

WTC 1396-10923

2012-010101

Klamath County, Oregon

**RECORDATION REQUESTED BY:**

Sterling Savings Bank dba Sterling Bank  
Klamath Falls Commercial Banking Center  
540 Main St  
Klamath Falls, OR 97601



00124144201200101010040046

09/12/2012 11:45:01 AM

Fee: \$52.00

**WHEN RECORDED MAIL TO:**

Sterling Savings Bank  
Loan Support  
PO Box 2131  
Spokane, WA 99210

**SEND TAX NOTICES TO:**

ACH PROPERTY ACQUISITIONS, LLC  
3507 BEVERLY DR  
KLAMATH FALLS, OR 97601

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**MODIFICATION OF DEED OF TRUST**

THIS MODIFICATION OF DEED OF TRUST dated August 30, 2012, is made and executed between ACH PROPERTY ACQUISITIONS, LLC, AN OREGON LIMITED LIABILITY COMPANY, whose address is 3507 BEVERLY DR, KLAMATH FALLS, OR 97601 ("Grantor") and Sterling Savings Bank dba Sterling Bank, whose address is Klamath Falls Commercial Banking Center, 540 Main St, Klamath Falls, OR 97601 ("Lender").

**DEED OF TRUST.** Lender and Grantor have entered into a Deed of Trust dated June 3, 2009 (the "Deed of Trust") which has been recorded in KLAMATH County, State of Oregon, as follows:

RECORDED JUNE 15, 2009 UNDER KLAMATH COUNTY AUDITOR'S FILE #2009-008319.

**REAL PROPERTY DESCRIPTION.** The Deed of Trust covers the following described real property located in KLAMATH County, State of Oregon:

LOTS 2 AND 3 IN BLOCK 4 OF THE RESUBDIVISION OF A PORTION OF MCLOUGHLIN HEIGHTS, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

The Real Property or its address is commonly known as 2580 DAGGETT AVE, KLAMATH FALLS, OR 97601. The Real Property tax identification number is 3809-020AC-03101-000.

**MODIFICATION.** Lender and Grantor hereby modify the Deed of Trust as follows:

**TERMS OF THE NOTE ARE HEREBY AMENDED AS FOLLOWS:** NOTE DATED AUGUST 30, 2012 IN THE PRINCIPAL AMOUNT OF \$456,849.17 WITH A MATURITY DATE OF AUGUST 28, 2022.

**CONTINUING VALIDITY.** Except as expressly modified above, the terms of the original Deed of Trust shall remain unchanged and in full force and effect. Consent by Lender to this Modification does not waive Lender's right to require strict performance of the Deed of Trust as changed above nor obligate Lender to make any future modifications. Nothing in this Modification shall constitute a satisfaction of the promissory note or other credit agreement secured by the Deed of Trust (the "Note"). It is the intention of Lender to retain as liable all parties to the Deed of Trust and all parties, makers and endorsers to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Modification. If any person who signed the original Deed of Trust does not sign this Modification, then all persons signing below acknowledge that this Modification is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Modification or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

**FRAUDS DISCLOSURE, UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US (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 US TO BE ENFORCEABLE.**

**ADDITIONAL PROVISION.** THE DEED OF TRUST DOES NOT SECURE AND SHALL NOT BE CONSTRUED AS SECURING ANY GUARANTY AS THE WORD IS DEFINED THEREIN.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MODIFICATION OF DEED OF TRUST AND GRANTOR AGREES TO ITS TERMS. THIS MODIFICATION OF DEED OF TRUST IS DATED AUGUST 30, 2012.**

GRANTOR:

ACH PROPERTY ACQUISITIONS, LLC

BY

NICOLA CHERRY, Manager of ACH PROPERTY ACQUISITIONS, LLC

LENDER:

STERLING SAVINGS BANK DBA STERLING BANK

x

Brooke Kiewer  
Authorized Officer

AMERITITLE has recorded this instrument by request as an accommodation only, and has not examined it for regularity and sufficiency or as to its effect upon the title to any real property that may be described therein.

52pmf

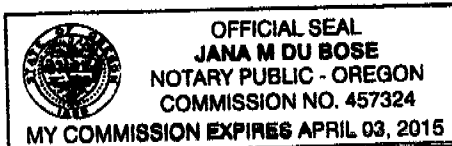
MODIFICATION OF DEED OF TRUST  
(Continued)

Loan No: 378770044-9001

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Oregon )  
COUNTY OF Klamath ) SS

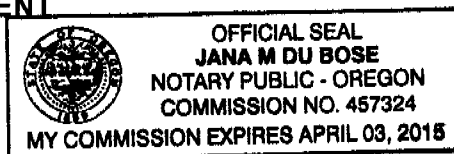


On this 12th day of September, 20 12, before me, the undersigned Notary Public, personally appeared NICOLA J CHERRY, Manager of ACH PROPERTY ACQUISITIONS, LLC, and known to me to be a member or designated agent of the limited liability company that executed the Modification of Deed of Trust and acknowledged the Modification to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Modification and in fact executed the Modification on behalf of the limited liability company.

By Jana M Du Bose Residing at Klamath County  
Notary Public in and for the State of Oregon My commission expires 4/3/15

LENDER ACKNOWLEDGMENT

STATE OF Oregon )  
COUNTY OF Klamath ) SS



On this 12th day of September, 20 12, before me, the undersigned Notary Public, personally appeared Sterling Savings Bank dba Sterling Bank and known to me to be the authorized agent for Sterling Savings Bank dba Sterling Bank that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of Sterling Savings Bank dba Sterling Bank, duly authorized by Sterling Savings Bank dba Sterling Bank through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of Sterling Savings Bank dba Sterling Bank.

By Jana M Du Bose Residing at Klamath County  
Notary Public in and for the State of Oregon My commission expires 4/3/15

## ADDENDUM TO DEED OF TRUST

This ADDENDUM TO DEED OF TRUST is attached to and by this reference is made a part of the Modification of Deed of Trust, dated August 30, 2012, and executed in connection with a loan or other financial accommodations between STERLING SAVINGS BANK DBA STERLING BANK and ACH PROPERTY ACQUISITIONS, LLC.

ADDITIONAL PROVISIONS: In addition to the covenants and agreements made in the Deed of Trust, Borrower and Lender further covenant and agree as follows:

**1. Amendment to Due on Sale - Consent of Lender.** In addition, and not by way of limitation, the Due on Sale - Consent of Lender provision in the Deed of Trust shall also provide that Trustor/Grantor acknowledges that Lender has relied upon the principals of Trustor/Grantor and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except with the prior written consent of Lender or as otherwise expressly permitted in the Note, a "Transfer" for purposes of said provision shall prohibit Trustor/Grantor from causing or permitting a Transfer of any direct or indirect interest (whether general or limited partnership interest, stock, limited liability company interest, trust, or otherwise) in Trustor/Grantor. In the event of any Transfer that is not expressly permitted in the Note and is without the prior written consent of Lender, Lender shall have the absolute right at its option, without prior demand or notice, to declare all of the secured obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under this Deed of Trust. Trustor/Grantor agrees to pay any prepayment fee as set forth in the Note in the event the secured obligations are accelerated pursuant to the terms of this Section. Consent to one such Transfer shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers.

**2. Fixture Filing; Rights of Lender.** As to all of the above-described Personal Property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Uniform Commercial Code, as amended or recodified from time to time ("UCC"). In addition to Lender's rights as a "secured party" under the UCC, Lender may, but shall not be obligated to, at any time without notice and at the expense of Trustor/Grantor: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Personal Property or any rights or interests of Lender therein; (c) inspect the Personal Property; and (d) endorse, collect and receive any right to payment of money owing to Trustor/Grantor under or from the Personal Property.

**2.1** Notwithstanding the above, in no event shall Lender be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor/Grantor to Lender unless Lender shall make an express written election of said remedy under the UCC or other applicable law.

**2.2** Upon the occurrence of a Default hereunder, then in addition to all of Lender's rights as a "secured party" under the UCC or otherwise at law: (a) Lender may: (i) upon written notice, require Trustor/Grantor to assemble any or all of the Personal Property and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where any of the Personal Property may be located and take possession of, collect, sell and dispose of any or all of the Personal Property, and store the same at locations acceptable to Lender at Trustor/Grantor's expense; or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Personal Property and bid and become purchaser at any such sales; and (b) Lender may, for the account of Trustor/Grantor and at Trustor/Grantor's expense: (i) operate, use, consume, sell or dispose of the Personal Property as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Lender may deem desirable or proper with respect to any of the Personal Property; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor/Grantor in connection with or on account of any or all of the Personal Property. Trustor/Grantor acknowledges and agrees that a disposition of the Personal Property in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that five (5) days' prior notice of such disposition is commercially reasonable notice. Trustor/Grantor further agrees that any sale or other disposition of all or any portion of the Personal Property may be applied by Lender first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the secured obligations.

**3. Absolute Assignment of Rents with License.** The assignment of Rents under the Deed of Trust constitutes a present and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Rents is not contingent upon, and may be exercised without possession of, the Property. Lender confers upon Trustor/Grantor a revocable license ("License") to collect and retain the Rents as they become due and payable, until the occurrence of a Default. Upon a Default, the License shall be automatically revoked and, to the full extent permitted under applicable law, Lender may collect and apply the Rents, either with or without the appointment of a receiver as provided hereinbelow, pursuant to the terms hereof without notice and without taking possession of the Property. All Rents thereafter collected by Trustor/Grantor shall be held by Trustor/Grantor as trustee under a constructive trust for the benefit of Lender.

**3.1** Trustor/Grantor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Trustor/Grantor hereby relieves the tenants from any liability to Trustor/Grantor by reason of relying upon and complying with any such notice or demand by Lender. Lender may apply, in its sole discretion, any Rents so collected by Lender against any secured obligation or any other obligation of Trustor/Grantor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Rents by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

**3.2** The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Lender any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Trustor/Grantor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder; or (ii) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Trustor/Grantor arising under the Leases.

**4. Appointment of Receiver.** Trustor/Grantor hereby further agree that in light of the facts and circumstances that exist and the complexities attendant to the development of the Property, in the event of any Default hereunder, Lender shall have the right to petition the court, on an ex parte basis, for the appointment of a receiver for the Property. [Trustor/Grantor] acknowledges and agrees that Lender is entitled to the appointment of a receiver for the Property without regard to (a) the adequacy of the collateral or (b) the existence of any waste with respect to the Property. TRUSTOR/GRANTOR HEREBY CONSENTS TO THE APPOINTMENT OF A RECEIVER ON AN EX PARTE BASIS. LENDER MAY PROVIDE ANY COURT WITH A COPY OF THIS AGREEMENT AS PROOF OF LENDER'S AUTHORITY, AND TRUSTOR/GRANTOR'S AND GUARANTOR'S CONSENT THERETO, TO OBTAIN A RECEIVER FOR THE PROPERTY. Such right shall be exercised, if at all, by Lender in Lender's sole and absolute discretion at any time on or after the date hereof.

**5. Future Advances.** In addition to the other obligations secured by the Deed of Trust, Trustor/Grantor acknowledges and agrees that the obligations secured hereby shall include payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust.

**6. Power of Attorney.** Trustor/Grantor hereby irrevocably appoints Lender as Trustor/Grantor's attorney-in-fact (such power of attorney being coupled with an interest), effective upon a Default hereunder, and as such attorney-in-fact, Lender may, without the obligation to do so, in Lender's name or in the name of Trustor/Grantor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to any of the Collateral, and upon a Default hereunder, take any other action required of Trustor/Grantor; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender.

**7. Homestead; Business Loan.** There is no homestead or other exemption available to Trustor/Grantor which would materially interfere with the right to sell the Property at a trustee's sale or the right to foreclose the Deed of Trust. The proceeds of the Loan shall be used exclusively for business purposes. No portion of the Property is or will be occupied by Trustor/Grantor as its principal residence, and Trustor/Grantor hereby waives the right to claim the Property as their principal residence.

**8. Counterparts.** This Addendum to Deed of Trust, and all other Loan Documents, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original and all of which taken together shall be deemed to be one and the same document.

Other than stated herein, the terms and conditions to be in effect during the term of the Loan are those terms and conditions within the Deed of

**ADDENDUM TO DEED OF TRUST  
(Continued)**

Loan No: 378770044-9001

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Trust to which this addendum is attached.

BY SIGNING BELOW, Borrower accepts and agrees to the terms, conditions and covenants contained in this Addendum to Deed of Trust.

THIS ADDENDUM TO DEED OF TRUST IS EXECUTED ON AUGUST 30, 2012.

GRANTOR:

ACH PROPERTY ACQUISITIONS, LLC

By:   
NICOLA J CHERRY, Manager of ACH PROPERTY  
ACQUISITIONS, LLC

LENDER:

STERLING SAVINGS BANK DBA STERLING BANK

x   
Authorized Officer