

NTC 83607

2008-015684

Klamath County, Oregon



00056586200800156840120124

AFTER RECORDING, RETURN TO:

STERLING SAVINGS BANK  
c/o Intervest-Mortgage Investment Company  
Attn: Nancy Dalton  
5005 S.W. Meadows Road, Suite 400  
Lake Oswego, Oregon 97035

11/21/2008 01:45:35 PM

Fee: \$86.00

**Document Title:** Assumption and Modification of Promissory Note and Deed of Trust (and Fixture Filing)

**Reference Number of Documents Modified:** M06-02180 and M06-02181

**Grantor:** Onyx Business Park, LLC

**Assumptor:** Weston Investment Co. LLC

**Trustee:** AmeriTitle

**Beneficiary:** Sterling Savings Bank

**Property Tax Account Number:** R-3909-010BA-02600-000

**ASSUMPTION AND MODIFICATION OF PROMISSORY NOTE,  
DEED OF TRUST AND ASSIGNMENT OF LEASES (AND FIXTURE FILING)**

THIS ASSUMPTOIN AND MODIFICATION AGREEMENT is dated this 13 day of November, 2008, by and between ONYX BUSINESS PARK, LLC, an Oregon limited liability company (hereinafter referred to as "Borrower"); WESTON INVESTMENT CO. LLC, an Oregon limited liability company (hereinafter referred to as "Assumptor"); and STERLING SAVINGS BANK, successor in interest to Intervest-Mortgage Investment Company (hereinafter referred to as "Lender").

**RECITALS**

1. On or about February 1, 2006, Borrower made, executed and delivered to Lender its Promissory Note (hereinafter "Note"), in writing, in the original principal amount of \$4,100,000.00, together with interest thereon at the rate equal to the Prime Rate as published in the Money Rates section of the *Wall Street Journal*. The interest rate on all sums advanced shall be adjusted on the first day of the month following the date said rate is changed to equal the then present published Prime Rate. The Note, as extended, provides for maturity on October 1, 2013.

2. At the same time as the execution and delivery of the Note, and in order to secure repayment of the same, Borrower executed, in favor of Lender, a Deed of Trust, Assignment of Rents and Security Agreement (hereinafter "Deed of Trust"), encumbering certain real property

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located in Klamath County, Oregon (the "property"), and legally described in Exhibit "A" attached hereto. The Deed of Trust was thereafter recorded on February 3, 2006 in Volume M06, page 02180, Microfilm Records of Klamath County, Oregon.

3. At the same time as the execution and delivery of the Note and Deed of Trust, and in order to further secure repayment of the obligation of the Note, Borrower executed and delivered to Lender an Assignment of Leases and Cash Collateral (hereinafter "Assignment"), wherein Borrower assigned to Lender all of its rights under the leases, rents and income of the property. The Assignment was recorded on February 3, 2006 in Volume M06, page 02181, Microfilm Records of Klamath County, Oregon.

4. At the same time as the execution and delivery of the Note and Deed of Trust, Borrower executed and delivered to Lender (i) its Certificate and Indemnity Regarding Hazardous Substances, which warrants to Lender that the Property has been and will continue to be used in conformity and in compliance with all local, state and federal ordinances, statutes, rules and regulations relating to the use, disposal, storage or transfer of hazardous substances, and agrees to indemnify and hold Lender harmless from any loss or damage caused by a breach of said warranties, and (ii) its Building Laws Indemnity, which warrants to Lender that the Property has been and will continue to be used in conformity and in compliance with all local, state and federal ordinances, statutes, rules and regulations relating to the development, use and operation of the Property, including the Americans With Disabilities Act, and agrees to indemnify and hold Lender harmless from any loss or damage caused by a breach of said warranties (hereinafter collectively referred to as the "Indemnity").

5. At the same time as the execution and delivery of the Note and Deed of Trust, and in order to further secure repayment of the obligation of the Note, Randall D. Simonson and Barbara A. Simonson guaranteed repayment of Borrower's indebtedness to Lender in a written Guaranty.

6. On or about December 4, 2006, Lender agreed to release a portion of the real property from the lien of the Deed of Trust in exchange for Borrower's principal reduction of the Note by \$250,000.00. The property was the subject of a land partition, and Exhibit "A" shows the property which remains subject to Lender's Deed of Trust.

7. On or about October 2, 2008, Borrower and Lender entered into a written modification agreement wherein the maturity of the Note was extended to October 1, 2013 and the interest rate and repayment terms were amended (hereinafter the "Modification Agreement"). The Modification Agreement was thereafter recorded on October 8, 2008 under Recording No. 2008-013832, records of Klamath County, Oregon.

8. The outstanding principal amount of the indebtedness is \$3,850,000.00 with interest owing from October 1, 2008.

9. Borrower is desirous of transferring the property to Assumptor in exchange for Assumptor's assumption of the Note, Deed of Trust, Assignment of Leases and the Loan Documents executed in connection therewith. Lender is willing to allow the assumption by Assumptor upon the other terms and conditions set forth herein.

10. The Note, the Deed of Trust, the Assignment, Indemnity, Modification Agreement, and this Assumption Agreement, and any other document executed in connection therewith or referred to therein, may hereinafter be referred to as the "Loan Documents."

#### AGREEMENT

NOW, THEREFORE, in consideration of their mutual benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, Borrower, Assumptor and Lender hereby agree that the Note and Deed of Trust are modified as follows:

A. Assumptor agrees to assume and pay the obligations evidenced by the aforementioned Loan Documents, Note, Deed of Trust, Assignment, Indemnity and every document executed in connection therewith and/or referred to therein, and does hereby agree to assume and perform all of the terms, conditions and covenants provided for therein, as if Assumptor was the original signator thereto.

(1) It is agreed and understood that at closing the parties will pay down the indebtedness so that the outstanding principal balance of the Note is Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00), and Assumptor agrees to pay said sum pursuant to the terms of the Loan Documents, and as provided herein. At closing Borrower shall pay to Lender pro rated interest from October 1, 2008 through the date of closing. At closing Assumptor shall pay to Lender pro rated interest from the date of closing through November 30, 2008. Commencing January 1, 2009 and on the 1st day of each month thereafter, Assumptor shall pay to Lender the regular installment of principal and interest due on the Note as modified below.

(2) In consideration of the assumption by Assumptor, Assumptor shall pay to Lender a non-refundable assumption fee of Twenty-Eight Thousand One Hundred Twenty-Five Dollars (\$28,125.00).

(3) Lender hereby agrees and permits Assumptor to assume, and Assumptor does hereby assume, the Note, Deed of Trust, Assignment, Indemnity and the other Loan Documents. Said assumption shall bind Assumptor, its heirs, successors and assigns. Following Assumptor's assumption herein, Borrower and Randall D. Simonson and Barbara A. Simonson shall be released from their obligation under the Loan Documents and Guaranty.

B. The principal amount of the debt shall be paid down to \$3,750,000.00. Assumptor promises and agrees to pay principal and interest under the Note, as modified herein (a copy of the Modified Promissory Note is attached hereto as Exhibit "B" and by this reference made a part hereof), to Lender c/o Intervest-Mortgage Investment Company, 5005 S.W. Meadows Road, Suite 400, Lake Oswego, Oregon 97035, or at such other place as Lender may direct, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of private and public debts, as follows:

(1) Commencing from the date hereof through November 30, 2013, the indebtedness shall bear interest on the outstanding balance at a fixed rate of seven and one half percent (7.50%) per annum. Thereafter, on December 1, 2013 the interest rate shall be adjusted to equal three and one half percent (3.50%) in excess of the rate established for Interest Rate Swaps with maturities of one (1) year as published in the Federal Reserve Statistical Release H.15 (the "Index"), said rate to be established by the week ending average in the most recent publication prior to the date of adjustment of the rate, rounded up to the nearest eighth of a percentage point (.125 of 1%). If the Index ceases to be made available by the publisher, or by any successor to the publisher, the holder will set the interest rate by using a comparable index.

(2) On the date of the closing of the loan, interest shall be paid as calculated from the date funds are first disbursed to the undersigned to the date one month prior to the beginning of amortization installment payments.

(3) Commencing January 1, 2009, and on the first day of each and every month thereafter, principal and interest shall be payable in monthly installments in an amount necessary to amortize the principal balance and interest in equal monthly payments over a twenty (20) year term ("Amortization Term"). In the event of a change in the rate of interest, the monthly payment shall be adjusted to an amount necessary to amortize the remaining principal balance and interest over the remaining months in the Amortization Term at the rate of interest on said adjustment date.

(4) All payments made herein shall apply first against costs, if any, then against late charges, if any, then against accrued interest and then against the last maturing installment of principal.

(5) The entire principal and any accrued interest on the Modified Note shall be paid in full on December 1, 2014.

C. In consideration of Lender allowing this assumption and in order to further secure the repayment of the Note, Joseph E. Weston shall execute and deliver his written Guaranty of Assumpor's indebtedness to Lender.

D. Assumpor's address for notice purposes under the Loan Documents is 2145 NE Broadway, Suite 200, Portland, Oregon 97232.

E. The Deed of Trust includes a security agreement wherein Borrower granted to Lender a security interest in Borrower's personal property. As to all of the personal property which is or which hereafter becomes a "fixture" under applicable law, this Agreement constitutes a fixture filing under the Oregon Uniform Commercial Code, as amended or recodified from time to time. Borrower and Assumpor hereby authorize Lender to file a financing statement, with or without Borrower's or Assumpor's signature, to perfect Lender's lien and security interest in the Personal Property and Improvements as described in the Loan Documents (including any required continuation statements, amendment statements or other such documents necessary to perfect and continue the lien) and Borrower and Assumpor hereby expressly ratify any financing statements Lender may have filed prior to the date of this Assumption Agreement.

F. In the event Assumpor shall, at any time be or have been in default hereunder or under the Loan Documents, Lender shall have the right, at Assumpor's sole expense, to enter upon the property, either by itself or through its agent, for the purpose of conducting an MAI appraisal of the property. The cost of the appraisal shall be payable by Assumpor to Lender on demand, and shall bear interest at the Note rate, as modified. It is expressly agreed and understood by Assumpor that the occurrence of such a default shall be deemed to increase Lender's risk hereunder, thereby creating a need for Lender to have the information contained in an MAI appraisal of the property.

G. It is agreed and understood that all of the agreements, covenants and conditions of the Loan Documents shall remain in full force and effect, except for the amendments and modifications expressly mentioned herein.

H. Nothing herein contained shall in any manner affect the validity or priority of the lien established by the Deed of Trust encumbering the property referred to in Paragraph 2 above.

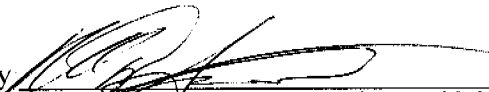
I. The recitals set forth in Paragraphs 1 through 10 above are incorporated into the substantive provisions of this Agreement.

J. This Modification Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if the parties hereto had signed the same document. All of such counterparts shall constitute one instrument, but in making proof, it shall only be necessary to produce one such counterpart.

K. UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY A 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 THE LENDER TO BE ENFORCEABLE.

BORROWER:

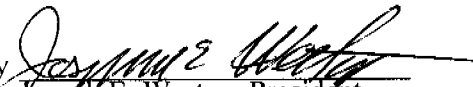
ONYX BUSINESS PARK, LLC,  
an Oregon limited liability company

By   
Randall D. Simonson, Member and Manager

ASSUMPTOR:

WESTON INVESTMENT CO. LLC,  
an Oregon limited liability company

By American Property Management Corp., an  
Oregon corporation, Manager

By   
Joseph E. Weston, President

LENDER:

~~INTERVEST MORTGAGE INVESTMENT~~  
~~COMPANY~~  
STERLING SAVINGS BANK

By \_\_\_\_\_  
Its \_\_\_\_\_

K. UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY A 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 THE LENDER TO BE ENFORCEABLE.

**BORROWER:**

ONYX BUSINESS PARK, LLC,  
an Oregon limited liability company

By   
Randall D. Simonson, Member and Manager

**ASSUMPTOR:**

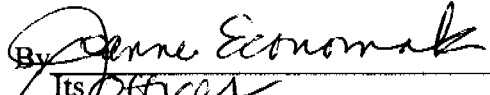
WESTON INVESTMENT CO. LLC,  
an Oregon limited liability company

By American Property Management Corp., an  
Oregon corporation, Manager

By \_\_\_\_\_  
Joseph E. Weston, President

**LENDER:**

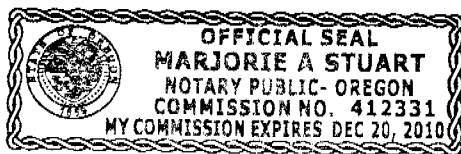
STERLING SAVINGS BANK

By   
Its Officer \_\_\_\_\_

State of Oregon }  
County of Klamath ss.

I certify that I know or have satisfactory evidence that Randall D. Simonson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it a Member and the Manager of Onyx Business Park, LLC, to be the free and voluntary act of such party, for the uses and purposes mentioned in the instrument.

DATED: Nov. 20, 2008.



MASUM  
Print Name: MA Stuart  
Notary Public in and for the State  
of Oregon, residing at Klamath Falls OR  
My appointment expires: (2/20/10)

State of Oregon }  
County of Multnomah ss.

I certify that I know or have satisfactory evidence that Joseph E. Weston is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it President of American Property Management Corp., which is the Manager of Weston Investment Co. LLC, to be the free and voluntary act of such party, for the uses and purposes mentioned in the instrument.

DATED: November 13, 2008.

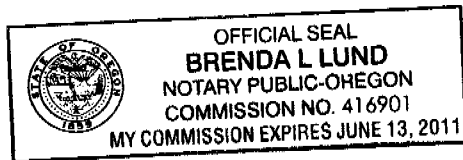


Kathryn L. Bork  
Print Name: KATHRYN L. BORK  
Notary Public in and for the State  
of Oregon, residing at West Linn  
My appointment expires: 8-19-2009

State of Oregon        )  
County of Clackamas } ss.

I certify that I know or have satisfactory evidence that JOANNE ECONOMAKI personally appeared before me, and on oath stated that she was authorized to execute the instrument and acknowledged it, as OFFICER, of STERLING SAVINGS BANK, to be the free and voluntary act of such corporation, for the uses and purposes mentioned in the instrument.

DATED: NOVEMBER 13, 2008.



Brenda L Lund  
Print Name: BRENDA L LUND  
NOTARY PUBLIC in and for the State  
of Oregon, residing at WILSONVILLE  
My appointment expires: 06/11/13



## **EXHIBIT "A"**

### **Legal Description**

Parcel 1 of Land Partition 8-06 being a replat of Parcel 3 of Major Land Partition 8-98, situated in the NW ¼ of Section 10, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Situate in Klamath County, Oregon.

## EXHIBIT "B"

### MODIFIED PROMISSORY NOTE

\$3,750,000.00

Klamath Falls, Oregon  
November \_\_, 2008

The undersigned ("Maker"), for value received, promises to pay to the order of STERLING SAVINGS BANK ("Lender") the principal sum of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00), and to pay interest on the unpaid principal thereof from the date of disbursement of principal at the rates hereinafter set forth, together with all costs and fees, including attorneys' fees, incurred by Lender in enforcing the obligations of this Modified Note. All interest due shall be computed on the basis of a 360-day year. The principal hereof and interest and premium, if any, hereon are payable to Lender c/o Intervest-Mortgage Investment Company, 5005 S.W. Meadows Road, Suite 400, Lake Oswego, Oregon 97035, or such other place as Lender may direct, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

a. Commencing from the date hereof through November 30, 2013, the indebtedness shall bear interest on the outstanding balance at a fixed rate of seven and one half percent (7.50%) per annum. Thereafter, on December 1, 2013, the interest rate shall be adjusted to equal three and one half percent (3.50%) in excess of the rate established for Interest Rate Swaps with maturities of one (1) year as published in the the Federal Reserve Statistical Release H.15 (the "Index"), said rate to be established by the week ending average in the most recent publication on or immediately prior to the date of adjustment of the rate, rounded up to the nearest eighth of a percentage point (.125 of 1%). If the Index ceases to be made available by the publisher, or by any successor to the publisher, the holder will set the interest rate by using a comparable index.

Yields on Interest Rate Swaps as published in the Index are based on International Swaps and Derivatives Association ("ISDA") mid-market par swap rates. Rates are for a Fixed Rate Payer in return for receiving three month LIBOR, and are based on rates collected at 11:00 a.m. by Garban Intercapital PLC and published on Reuters Page ISDAFIX1. If the Index ceases to be made available by Publisher, or any successor to the Publisher, the holder will set the rate by using a comparable index.

b. On the date of the closing of the loan, interest shall be paid as calculated from the date funds are first disbursed to the undersigned to the date one month prior to the beginning of amortization installment payments.

c. Commencing January 1, 2009, and on the first day of each and every month thereafter, principal and interest shall be payable in monthly installments in an amount necessary to amortize the principal balance and interest in equal monthly payments over a twenty (20) year term ("Amortization Term"). In the event of a change in the rate of interest, the monthly payment shall be adjusted to an amount necessary to amortize the remaining principal balance and interest over the remaining months in the Amortization Term at the rate of interest on said adjustment date.

d. All payments made herein shall apply first against costs, if any, then against late charges, if any, then against accrued interest and then against the last maturing installment of principal.

e. The entire principal and any accrued interest on this Modified Note shall be paid in full on December 1, 2014.

Maker shall have the right, at any time, to prepay the whole or any part hereof without penalty. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent installments or change the amount of such installments, unless Lender shall otherwise agree in writing.

Following default in the payment of any installment of principal or interest when due hereunder, or default under any of the covenants or conditions of the Deed of Trust which secures this Modified Note or any other document executed in connection with or to secure this Modified Note (the "Loan Documents") and expiration of the applicable cure period, Lender may elect to (i) declare the whole amount then unpaid due and collectible, whether due by lapse of time or not, and/or (ii) declare an increase in the rate of interest so that this Modified Note shall thereafter bear interest at the rate contained herein, plus three percent (3.00%) per annum, initially determined on the date of default and adjusted as any variable rate changes. Lender may exercise either or both of the foregoing remedies, and failure to exercise either of these options shall not constitute a waiver of the right to exercise the same at any other time.

In the event that any payment or portion thereof is not paid within fifteen (15) days after the date it is due, Lender may collect, and Maker agrees to pay with such payment, a "late charge" of Four Cents (\$0.04) for each dollar so over due as liquidated damages for the additional expense of handling such delinquent payments. Such late charge represents the reasonable estimate by the parties of a fair average compensation due to the failure of Maker to make timely payments. Such late charge shall be paid without prejudice to the rights of the Lender to collect any other amounts provided to be paid or to declare a default hereunder, under the Deed of Trust or under the Loan Documents.

In the event that Lender consults an attorney in connection with the default by Maker regarding the enforcement of any of Lender's rights under this Modified Note or the Loan Documents, or if this Modified Note is placed in the hands of an attorney for collection or if suit be brought to enforce this Modified Note or the Loan Documents, Maker promises to pay all costs thereof, including attorneys' fees. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal or in any proceedings under the Bankruptcy Act or state receivership statutes. Maker and any endorers severally waive presentment, protest and demand, notice of protest, demand of dishonor, and payment of this Modified Note, and expressly agrees that this Modified Note, or any payment hereunder, may be extended from time to time without in any way affecting the liability of Maker and any endorers hereof.

The undersigned acknowledges that the Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust") contains certain provisions restricting the conveyance, transfer or further encumbrance of the property encumbered by the Deed of Trust without the prior written consent of the holder hereof.

The undersigned particularly waives the right to demand any marshalling of assets as a condition to or in connection with the bringing of action hereon against it. The holder hereof may accept additional or substitute security, or may release in whole or in part the security described in the Loan Documents and now or hereafter securing the Modified Note without in anyway affecting or impairing the indebtedness evidenced hereby or the liability of the undersigned and any endorers, guarantors or sureties hereof.

This Modified Note is to be governed by and construed in accordance with the laws of the State of Oregon. At the option of Lender, the venue of any action hereon may be laid in Klamath County, Oregon, or in any county wherein is situate property subject to the Deed of Trust or the Loan Documents. In the event of any action hereon or for the enforcement hereof or

in the event of the referring of this Modified Note for collection, the Maker promises to pay all costs pertaining to the security therefor and all sums required to be paid under any of the Loan Documents.

This Modified Note is given for an actual loan of the above amount and is secured by a Deed of Trust dated February 1, 2006, as modified by a Modification Agreement of even date herewith, which is a lien upon the property therein described.

EACH AND EVERY MAKER HEREOF AGREES THAT IT HAS RECEIVED VALUABLE CONSIDERATION HEREUNDER, THAT IT SIGNS THIS MODIFIED NOTE AS MAKER AND NOT AS A SURETY, AND THAT ANY AND ALL SURETYSHIP DEFENSES ARE HEREBY WAIVED.

**UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY A 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 THE LENDER TO BE ENFORCEABLE.**

WESTON INVESTMENT CO. LLC,  
an Oregon limited liability company

By American Property Management Corp., an  
Oregon corporation, Manager

DO NOT SIGN – EXHIBIT B

By Joseph E. Weston, President