

**2014-013109**

**Klamath County, Oregon**

**12/22/2014 09:21:01 AM**

**Fee: \$107.00**

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**Modification of Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing**

**STATE:** Oregon  
**COUNTY:** Klamath

**GRANTOR:** LD Acquisition Company 9 LLC, a Delaware limited liability company  
2141 Rosecrans Avenue, Suite 2100, El Segundo, California 90245

**GRANTEE:** SunTrust Bank, as Administrative Agent  
303 Peachtree Street N.E. / 25th Floor, Atlanta, Georgia 30308

**DOCUMENT DATE:** NOVEMBER 19<sup>TH</sup>, 2014

**ORIGINAL RECORDING**

**REFERENCE:** Instrument 2012-014208 on 12/21/2012

**LEGAL DESCRIPTION:** SEE ATTACHED Exhibit A

**Prepared by:**  
LATHAM & WATKINS LLP  
355 South Grand Avenue  
Los Angeles, CA 90071-1560

**Return after recording to:**  
Fidelity National Title Group  
7130 Glen Forest Drive #300

*This instrument is being filed as an  
accommodation only. It has not been  
examined as to its execution, insur-  
ability or affect on title.*

## **MODIFICATION OF Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing**

This **MODIFICATION OF Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing** (as amended, amended and restated, supplemented or otherwise modified from time to time, this “**Modification Agreement**”) is made effective as of November 19<sup>th</sup>, 2014 by and between **LD Acquisition Company 9 LLC, a Delaware limited liability company**, with an address at 2141 Rosecrans Avenue, Suite 2100, El Segundo, California 90245 (“**Lien Grantor**”), and **SUNTRUST BANK**, with an address at 303 Peachtree Street N.E. / 25th Floor, Atlanta, Georgia 30308, as Administrative Agent for the Secured Parties (each as defined in the Amended and Restated Credit Agreement (as defined below)), in such capacity, and together with its permitted successors and assigns, the “**Administrative Agent**”).

WITNESSETH:

**WHEREAS**, Lien Grantor and certain other Persons party thereto as borrowers (the “**Original Borrowers**”), the lenders from time to time party thereto (the “**Original Lenders**”), and the Administrative Agent (as defined in the Original Lien Document (as defined below)) (the “**Original Agent**”), entered into the Credit Agreement (as defined in the Original Lien Document) (as amended prior to the date hereof, the “**Original Credit Agreement**”), pursuant to which the Original Lenders made certain loans and other extensions of credit to the borrowers under the Original Credit Agreement;

**WHEREAS**, in order to secure the obligations under the Original Credit Agreement and other obligations, Lien Grantor executed and delivered to the Original Agent, that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing as more particularly described on **Schedule 1** (the “**Original Lien Document**”, as modified by this Modification Agreement, being the “**Modified Lien Document**”), establishing liens over the property covered therein (the “**Secured Property**”, including the land more particularly described on **Exhibit “A”** attached hereto;

**WHEREAS**, pursuant to that certain Master Assignment of Notes, Security Instruments and Liens, dated as of the date hereof (the “**Assignment**”), entered into by and among the Original Agent (as administrative agent under the Original Credit Agreement) and the Original Lenders in favor of Administrative Agent (as administrative agent under the Amended and Restated Credit Agreement (as defined below)) on its own behalf and on behalf of the Secured Parties (and also executed by the Original Borrowers and the Borrower (as defined below)), the Original Agent and Original Lenders have assigned certain rights, titles and interests to the Administrative Agent and the New Lenders, and the Administrative Agent and the New Lenders have assumed certain obligations of the Original Agent and the Original Lenders, under the Original Credit Agreement, the Original Lien Document and the other loan documents related thereto, which Assignment has been further evidenced by an assignment of the Original Lien Document, dated as of the date hereof (the “**Recorded Assignment**”), executed by the Original Agent in favor of the Administrative Agent and recorded in the same real property records as this Modification Agreement;

**WHEREAS**, in connection with the Assignment, Landmark Infrastructure Operating Company LLC, a Delaware limited liability company ("**Borrower**"), Landmark Infrastructure Partners LP, a Delaware limited partnership (the "**MLP**"), the Administrative Agent and the New Lenders have agreed to amend and restate the Original Credit Agreement pursuant to that certain Amended and Restated Credit Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Amended and Restated Credit Agreement**"), by and among Borrower, MLP, the Administrative Agent, and the lenders under the Amended and Restated Credit Agreement (the "**New Lenders**");

**WHEREAS**, in connection with the Amended and Restated Credit Agreement, Lien Grantor and certain other guarantors party thereto have entered into a Guaranty and Security Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Guaranty**"), guaranteeing all of Borrower's Obligations under the Amended and Restated Credit Agreement;

**WHEREAS**, as a condition to entering into the Amended and Restated Credit Agreement, the New Lenders have required Lien Grantor to enter into this Modification Agreement; and

NOW, THEREFORE, in consideration of the foregoing and legal sufficiency of which is hereby acknowledged, Lien Grantor and the Administrative Agent (on behalf of the Secured Parties) hereby agree and give notice as follows:

1. All of the foregoing recitals are acknowledged by Lien Grantor as being true and correct and shall be deemed incorporated by reference herein. Lien Grantor hereby acknowledges and agrees that the Modified Lien Document secures all of Lien Grantor's obligations under the Guaranty and the Modified Lien Document.

2. From and after the date hereof, all references in the Modified Lien Document to the "Credit Agreement" shall mean the Amended and Restated Credit Agreement. From and after the date hereof, all references in the Modified Lien Document to the "Notes" shall mean the Amended and Restated Credit Agreement and any promissory notes issued pursuant to the terms thereof.

3. To the extent the Original Lien Document contains a statement of the maximum principal amount secured thereby, such maximum principal amount is hereby modified from \$70,000,000 to \$390,000,000.

4. The Original Lien Document is hereby amended to delete any specifically listed events or circumstances listed as "Events of Default", and any phrase such as "Default" or "Event of Default" shall refer to the Events of Default as defined in the Amended and Restated Credit Agreement. To the extent the Original Lien Document contains a definition of "Event of Default", such definition is hereby deleted in its entirety and is replaced with the definition that an "Event of Default" shall have the meaning ascribed to such term in the Amended and Restated Credit Agreement.

5. To the extent the Original Lien Document is required by applicable law to contain an express statement of the maturity of the loan secured by the Original Lien Document is hereby

amended to refer to November 19<sup>th</sup>, 2019, and to the extent the Original Lien Document is not required by applicable law to set forth an express statement of the maturity of the loan secured by the Original Lien Document is hereby deleted.

6. The following shall be deleted in their entirety from the Original Lien Document and such terms and provisions shall be governed by the Amended and Restated Credit Agreement:

(a) All representations and warranties of Lien Grantor set forth in the Original Lien Document, other than representations and warranties required pursuant to applicable law in order to establish or maintain the Secured Property as commercial property rather than residential property or any other classification of property as to which special enforcement procedures or rights as to deficiency judgments or other enforcement rights would apply, or required by applicable law or custom to establish or maintain the existence or priority of the liens, assignments and security interests created under the Original Lien Document.

(b) All affirmative covenants of Lien Grantor, other than those related to the establishment or maintenance of the existence or priority of the liens, assignments and security interests created under the Original Lien Document, or the enforcement of remedies by the Administrative Agent, any trustee thereof, any receiver or similar trustee after an Event of Default under the Amended and Restated Credit Agreement.

(c) All terms and provisions with respect to release and indemnification or expense reimbursement obligations of the applicable Lien Grantor, other than indemnification and expense reimbursement obligations in favor of any trustee, receiver or similar position under the Original Lien Document.

(d) All terms and provisions with respect to the time and place for payments of amounts due under the Notes or Amended and Restated Credit Agreement, or as to the application of payments and/or proceeds from the enforcement of remedies under the Original Lien Document, except to the extent such rules for the application of payments and/or proceeds are required by applicable law.

(e) All terms and provisions with respect to the subrogation of proceeds (other than such terms and provisions as may be necessary for the liens and assignments of the Modified Lien Document to retain the priority of the liens and assignments under the Original Lien Document) of the Loans (as defined in the Amended and Restated Credit Agreement) advanced by the Lenders for the repayment of any outstanding Indebtedness.

(f) All terms and provisions with respect to the creation, perfection and enforcement of security interests in personal property collateral; provided that any terms and provisions with respect to any assignment of rents or the enforcement thereof shall not be deleted and shall remain in full force and effect.

(g) Any rights of the Administrative Agent to notify account debtors or obligors, other than lessees under the Leases with respect to any assignment of rents after and

during the continuance of an Event of Default under the Amended and Restated Credit Agreement.

7. RESERVED.

8. Notwithstanding any provision in the Original Lien Document to the contrary, (i) in no event shall any Building or Manufactured (Mobile) Home (as such terms are defined in applicable Flood Insurance Regulations) be included in the Secured Property, including in any definition of "Property" or "Collateral" or "Additional Collateral" contained in the Original Lien Document and (ii) in the event the Original Lien Document encumbers any Building or Manufactured (Mobile) Home, the lien of such Original Lien Document on such Building(s) and/or Manufactured (Mobile) Home(s) is hereby released. As used herein, "Flood Insurance Regulations" shall mean (a) the National Flood Insurance Act of 1968, (b) the Flood Disaster Protection Act of 1973, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001 et seq.), and (d) the Flood Insurance Reform Act of 2004, in each case as now or hereafter in effect and including any regulations promulgated thereunder.

9. The Modified Lien Document cannot be further altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the parties hereto or their respective successors or assigns. To the fullest extent permitted by applicable law, any future amendment or modification of the Loan Documents (as defined in the Amended and Restated Credit Agreement) may or may not be recorded; all holders of any interest or claim that affects all or any portion of the Property (as defined in the Modified Lien Document or any estate or interest therein, which interest or claim is recorded after the date the Modified Lien Document was originally recorded or that is otherwise or is intended to be junior and subordinate to the lien of the Modified Lien Document (collectively, "**Junior Lien Claimants**"), are hereby placed on notice of the possibility that the Loan Documents or the Obligations that the Modified Lien Document secures may be amended but any such amendment may or may not be placed of record; any such amendment shall be fully effective whether or not recorded, without thereby impairing or reducing the priority of the lien of the Modified Lien Document or constituting a novation; Junior Lien Claimants should not assume they will be notified of any amendment of the Loan Documents or of any of Lien Grantor's obligations that occur before or after the recording of their lien; and by accepting their interest in the Property, Junior Lien Claimants shall be deemed to acknowledge and consent to the foregoing.

10. As modified herein, the terms of the Modified Lien Document shall continue in full force and effect. It is understood by and is the intention of the parties hereto that any legal or equitable priorities of any Secured Party over any party which were in existence before the date of execution of this Modification Agreement shall remain in effect after the execution of this Modification Agreement. Neither this Modification Agreement nor the transactions pursuant to the Amended and Restated Credit Agreement shall be deemed to constitute a novation or to extinguish any of the Obligations secured by the Modified Lien Document.

11. Lien Grantor hereby represents and warrants to Administrative Agent and each Secured Party as follows:

(a) the execution, delivery and performance by such Lien Grantor of this Modification Agreement: (i) have been duly authorized by all necessary organizational and, if required, shareholder, partner or member action; (ii) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority, except those as have been obtained or made and are in full force and effect and except for filings necessary to perfect or maintain perfection of the liens, collateral assignments and security interests created under Modified Lien Document; and (iii) will not violate any Requirement of Law (as defined in the Amended and Restated Credit Agreement) applicable to such Lien Grantor or any judgment, order or ruling of any Governmental Authority.

(b) This Modification Agreement constitutes valid and binding obligations of such Lien Grantor, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

12. Lien Grantor hereby confirms and acknowledges that it has no existing offsets, defenses, claims, counterclaims, setoffs, or other basis for reduction of the amounts secured hereby under the Amended and Restated Credit Agreement.

**13. APPLICABLE LAW. THIS MODIFICATION AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO NEW YORK'S PRINCIPLES OF CONFLICTS OF LAW) AND THE LAW OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF NEW YORK, EXCEPT FOR THOSE PROVISIONS IN THIS MODIFICATION AGREEMENT PERTAINING TO THE CREATION, PERFECTION OR VALIDITY OF OR EXECUTION OF LIENS OR SECURITY INTERESTS ON PROPERTY LOCATED IN THE STATE WHERE THE PROPERTY IS LOCATED, WHICH PROVISIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED AND APPLICABLE UNITED STATES FEDERAL LAW.**

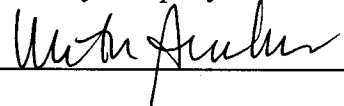
14. This Modification Agreement may be executed in any number of counterparts, and all such counterparts shall together constitute the same agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Modification Agreement as of the day and year immediately below written:

**LIEN GRANTOR:**

LD Acquisition Company 9 LLC, a Delaware limited liability company

By: 

Name: Keith M. Drucker

Title: Chief Operating Officer

STATE OF TEXAS           )  
  )     SS  
COUNTY OF HARRIS     )

On November 17, 2014, before me SUE MARTIN  
a Notary Public, personally appeared Keith M. Drucker, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

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

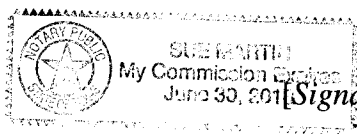
WITNESS my hand and official Seal.



Notary Public for Texas

My Commission Expires June 30, 2018

[NOTARIAL SEAL]



[Signatures continuing on following page]

ADMINISTRATIVE AGENT:

SUNTRUST BANK

By: \_\_\_\_\_

Name: Mark Kelley

Title: Managing Director

STATE OF TEXAS )

) SS

COUNTY OF HARRIS )

On November 17, 2014, before me SUE MARTIN  
a Notary Public, personally appeared Mark Kelley, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

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

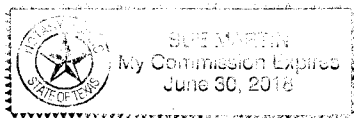
WITNESS my hand and official Seal.

Sue Martin

Notary Public for Texas

My Commission Expires June 30, 2018

[NOTARIAL SEAL]





**EXHIBIT A**

**Legal Description**

State: OR COUNTY: Klamath

An interest in land, said interest being over a portion of the following described parent parcel:

S1/2 SE1/4 Section 12; N1/2 NE1/4 Section 13, Township 38 South, Range 7 East, Willamette Meridian, Klamath County, Oregon.

Tax Parcel Nos. 3807-00000-01200-000, 3807-00000-01300-000

## **SCHEDULE 1**

Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing

Grantor: LD Acquisition Company 9 LLC, a Delaware limited liability company

Lender: Bank of America, N.A., a national banking association

Recorded: 12/21/2012

Recorded In: Instrument 2012-014208

Assigned by Bank of America, N.A., a national banking association to SunTrust Bank by Assignment of Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated November 19<sup>th</sup>, 2014 and recorded immediately prior.