

MISC 2013005571



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 Register of Deeds, Douglas County, NE
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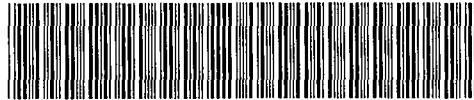
2013005571

✓ WHEN RECORDED MAIL TO:
 Wells Fargo Bank, National Association
 BBSG - Boise Loan Ops LDI
 P.O. Box 34656
 San Antonio, TX 78265

FOR RECORDER'S USE ONLY

smpt# 12090320106

MODIFICATION OF DEED OF TRUST



200157473906500480

THIS MODIFICATION OF DEED OF TRUST dated October 22, 2012, is made and executed between HFH Omaha GC, LLC, shown in title as HFH Omaha GC, L L C, whose address is 6006 North 72nd Street, Omaha, NE 68134 ("Trustor") and Wells Fargo Bank, National Association, whose address is Utah - Loan Support Team (Special Loans), 299 South Main, 6th Floor, MAC #U1228-065, Salt Lake City, UT 84111 ("Lender").

DEED OF TRUST. Lender and Trustor have entered into a Deed of Trust dated August 14, 2008 (the "Deed of Trust") which has been recorded in Douglas County, State of Nebraska, as follows:

Recorded on August 21, 2008, as Instrument (Serial) No. 2008083383, of the Official Records of Douglas County, Nebraska, as modified from time to time ("Deed of Trust"), with respect to the real property described and incorporated herein by this reference.

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

Lot 1, Sorenson Park Plaza Replat 4, a Cluster Subdivision, Douglas County, Nebraska

The Real Property or its address is commonly known as 6006 N 72nd Street, Omaha, NE 68134. The Real Property tax identification number is 3397-1112-22.

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

The Deed of Trust is hereby modified to include within the indebtedness and obligations secured by the Deed of Trust, the payment to Beneficiary of all indebtedness and performance of all obligations evidenced by and arising under that promissory note, loan or credit agreement, confirmation letter and disclosure, or other evidence of debt, dated as of October 22, 2012, evidencing indebtedness of HFH Omaha GC, LLC to Beneficiary in the principal amount of \$3,097,194.12 with a final maturity or payment in full date of October 15, 2014 (which represents the refinancing of that certain promissory note, loan or credit agreement, confirmation letter and disclosure, or other evidence of debt dated as of October 26, 2011, and secured by the Deed of Trust), together with interest thereon, and any such indebtedness or other obligations incurred under or in connection with the credit accommodation evidenced, even if not specifically referenced therein.

Grantor hereby acknowledges that the following additional provisions entitled "Failure to Provide Insurance" and "Lender to be Named Loss Payee" by this reference are made a part of the Deed of Trust.

Cashier's Checks 0138318042 + 0138318055

**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 2352784420

Page 2

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.

FACSIMILE AND COUNTERPART. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

ARBITRATION AGREEMENT. Arbitration - Binding Arbitration. Lender and each party to this agreement hereby agree, upon demand by any party, to submit any Dispute to binding arbitration in accordance with the terms of this Arbitration Program. Arbitration may be demanded before the institution of a judicial proceeding, or during a judicial proceeding, but not more than 60 days after service of a complaint, third party complaint, cross-claim, or any answer thereto, or any amendment to any of such pleadings. A "Dispute" shall include any dispute, claim or controversy of any kind, whether in contract or in tort, legal or equitable, now existing or hereafter arising, relating in any way to any aspect of this agreement, or any related note, instrument or agreement incorporating this Arbitration Program (the "Documents"), or any renewal, extension, modification or refinancing of any indebtedness or obligation relating thereto, including without limitation, their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination. This provision is a material inducement for the parties entering into the transactions relating to this Agreement. DISPUTES SUBMITTED TO ARBITRATION ARE NOT RESOLVED IN COURT BY A JUDGE OR JURY. TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARBITRATED PURSUANT TO THIS ARBITRATION PROGRAM.

A. Governing Rules. Any arbitration proceeding will (i) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (ii) be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs, in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes are referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then at a location selected by the AAA in the state of the applicable substantive law primarily governing the Note. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. The arbitrator shall award all costs and expenses of the arbitration proceeding. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. Section 91, as amended or replaced from time to time, or any similar applicable state law.

B. No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

C. Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any Dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. Every arbitrator must be a neutral practicing attorney or a retired member of the state or federal judiciary, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the Dispute. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all Disputes in accordance with the applicable substantive law and may grant any remedy or relief that a court of such

**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 2352784420

Page 3

state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the applicable state rules of civil procedure, or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

D. Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

E. Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against non-parties in any arbitration, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity. As used herein, "non-parties" shall mean all persons and entities except Lender and the party(ies) executing this agreement or any related Document.

F. State Specific Provisions.

If **Delaware, Pennsylvania or Virginia law governs the Dispute**, the following provision is applicable if there is a Confession of Judgment in the Note, any Guaranty, or Related Documents:

Confession of Judgment. Notwithstanding anything herein to the contrary, the arbitration requirement does not limit or preclude the right of Lender to confess judgment pursuant to a warrant of attorney provision set forth in the Note, any Guaranty, or Related Documents. No party shall have the right to demand binding arbitration of any claim, dispute or controversy seeking to (i) strike-off or open a judgment obtained by confession pursuant to a warrant of attorney contained in the Note, any Guaranty, or Related Documents, or (ii) challenge the waiver of a right to prior notice and a hearing before judgment is entered, or after judgment is entered, but before execution upon the judgment. Any claims, disputes or controversies challenging the confession of judgment shall be commenced and prosecuted in accordance with the procedures set forth, and in the forum specified by the applicable state rules of civil procedure or other applicable law.

If **Maryland law governs the Dispute**, the following provision is applicable if there is a Confession of Judgment in the Note, any Guaranty, or Related Documents:

Confession of Judgment. Notwithstanding anything herein to the contrary, the arbitration requirement does not limit or preclude the right of Lender to confess judgment, and no party shall have the right to demand binding arbitration of any claim, dispute or controversy seeking to open a judgment obtained by confession. Nothing herein, including the arbitration requirement, shall limit the right of any party to foreclose judicially or non-judicially against any real or personal property collateral, or exercise judicial or non-judicial power of sale rights. No provision regarding submission to a jurisdiction and/or venue in any court or the waiver of any right to trial by jury is intended or shall be construed to be in derogation of the provisions for arbitration of any dispute. Any claim or counterclaim or defense raised in connection with Lender's exercise of any rights set forth in the Note, any Guaranty, or Related Documents shall be subject to the arbitration requirement.

If **South Carolina law governs the Dispute**, the following provision is included:

WAIVER OF JURY TRIAL. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS MORTGAGE, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, MORTGAGOR AND MORTGAGEE WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGEE, AND MORTGAGOR AND MORTGAGEE HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

G. Real Property Collateral.

If **California law governs the Dispute**, the following provisions are included:

Real Property Collateral; Judicial Reference. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of California, thereby agreeing that all indebtedness and obligations of the parties, and all

**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 2352784420

Page 4

mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such Dispute is not submitted to arbitration, the Dispute shall be referred to a referee in accordance with California Code of Civil Procedure Section 638 et seq., and this general reference agreement is intended to be specifically enforceable in accordance with said Section 638, as amended or replaced from time to time. A referee with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a referee shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645, as amended or replaced from time to time.

Small Claims Court. Any party may require that a Dispute be resolved in Small Claims Court if the Dispute and related claims are fully within that court's jurisdiction.

If Connecticut law governs the Dispute, the following provision is included:

Real Property Collateral. Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property located in Connecticut unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of Sections 49-1 and 49-14 et seq. of the Connecticut General Statutes, as amended or replaced from time to time, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Idaho, Kansas, Montana, Nevada, South Dakota or Virginia law governs the Dispute, the following provision is included:

Real Property Collateral. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Idaho, Kansas, Montana, Nevada, South Dakota or Virginia, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

If Utah law governs the Dispute, the following provision is included:

Real Property Collateral; Judicial Reference. Notwithstanding anything herein to the contrary, no Dispute shall be submitted to arbitration if the Dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Utah, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable. If any such Dispute is not submitted to arbitration, the Dispute shall be referred to a master in accordance with Utah Rule of Civil Procedure 53, as amended or replaced from time to time, and this general reference agreement is intended to be specifically enforceable. A master with the qualifications required herein for arbitrators shall be selected pursuant to the AAA's selection procedures. Judgment upon the decision rendered by a master shall be entered in the court in which such proceeding was commenced in accordance with Utah Rule of Civil Procedure 53(e), as amended or replaced from time to time.

H. Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a Dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the Dispute shall control. This arbitration provision shall survive the repayment of the Note and the termination, amendment or expiration of any of the Documents or any relationship between the parties.

LENDER TO BE NAMED LOSS PAYEE. All required policies and certificates of insurance shall name Mortgagee/Beneficiary as loss payee, and shall provide that the insurance cannot be terminated as to Mortgagee/Beneficiary except upon a minimum of ten (10) days' prior written notice to Mortgagee/Beneficiary. Immediately upon any request by Lender/Mortgagee/Beneficiary, Grantor/Trustor/Mortgagor shall deliver to Lender/Mortgagee/Beneficiary the original of all such policies or certificates, with receipts evidencing annual prepayment of the premiums.

FAILURE TO PROVIDE INSURANCE. Grantor/Trustor/Mortgagor ("Owner") acknowledges and agrees that if Owner fails to provide any required insurance on the terms set forth herein or in any Related Documents, or fails to continue such insurance in force in compliance with the requirements of this agreement or any Related Documents, Lender may purchase insurance at Owner's expense as provided therein. Such insurance may protect Lender's interests, and may otherwise protect none of, or less than all of, Owner's interests. The cost of any such insurance shall become a part of the Indebtedness and shall be payable on demand or added to the Note as provided herein, at Lender's option. OWNER ACKNOWLEDGES THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE MAY PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO THE BALANCE OF THE LOAN; HOWEVER, OWNER'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE

MODIFICATION OF DEED OF TRUST
(Continued)

Loan No: 2352784420

Page 5

REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MODIFICATION OF DEED OF TRUST AND TRUSTOR AGREES TO ITS TERMS. THIS MODIFICATION OF DEED OF TRUST IS DATED OCTOBER 22, 2012.

TRUSTOR:

HFH OMAHA GC, LLC

NSC PROPERTIES, LLC, Manager of HFH Omaha GC, LLC

By: [Signature]
Neil J Wall, Manager of NSC Properties, LLC

By: [Signature]
R. Scott Priest, Manager of NSC Properties, LLC

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

X [Signature]
Authorized Officer

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
) SS
COUNTY OF Davis)

On this 24 day of October, 20 12, before me, the undersigned Notary Public, personally appeared Neil J Wall, Manager of NSC Properties, LLC, Manager of HFH Omaha GC, LLC, and known to me to be 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 [Signature]
Printed Name: Jenny Wall
Notary Public in and for the State of Utah
Residing at Layton
My commission expires 3/28/15



MODIFICATION OF DEED OF TRUST
(Continued)

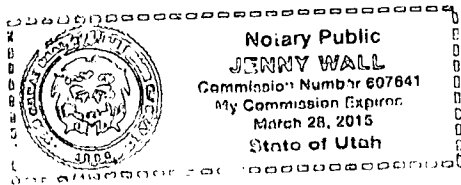
Loan No: 2352784420

Page 6

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
) SS
COUNTY OF Davis)

On this 24 day of October, 20 12, before me, the undersigned Notary Public, personally appeared R. Scott Priest, Manager of NSC Properties, LLC, Manager of HFH Omaha GC, LLC, and known to me to be 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.

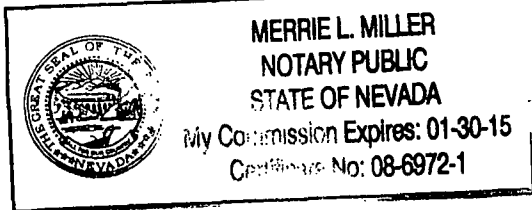


By Jenny Wall
Printed Name: Jenny Wall
Notary Public in and for the State of Utah
Residing at Layton
My commission expires 3/28/15

LENDER ACKNOWLEDGMENT

STATE OF Nevada)
) SS
COUNTY OF Clark)

On this 25th day of October, 20 12, before me, the undersigned Notary Public, personally appeared tyler Barton, and known to me to be the vice president, authorized agent for Wells Fargo Bank, National Association that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of Wells Fargo Bank, National Association, duly authorized by Wells Fargo Bank, National Association 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 Wells Fargo Bank, National Association.



By Merrie Miller
Printed Name: Merrie Miller
Notary Public in and for the State of NV
Residing at Las Vegas
My commission expires 1-30-15