

MTL 73222
AFTER RECORDING, RETURN TO:

2013-003778
Klamath County, Oregon
04/09/2013 03:18:08 PM
Fee: \$92.00

STERLING SAVINGS BANK
Attn: Loan Support
P.O. Box 2131
Spokane, Washington 99210

Document Title: Third Modification of Promissory Note and Deed of Trust
Reference Number of Documents Modified: M06-02180 and M06-02181
Grantor: Weston Investment Co. LLC
Trustee: AmeriTitle
Beneficiary: Sterling Savings Bank
Property Tax Account Number: 12-3909-010BA-02600-000

**THIRD MODIFICATION
OF PROMISSORY NOTE AND DEED OF TRUST**

THIS THIRD MODIFICATION AGREEMENT is made effective this 1st day of March, 2013, by and between WESTON INVESTMENT CO. LLC, an Oregon limited liability company (hereinafter referred to as "Borrower"), 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, Onyx Business Park, LLC (hereinafter "Onyx") 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 a variable rate of interest.
2. At the same time as the execution and delivery of the Note, and in order to secure repayment of the same, Onyx executed, in favor of Lender, a Deed of Trust, Assignment of Rents and Security Agreement (hereinafter "Deed of Trust"), encumbering certain real property 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, Onyx executed and delivered to Lender an Assignment of Leases and Cash Collateral (hereinafter "Assignment"), wherein Onyx assigned to Lender all of its rights under the leases, rents and income of the Property. The

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

6. On or about October 2, 2008, Onyx 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 "First Modification"). The First Modification was thereafter recorded on October 8, 2008 under Recording No. 2008-013832, records of Klamath County, Oregon.

7. On or about November 13, 2008, Onyx, Borrower and Lender entered into a written assumption and modification agreement, wherein Borrower assumed the loan from Onyx, the interest rate of the Note was adjusted and the maturity date was extended to December 1, 2014 (hereinafter the "Second Modification"). The Second Modification was thereafter recorded on November 21, 2008 under Recording No. 2008-015684, records of Klamath County, Oregon.

8. At the same time as the execution and delivery of Second Modification, and in order to further secure repayment of the obligation of the Note, Joseph E. Weston ("Guarantor") guaranteed repayment of Borrower's indebtedness to Lender in his written Guarantee. Said Guarantee is unconditional and shall remain in full force and effect as to the indebtedness of said Borrower under the Note and Deed of Trust, as modified herein. Guarantor does hereby reaffirm and ratify his previous Guarantee.

9. After application of the installment of principal and interest due March 1, 2013, the principal amount of the indebtedness is \$3,353,949.31.

10. Borrower is desirous of modifying the interest rate and extending the maturity of the Note. Lender is willing to modify the interest rate and extend the maturity of the Note upon the other terms and conditions set forth herein.

11. The Note, the Deed of Trust, the Assignment, Indemnity, Guarantee, First Modification, Second Modification and this Third Modification 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 and Lender hereby agree that the Loan Documents are modified as follows:

A. Borrower 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 at 111 North Wall Street, Spokane, Washington 99201, 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.

(1) Commencing on the date hereof, the indebtedness shall bear interest on the outstanding balance at the fixed rate of three and four tenths percent (3.40%) per annum.

(2) Commencing April 1, 2013, and on the first day of each and every month thereafter, principal and interest shall be payable in monthly installments of \$30,209.74. Provided, however, the principal balance of the indebtedness will be amortized over the remaining months of the 20-year term which commenced December 1, 2008 at the new interest rate herein.

(3) 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.

(4) The entire principal and any accrued interest on the Modified Note shall be paid in full on March 1, 2017.

B. In consideration of Lender entering into this Third Modification Agreement, Borrower agrees to pay Lender for legal fees incurred in the preparation of this loan documentation, together with the cost of a modification endorsement to Lender's title policy, together with all costs of recording this Agreement with the Office of the Klamath County Recorder.

C. 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 hereby authorizes Lender to file a financing statement, with or without Borrower'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 hereby expressly ratifies any financing statements Lender may have filed prior to the date of this Third Modification Agreement.

D. The financial accommodations provided under this Agreement are conditioned upon the representations and warranties of Borrower set forth in the Loan Documents having been true and correct when made or given, and being true and correct as of the date hereof. By executing and delivering this Agreement, Borrower confirms that such representations and warranties were true and correct when made or given, and are true and correct as of the date of this Agreement. Borrower makes the following additional representations and warranties:

(a) As of the date of this Agreement, (i) the Loan Documents are in full force and effect; (ii) Borrower is liable to Lender for the payment and performance of all of its obligations under the Loan Documents, as set forth therein, in accordance with their terms and without set off, recoupment, or counter claim; (iii) Lender has performed all of its obligations with respect to the Loan Documents to this date; and (iv) there are no

events of default under the Loan Documents that are not otherwise resolved by this Agreement.

(b) As of the date of this Agreement, Borrower has no disputes with or claims against Lender, and expressly waive(s) and releases any claim with respect to breach or violation by Lender, if any, of the terms and conditions of the Loan Documents in existence as of this date.

(c) There are no other loan commitments, verbal or written, made or claimed to have been made by Lender to Borrower which are not contained in this Agreement and the Loan Documents.

(d) Borrower shall indemnify, defend (using counsel reasonably acceptable to Lender) and hold Lender harmless from and against any and all losses, costs, damages, claims, or expenses (including reasonable attorneys' fees) which have been or may be asserted against or incurred by Lender as a result of or in connection with the above matters represented and warranted to Lender by Borrower.

E. 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.

F. 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.

G. The recitals set forth in Paragraphs 1 through 11 above are incorporated into the substantive provisions of this Agreement.

H. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

I. 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:

WESTON INVESTMENT CO. LLC,
an Oregon limited liability company

By Weston Trust Corp., an
Oregon corporation, Manager

By *Joseph E. Weston*
Joseph E. Weston, President

State of Oregon)
County of Multnomah)ss.

On March 28, 2013, before me, a Notary Public in and for the State, personally appeared Joseph E. Weston, personally known to me (or proved to me on the basis of satisfactory evidence) to be the President of Weston Trust Corp., which is the Manager of Weston Investment Co. LLC, and the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same freely and voluntarily in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

DATED this 28th day of March, 2013.



Tracy L Sprague
Print Name: Tracy L. Sprague
NOTARY PUBLIC in and for the State of
Oregon, residing at 2154 NE Broadway
My commission expires: 3-31-16

GUARANTOR:

Joseph E. Weston
JOSEPH E. WESTON

State of Oregon)
County of Multnomah)ss.

On March 28, 2013, before me, a Notary Public in and for the State, personally appeared Joseph E. Weston, personally known to me (or 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 freely and voluntarily, and that by his signature on the instrument the person executed the instrument.

DATED this 28th day of March, 2013.



Tracy L Sprague
Print Name: Tracy L Sprague
NOTARY PUBLIC in and for the State of
Oregon, residing at 2154 NE Broadway
My commission expires: 3-31-16

LENDER:

STERLING SAVINGS BANK

By [Signature]
Its Vice President

State of Oregon)
County of Multnomah)ss.

On ~~March~~ April 3rd, 2013, before me, a Notary Public in and for the State, personally appeared William C Hewitt, personally known to me (or proved to me on the basis of satisfactory evidence) to be the V President of Sterling Savings Bank, and the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same freely and voluntarily in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

DATED this 3rd day of April, 2013.



Christine A. Shirley
Print Name: Christine A Shirley
NOTARY PUBLIC in and for the State of
Oregon, residing at Portland
My commission expires: 10-22-13

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

\$3,353,949.31

Klamath Falls, Oregon
March 1, 2013

The undersigned ("Maker"), for value received, promises to pay to the order of STERLING SAVINGS BANK ("Lender") the principal sum of Three Million Three Hundred Fifty-Three Thousand Nine Hundred Forty-Nine and 31/100 Dollars (\$3,353,949.31), 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. The principal hereof and interest and premium, if any, hereon are payable to Lender at 111 North Wall Street, Spokane, Washington 99201, 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, the indebtedness shall bear interest on the outstanding balance at a fixed rate of three and four tenths percent (3.40%) per annum. All interest due shall be computed on the basis of a 360-day year based on the actual number of days elapsed. Borrower recognizes, understands and accepts that this method of calculating interest results in a marginally higher rate of interest than the standard rate.

b. Commencing April 1, 2013, and on the first day of each and every month thereafter, principal and interest shall be payable in monthly installments in the amount of \$30,209.74. Provided, however, the principal balance of the indebtedness will be amortized over the remaining months of the 20-year term which commenced December 1, 2008 at the new interest rate herein.

c. 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.

d. The entire principal and any accrued interest on this Modified Note shall be paid in full on March 1, 2017.

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 endorsers 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 endorsers 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 endorsers, 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 Third 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 Weston Trust Corp., an
Oregon corporation, Manager

DO NOT SIGN – EXHIBIT B
By _____
Joseph E. Weston, President