



MISC 2012014061



FEB 13 2012 16:27 P 11

Fee amount: 60.00  
FB: 15-04560  
COMP: SB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
02/13/2012 16:27:37.00



2012014061

MODIFICATION OF LEASEHOLD DEED OF TRUST, ASSIGNMENT OF  
RENTS AND LEASES, SECURITY AGREEMENT AND  
FIXTURE FINANCING STATEMENT

When recorded, return to:  
Nebraska Title Company  
P.O. Box 6169  
Lincoln, NE 68506

File # 6052400

**PREPARED BY, RECORDING REQUESTED  
BY, AND WHEN RECORDED MAIL TO:**

**Paul, Hastings, Janofsky & Walker LLP  
600 Peachtree Street, N.E., Suite 2400  
Atlanta, Georgia 30308  
Attention: David J. Burch, Esq.**

**Cross Reference to:**

Document No. 2010120440  
Douglas County Records

**MODIFICATION OF LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS  
AND LEASES, SECURITY AGREEMENT AND  
FIXTURE FINANCING STATEMENT**

THIS MODIFICATION OF LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Modification") is made and entered into as of the 31st day of August, 2011, by AMERICAN BLUE RIBBON HOLDINGS, LLC, a Delaware limited liability company ("Grantor"), whose address is 400 West 48<sup>th</sup> Avenue, Denver, Colorado 80216, and WELLS FARGO CAPITAL FINANCE, LLC, f/k/a Wells Fargo Foothill, LLC, in its capacity as administrative agent for the Lender Group (as defined in the hereinafter defined Credit Agreement) (in such capacity, together with its successors and assigns, "Agent") pursuant to the Credit Agreement, whose address is 2450 Colorado Avenue, Suite 3000 West, Santa Monica, California 90404, Attn: Specialty Finance Manager ("Beneficiary").

**WITNESSETH:**

**WHEREAS**, Fidelity Newport Holdings, LLC, a Delaware limited liability company ("Parent"), Grantor, Agent, and each of the Lenders (as defined in the Credit Agreement) are parties to that certain Credit Agreement dated as of March 27, 2009, as amended by Amendment Number 1 to Credit Agreement and Consent dated as of August 30, 2010 (as further amended, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, the "Original Credit Agreement");

**WHEREAS**, the obligations and indebtedness of Grantor under the Original Credit Agreement are secured by that certain Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement, executed by Grantor in favor of Chicago Title Insurance Company, as Trustee, for the benefit of Beneficiary, dated as of November 12, 2009, and recorded on December 17, 2010, as Document No. 2010120440 in the real property records of Douglas County, Nebraska (the "Deed of Trust");

**WHEREAS**, Parent, Grantor, Agent, and the Lenders have amended and restated the Original Credit Agreement pursuant to that certain Amended and Restated Credit Agreement dated as of August 11, 2011 (as hereafter amended, amended and restated, extended, supplemented, or modified, the "Credit Agreement"), providing for, inter alia, the extension of the maturity date to June 30, 2015; and

**WHEREAS**, Grantor and Beneficiary desire to modify the Deed of Trust to reflect the terms and conditions of the Credit Agreement and to confirm that the Deed of Trust shall continue to secure the obligations and indebtedness of Grantor under the Credit Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the sum of Ten and No/100th Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Modification of Section 1.1.**

(a) Section 1.1(b) of the Deed of Trust is hereby modified by deleting the text thereof in its entirety and inserting the following text in lieu thereof:

**"Indebtedness"**: All Obligations of Grantor to Beneficiary, including, without limitation (but subject to the terms of the Credit Agreement), (1) the repayment of all amounts outstanding from time to time under the Credit Agreement and the other Loan Documents in a maximum principal amount at any one time outstanding not to exceed THIRTY MILLION AND NO/100THS Dollars (\$30,000,000.00) (the "**Total Maximum Principal Amount**"), with such indebtedness maturing on or before June 30, 2015, as provided in the Credit Agreement, including principal, interest (including all interest that, but for the provisions of the Bankruptcy Code, would have accrued), and other amounts which may now or hereafter be advanced as Advances and Overadvances, (2) the full and prompt performance of any and all repayment, fee, and indemnification obligations with respect to any Letters of Credit in accordance with the Credit Agreement, (3) fees, costs, expenses, charges, and indemnification obligations accrued, incurred, or arising in connection with, and subject to the terms of, any Loan Document, (4) any and all future advances made pursuant to the terms of the Credit Agreement, (5) any and all Net Cash Proceeds payable to Agent or the Lender Group in accordance with the Credit Agreement, and (6) all other payment Obligations. The Credit Agreement contains a revolving credit facility that permits Grantor to borrow certain principal amounts, repay all or a portion of such principal amounts, and reborrow the amounts previously paid to the Lender

Group, all upon satisfaction of certain conditions stated in the Credit Agreement. This Deed of Trust secures all Advances and re-advances under the revolving credit feature of the Credit Agreement.

(b) Section 1.1(e) of the Deed of Trust is hereby modified by deleting the text thereof in its entirety and inserting the following text in lieu thereof:

**“Trust Property”**: All of Grantor’s right, title, interest, and estate, whether now owned or hereafter acquired, in (1) the fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference (the **“Land”**), (2) all improvements now owned or hereafter acquired by Grantor, now or at any time situated, placed, or constructed upon the Land (the **“Improvements”**; the Land and Improvements are collectively referred to herein as the **“Premises”**), (3) all materials, supplies, equipment, apparatus, and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to or installed in any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities, and all other utilities whether or not situated in easements so as to constitute fixtures under the UCC or otherwise under the laws of the State or Commonwealth in which such items are located (the **“Fixtures”**), (4) all reserves, escrows, or impounds required under the Credit Agreement and all deposit accounts maintained by Grantor with respect to the Trust Property (the **“Deposit Accounts”**), (5) all existing and future leases, subleases, licenses, concessions, occupancy agreements, or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Trust Property, whether made before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code, together with any extension, renewal, or replacement of the same and together with all related security and other deposits (the **“Leases”**), (6) all of the rents, additional rents, revenues, royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying the Trust Property or any part thereof, whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code, subject, however, to the right of Grantor to receive and use the same and to exercise all rights and privileges as lessor under all of the Leases until an Event of Default shall have occurred (the **“Rents”**), (7) to the extent assignable, all other agreements to which Grantor is a party, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, franchises, authorizations, consents, approvals, certificates, entitlements, and other rights and privileges in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment, or ownership of the Premises (the **“Property Agreements”**), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, air rights, development rights or credits, zoning rights, appendages,

and appurtenances appertaining to the foregoing, and all right, title, and interest of Grantor in and to any streets, ways, alleys, strips, or gores of land adjoining the Land or any part thereof, and all right, title, and interest of Grantor, if any, in and to all rights, royalties, and profits with respect to all minerals, coal, oil, gas, and other substances of any kind or character on or underlying the Land, together with all right, title, and interest of Grantor, if any, in and to all water and water rights (whether riparian, appropriative, or otherwise and whether or not appurtenant), (9) all property tax refunds, utility refunds, awards, and rebates, earned or received by Mortgagor at any time related to the Premises, subject, however, to the right of Mortgagor, in accordance with the Credit Agreement, to receive and use the same and exercise all rights and privileges to such funds until an Event of Default shall have occurred (the "**Tax Refunds**"), (10) all accessions, replacements, and substitutions for any of the foregoing and all proceeds thereof (the "**Proceeds**"), (11) all insurance policies, unearned premiums therefor, and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the "**Insurance**"), (12) all of Mortgagor's right, title, and interest in and to any awards, damages, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any taking or condemnation of the Land, Improvements, or Fixtures, subject, however, to the right of Mortgagor, in accordance with the Credit Agreement, to receive and use the same and exercise all rights and privileges to such funds until an Event of Default shall have occurred (the "**Condemnation Awards**"), (13) all of Grantor's rights to appear and defend any action or proceeding brought with respect to the Trust Property and, if an Event of Default shall have occurred, to commence any action or proceeding to protect the interest of Grantor in the Trust Property, (14) all rights, powers, privileges, options, and other benefits of Grantor as lessor under the Leases, including, without limitation, if an Event of Default shall have occurred, the immediate and continuing right to claim for, receive, collect, and receive all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Indebtedness and the Obligations), and to do all other things which Grantor or any lessor is or may become entitled to do under the Leases, and (15) all other property and rights of Grantor of every kind and character relating to and/or used or to be used in connection with the foregoing (to the extent assignable), and all proceeds and products of any of the foregoing. As used in this Deed of Trust, the term "Trust Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein. THE TERM "TRUST PROPERTY" IS INTENDED TO AND SHALL EXCLUDE ALL ITEMS OF PERSONAL PROPERTY IN WHICH MORTGAGEE HAS OBTAINED AND/OR PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

2. **Modification of Section 2.1.** Section 2.1 of the Deed of Trust is hereby modified by deleting the text thereof in its entirety and inserting the following text in lieu thereof:

**Grant.** For and in consideration of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Mortgagor herein set forth, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of all of the Obligations, Mortgagor hereby irrevocably MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, WARRANTS, TRANSFERS, CONFIRMS and CONVEYS, to Trustee, in trust WITH POWER OF SALE and right of entry and possession, for the benefit of Beneficiary, as Agent for the Lender Group pursuant to the Credit Agreement, all its right, title, interest, and estate in, to and under the d Property, subject, however, to the Permitted Liens, TO HAVE AND TO HOLD the Trust Property and all parts, rights, and appurtenances thereof, to Trustee, in trust for the benefit of Beneficiary, subject to the terms and conditions of this Deed of Trust, the Credit Agreement and the other Loan Documents, with POWER OF SALE, forever, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND, subject to Permitted Liens, the title to the Trust Property unto Trustee, in trust for the benefit of Beneficiary, against every Person whomsoever lawfully claiming or to claim the same or any part thereof; and provided, further, that if (i) Mortgagor, Mortgagor's administrators, personal representatives, successors or assigns, shall pay to Beneficiary, its successors or assigns, the Indebtedness, as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations (other than unasserted contingent indemnification Obligations and other than any Bank Product Obligations that, at such time, are allowed by the Bank Product Providers to remain outstanding and that are not required by the provisions of the Credit Agreement to be repaid or cash collateralized) on or before the date same are to be performed and discharged, (ii) no member of the Lender Group shall have any further obligation to provide any additional credit under the Credit Agreement, and (iii) all Letters of Credit shall have terminated or expired or shall have been cash collateralized in accordance with the Credit Agreement, then the liens, security interests, estates, and rights granted by this Deed of Trust shall cease, terminate, and be void; otherwise same shall remain in full force and effect. In addition, Beneficiary shall release the Trust Property from this Deed of Trust upon the occurrence of a Permitted Disposition with respect thereto as allowed by and in accordance with the terms of the Credit Agreement.

Mortgagor hereby agrees and acknowledges that the Indebtedness secured by this Deed of Trust includes a revolving loan and is intended to secure future advances; accordingly, this Deed of Trust shall not be canceled by the full and complete repayment of the Indebtedness, so long as the Credit Agreement remains in force and effect.

**3. Modification of Section 3.2.** Section 3.2 of the Deed of Trust is hereby modified by deleting the text thereof in its entirety and inserting the following text in lieu thereof:

**First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Deed of Trust and the other Loan Documents (subject to Permitted Liens and Liens first approved in writing by Beneficiary). If any lien or security interest

other than the Permitted Liens (or any lien or security interest first approved in writing by Beneficiary) is asserted against the Trust Property, Mortgagor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount, and other material terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Beneficiary pursuant to the terms of the Credit Agreement).

4. **Modification of Credit Agreement.** Any references in the Deed of Trust to the term "Credit Agreement" shall hereafter refer to the Credit Agreement as defined herein.

5. **Ratification.** Except as modified hereby, the terms and conditions of the Deed of Trust are now and shall hereafter remain in full force, and Grantor hereby ratifies the terms and conditions thereof.

6. **Conflicting Provisions.** To the extent any provision of the Deed of Trust, as modified by this Modification, conflicts with any provision of the Credit Agreement, the conflicting terms and provisions of the Credit Agreement shall control.

7. **No Oral Modification.** This Modification may not be amended except upon the written agreement of all parties hereto.

8. **Binding Upon Successors and Assigns.** This Modification shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

9. **Headings.** The headings of the sections of this Modification are for convenience and reference only and shall not be considered a part hereof nor shall they be deemed to limit or otherwise affect any of the terms or provisions hereof.

10. **Governing Law.** This Modification shall be governed by and construed in accordance with the laws of the State of New York.

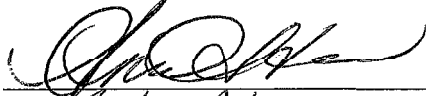
11. **Counterparts.** This Modification may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

*[Signatures Begin on Following Page]*

IN WITNESS WHEREOF, the undersigned have executed this Modification, under seal, as of the day and year first above written.

**GRANTOR:**

**AMERICAN BLUE RIBBON HOLDINGS, LLC**, a Delaware limited liability company

By:   
Name: Anita Adams  
Title: CFO

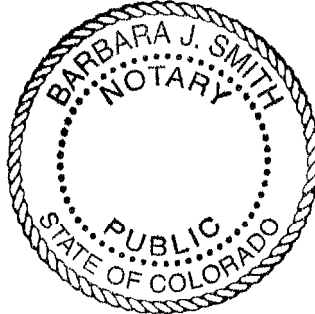
Grantor's Organizational Identification Number: 4637681

STATE OF COLORADO )  
 )ss.  
CITY AND COUNTY OF )

On August 29, 2011, before me, the undersigned, Notary Public in and for said State and County, personally appeared Anita Adams, 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(ies) upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
Notary Public



My Commission Expires 03/30/2012

[Signatures Continued on Following Page]





**ACKNOWLEDGMENT**

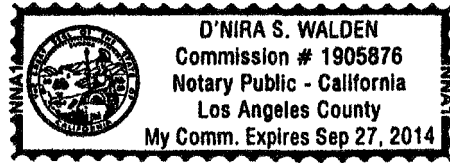
State of California  
County of Los Angeles)

On August 8, 2011 before me, D'Nira S. Walden, Notary Public  
(insert name and title of the officer)

personally appeared Ryan Haight,  
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.



Signature *D'Nira S. Walden* (Seal)

## Legal Description

Lots Four (4), Five (5), Six (6), Seven (7), Eight (8), EXCEPT that part thereof taken for street purposes previously taken, and all of the West 30 feet of Lots Three (3) and Thirty-six (36), together with vacated alley lying between West 30 feet of Lots Three (3) and Thirty-six (36), and between Lots Four (4), Five (5), Six (6), Seven (7), Eight (8), Thirty-three (33), Thirty-four (34) and Thirty-five (35), all in Block Four (4), Briggs Place, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.