each Guarantor represents and warrants to TMCC that no defenses exist to the enforcement of its respective Guaranty. Guarantors have joined in this Modification to evidence Guarantors' consent and agreement to the modifications contained herein. Guarantors each further acknowledge that without Guarantors' 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: DM Taylor
Name: David M. Taylor
Title: Corporate Manager

BORROWER:

LITHIA REAL ESTATE, INC., an Oregon
corporation

By: [Signature]
Name: MARK DEBOER
Title: VP

GUARANTORS:

LITHIA KLAMATH, INC., an Oregon
corporation

By: [Signature]
Name: JOHN NORTH
Title: ASSISTANT SECRETARY

LITHIA MOTORS, INC., an Oregon
corporation

By: [Signature]
Name: Sidney DeBoer
Title: CHAIRMAN & CEO

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On APRIL 19, 2010 before me, KAREN H. CONKLIN, Notary Public

personally appeared

David L. Taylor

Here Insert Name and Title of the Officer

Name(s) of Signer(s)



who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature: Karen H. Conklin

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: MODIFICATION AGREEMENT NO. 4 OF TRUST DEED

Document Date: APRIL 19, 2010

Number of Pages: 12

Signer(s) Other Than Named Above: MARK DEBOER, JOHN NORTH & SIOENEY DEBOER

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Attorney in Fact

☐ Trustee

☐ Trustee

☐ Guardian or Conservator

☐ Guardian or Conservator

☐ Other: _____

☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

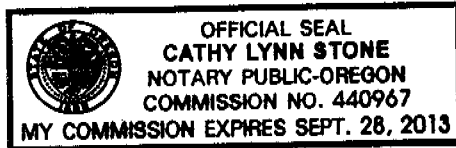
IN ACKNOWLEDGEMENTS

STATE OF Oregon)

) ss.

COUNTY OF Jackson)

On April 12, 2010, before me, the undersigned notary public in and for said County and State, personally appeared Mark DeBoer, who 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 September 28, 2013

IN ACKNOWLEDGEMENTS

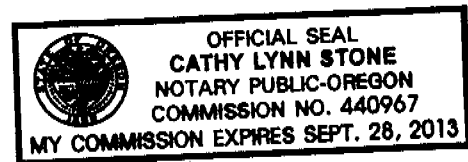
STATE OF Oregon)

) ss.

COUNTY OF Jackson)

On April 12, 2010, before me, the undersigned notary public in and for said County and State, personally appeared John North, who 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.

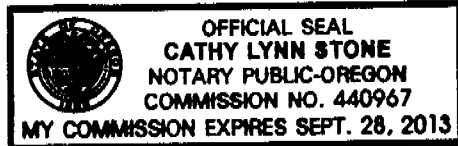
Cathy Lynn Stone
My commission expires on September 28, 2013



2 ACKNOWLEDGMENTS FOR MARK DEBOER & JOHN NORTH
AS PART OF DEED OF TRUST
PAGE 9 OF 12

IN ACKNOWLEDGEMENTS

STATE OF Oregon)
) ss.
COUNTY OF Jackson)
On April 12, 2010, before me, the undersigned notary public in and for said County and State,
personally appeared Sidney DeBoer, who 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 September 28, 2013

IN ACKNOWLEDGEMENTS

STATE OF _____)
) ss.
COUNTY OF _____)
On _____, 201____, before me, the undersigned notary public in and for said County and State,
personally appeared _____, who 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 _____

ACKNOWLEDGMENT FOR SIDNEY DEBOER
AS PART OF DEED OF TRUST
PAGE 10 OF 12

EXHIBIT A
DESCRIPTION OF PROPERTY

[see attached]

Exhibit A to Modification Agreement No. 4 to Trust Deed
(Klamath Falls)

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.