

2013-007864

Klamath County, Oregon



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07/11/2013 03:43:08 PM

Fee: \$87.00

WTC 85103

RETURN ADDRESS:
Washington Federal
Linda McLean
520 Pike Street
Seattle, WA 98101

ASSUMPTION AND LOAN MODIFICATION AGREEMENT

Reference: 414817-7
Grantor(s): XL Properties LLC
Grantee(s): 1. XL Cleaners, Inc.
2. WASHINGTON FEDERAL

Assessor's Tax Parcel ID#: 3909-002CA-00900-000

THIS AGREEMENT is made as of the 3rd day of July, 2013 between the undersigned Borrower (individually and collectively, if more than one, "Borrower"); the undersigned New Borrower (individually and collectively, if more than one, "New Borrower"); the undersigned Guarantor (individually and collectively, if more than one, "Guarantor"); the undersigned New Guarantor (individually and collectively, if more than one, "New Guarantor"); and WASHINGTON FEDERAL, a federal savings association (the "Lender").

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This Agreement is made with reference to a loan from Lender to Borrower (the "Loan") which is evidenced and secured by the following documents: **Promissory Note** in the principal amount of \$265,000.00 dated July 8, 2002 (the "Note"); **Deed of Trust** dated April 19, 2001 and recorded May 4, 2001 in Volume M01, page 20550, records of Klamath County, Oregon; **Deed of Trust** dated July 8, 2002 and recorded July 12, 2002 in Volume M02, page 39646, records of Klamath County, Oregon; **Deed of Trust** dated May 15, 2009 and recorded May 29, 2009 in Volume 2009-007504, records of Klamath County, Oregon (collectively, the "Deed of Trust") encumbering the real property legally described on attached **Exhibit A**; **Assignment of Rents** dated July 8, 2002; **Assignment of Rents** dated May 15, 2009; **Commercial Security Agreements** dated May 15, 2009; and various financing statements of record and other agreements, documents and instruments executed by Borrower in connection with the Loan (the foregoing is collectively referred to herein as the "Loan Documents").

Borrower desires to transfer and convey the Property (as defined in the Deed of Trust) to New Borrower, and New Borrower desires to assume all of Borrower's outstanding obligations under the Loan Documents. Lender has agreed to permit Borrower to transfer the Property to New Borrower and New Borrower to assume all of Borrower's outstanding obligations under the Loan Documents, subject to the terms and conditions of this Agreement. (Borrower and New Borrower are hereinafter sometimes collectively referred to as "Borrower Parties").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **No Default.** Borrower acknowledges that, and to the actual knowledge of Borrower, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, would constitute a default under the Loan Documents.

2. **Loan Documents.** Borrower Parties acknowledge and agree that (i) this Agreement and the Loan Documents constitute valid and legally binding obligations of Borrower and from and after the date hereof are valid and legally binding obligations of New Borrower enforceable in accordance with their terms, (ii) the representations and warranties contained in the Loan Documents are true and correct representations and warranties of Borrower and the New Borrower as of the date of this Agreement, and (iii) the Borrower Parties have no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender with respect to (A) the Loan, (B) the Loan Documents, or (C) any other documents or instruments now or previously evidencing, securing or in any way relating to the Loan. To the extent any of Borrower Parties would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action, Borrower Parties waive and relinquish them.

3. **Loan Assignment and Assumption.** Borrower hereby assigns to New Borrower all of Borrower's rights, title and interests in and under the Loan Documents. New Borrower hereby accepts such assignment and assumes the indebtedness due under the Loan and all of Borrower's other obligations, as grantor, mortgagor, borrower, indemnitor, trustor, guarantor, or maker, as the case may be, under the Loan Documents, effective as of the date of this Agreement, to the same extent as if New Borrower had signed such instruments, rather than Borrower. New Borrower agrees to comply with and be bound by all the terms, covenants and agreements, conditions and provisions set forth in the Loan Documents. The Borrower Parties agree that this Agreement and the execution or filing of other documents contemplated hereby do not constitute the creation of new debt nor will they in any way affect or impair the liens, security interests or encumbrances created by the Loan Documents, which shall continue in their perfection and priority until the obligations secured by the Loan Documents are fully discharged.

4. **Guaranty.** Contemporaneously with the execution and delivery of this Agreement, the Borrower Parties shall cause New Guarantor to execute and deliver to Lender a Guaranty and a Hazardous Substances Agreement in form and content acceptable to Lender in its sole discretion. New Guarantor, jointly and severally (if more than one New Guarantor), hereby assumes all of Guarantor's obligations under the Guaranty and the Hazardous Substances Agreement, effective as of the date of this Agreement, to the same extent as if New Guarantor had signed such instruments, rather than Guarantor. Guarantor and New Guarantor acknowledge and agree that (i) this Agreement and the Guaranty and the Hazardous Substances Agreement constitute valid and legally binding obligations of Guarantor and from and after the date hereof are valid and legally binding obligations of New Guarantor enforceable in accordance with their terms, and (ii) the representations and warranties contained in the Guaranty and the Hazardous Substances Agreement are true and correct representations and warranties of Guarantor and the New Guarantor as of the date of this Agreement. Guarantor and New Guarantor acknowledge and agree that there are no defenses, setoffs, claims,

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counterclaims or causes of action of any kind or nature whatsoever against Lender with respect to the obligations created and evidenced by the Guaranty or the Hazardous Substances Agreement. To the extent Guarantor or New Guarantor would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action, Guarantor and New Guarantor waives and relinquishes them.

5. **Consent of Lender; Condition.** Subject to the terms of this Agreement, Lender hereby consents to the transfer of the Property to New Borrower and the assignment and assumption of the Loan from Borrower to New Borrower. Borrower Parties agree that this Agreement shall not be deemed an agreement by Lender to consent to any other transfer or conveyance of the Property or assumption of the Loan. Lender's consent is further conditioned on any or both of the Borrower Parties paying on demand all costs and expenses incurred by Lender in connection with this Agreement and the transactions contemplated in this Agreement, including, without limitation, the costs and fees of Lender's counsel (inside and or outside), all recording and other costs of transfer, and the costs of updating Lender's policy of title insurance.

6. **Release of Borrower and Guarantor.** Borrower acknowledges and agrees that nothing contained in this Agreement shall release Borrower from any of its obligations, agreements, duties and liabilities under the Loan Documents arising prior to the date of this Agreement; provided, however, in reliance on the representations, warranties and agreements of the Borrower Parties and Guarantor, Lender hereby releases Borrower from any acts or events occurring or obligations arising under the Loan Documents after the date of this Agreement. Guarantor acknowledges and agrees that nothing contained in this Agreement shall release Guarantor from any of its obligations, agreements, duties and liabilities under the Guaranty arising prior to the date of this Agreement; provided, however, in reliance on the representations, warranties and agreements of the Borrower Parties and Guarantor, Lender hereby releases Guarantor for any acts or events occurring or obligations arising under the Guaranty after the date of this Agreement. Nothing contained in this Section 6 shall impair the right of Lender to bring suit against Borrower and or Guarantor for any acts or events occurring, or obligations arising, prior to and including the date of this Agreement. If any material element of the representations and warranties contained in this Agreement is false as of the date of this Agreement, then the release set forth in this Section 6 will be canceled as of the date of this Agreement and the Borrower and Guarantor will remain obligated under the Loan Documents as though there had been no such release.

7. **Additional Advance.** An additional advance of \$2,518.85 will be made so the current unpaid principal balance is increased to \$201,851.00

8. **Maturity Date.** The maturity date of the Deed of Trust is hereby extended to July 15, 2023.

9. **Release of Lender.** Borrower Parties, Guarantor, and New Guarantor, jointly and severally, on behalf of themselves and all of their respective heirs, successors and assigns, hereby release, remise and forever discharge Lender and any of Lender's predecessors in interest and any of their respective subsidiaries or affiliates, successors and assigns from any and all manner of agreements, liabilities, obligations, expenses, claims, demands and causes of action of any nature whatsoever, known or unknown, which any of them now has or hereafter may have by reason of any matter, cause or thing, arising out of or relating to the Loan or the Loan Documents prior to and including the date of this Agreement.

10. **Further Assurances.** Borrower Parties, Guarantor, and New Guarantor shall execute and deliver to Lender such agreements, instruments, documents, financing statements and other writings as may be reasonably requested from time to time by Lender to perfect and to maintain the perfection of Lender's security interest in and to the Property, and to consummate the transactions contemplated by or in the Loan Documents and this Agreement but not materially modify the terms and conditions of the Loan Documents.

11. **Representations and Warranties.** Borrower Parties, Guarantor, and New Guarantor (each as to itself) hereby represent and warrant to Lender that the execution, delivery and performance of this Agreement and any and all other Loan Documents to which it is a party or other documents executed and or delivered by it in connection with this Agreement have been authorized by all required action and do not and will not conflict with or result in a breach of its charter or governing documents. All representations and warranties made in this Agreement or any other document executed in connection with this Agreement shall survive the execution and delivery of this Agreement and any other such document.

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12. **Reference to Loan Documents.** All references in the Deed of Trust and the Note to the agreements, documents and instruments executed in connection with the Loan shall hereinafter mean and refer to: (i) all such agreements, documents and instruments described therein; (ii) this Agreement; and (iii) any and all other documents executed in connection with or otherwise pertaining to this Agreement.

13. **General Provisions.** Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender under the Loan Documents in equity or at law. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against whom enforcement is asserted. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by and construed in accordance with Federal law and the laws of the State of Washington. The prevailing party shall be entitled to its reasonable attorneys fees and all other costs and expenses in any action to enforce or interpret this Agreement, including attorneys fees in both trial and appellate courts and in any bankruptcy or reorganization proceeding. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together may constitute a single agreement.

DATED as of the day and year first above written.

**PLEASE BE ADVISED THAT ORAL AGREEMENTS OR ORAL COMMITMENTS
TO LOAN MONEY, EXTEND CREDIT OR FOREBEAR FROM ENFORCING
REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON
LAW**

[Signatures on following page]

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LENDER:

Washington Federal,
a federal savings association

Tessa Koch

By: Tessa Koch
Its: Loan Officer

BORROWER:

XL Properties LLC

Steven V. Harper

By: Steven V. Harper
Its: Member

Sharon A. Harper

By: Sharon A. Harper
Its: Member

NEW BORROWER:

XL Cleaners, Inc.

Steven V. Harper

By: Steven V. Harper
Its: President

Sharon A. Harper

By: Sharon A. Harper
Its: Secretary

GUARANTOR:

XL Properties LLC

Steven V. Harper

By: Steven V. Harper
Its: Member

Sharon A. Harper

By: Sharon A. Harper
Its: Member

XL Cleaners, Inc.

Steven V. Harper

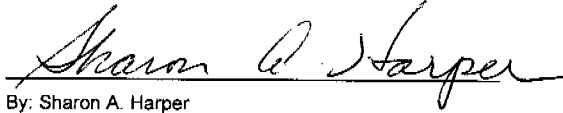
By: Steven V. Harper
Its: President

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By: Sharon A. Harper
Its: Secretary

NEW GUARANTOR:

* 

Steven V. Harper

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Sharon A. Harper

* 

Matthew B. Harper

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CORPORATE ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this day before me, the undersigned Notary Public, personally appeared Tessa Koch, and personally known to me or proven on the basis of satisfactory evidence to be the Loan Officer of WASHINGTON FEDERAL that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of such party, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute the said instrument and in fact executed the instrument on behalf of such party.

Given under my hand and official seal this 8th day of July, 2013

By Colette L Hernandez Residing at 803 Main St

Notary Public in and for the State of Oregon My commission expires May 29, 2015

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this day before me, the undersigned Notary Public, personally appeared Steven V. Harper, and personally known to me or proven on the basis of satisfactory evidence to be the Member of XL Properties LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument 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 document, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute the said instrument and in fact executed the instrument on behalf of the limited liability company.

Given under my hand and official seal this 8th day of July, 2013

By Colette L Hernandez Residing at 803 Main St

Notary Public in and for the State of Oregon My commission expires May 29, 2015

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LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

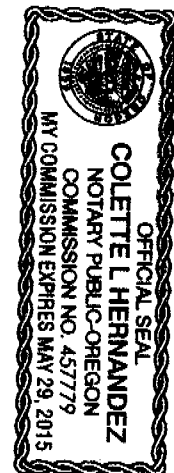
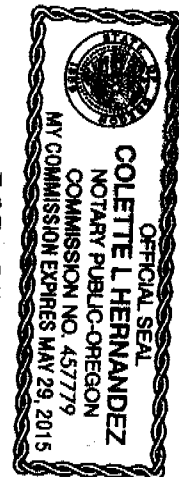
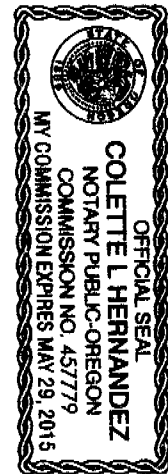
STATE OF Oregon)
COUNTY OF Klamath) ss.

On this day before me, the undersigned Notary Public, personally appeared Sharon A. Harper, and personally known to me or proven on the basis of satisfactory evidence to be the Member of XL Properties LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument 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 document, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute the said instrument and in fact executed the instrument on behalf of the limited liability company.

Given under my hand and official seal this 8th day of July, 2013

By Colette L Hernandez Residing at 803 Main St

Notary Public in and for the State of Oregon My commission expires May 29, 2015



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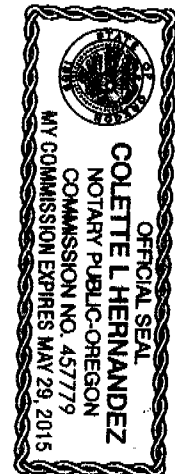
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CORPORATE ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this day before me, the undersigned Notary Public, personally appeared **Steven V. Harper**, and personally known to me or proven on the basis of satisfactory evidence to be the **President** of **XL Cleaners, Inc.**, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the corporation, by authority of statute, its articles of organization or its operating agreement document, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute the said instrument and in fact executed the instrument on behalf of the corporation.

Given under my hand and official seal this 8th day of July, 2013
By Colette L Hernandez Residing at 803 Main St
Notary Public in and for the State of Oregon My commission expires May 29, 2015

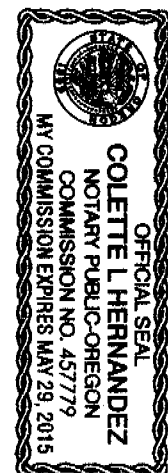


CORPORATE ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this day before me, the undersigned Notary Public, personally appeared **Sharon A. Harper**, and personally known to me or proven on the basis of satisfactory evidence to be the **Secretary** of **XL Cleaners, Inc.**, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the corporation, by authority of statute, its articles of organization or its operating agreement document, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute the said instrument and in fact executed the instrument on behalf of the corporation.

Given under my hand and official seal this 8th day of July, 2013
By Colette L Hernandez Residing at 803 Main St
Notary Public in and for the State of Oregon My commission expires May 29, 2015

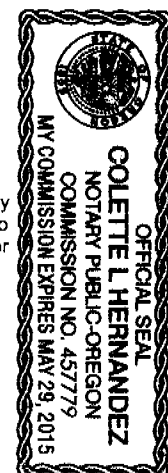


INDIVIDUAL ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this day, before me, the undersigned Notary Public, personally appeared **Steven V. Harper**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual described in and who executed the foregoing instrument, and acknowledged that he or she signed the said instrument as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 8th day of July, 2013
By Colette L Hernandez Residing at 803 Main St
Notary Public in and for the State of Oregon My commission expires May 29, 2015



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INDIVIDUAL ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this day, before me, the undersigned Notary Public, personally appeared **Sharon A. Harper**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual described in and who executed the foregoing instrument, and acknowledged that he or she signed the said instrument as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 8th day of July, 2013

By Colette Hernandez Residing at 803 Main St

Notary Public in and for the State of Oregon My commission expires May 29, 2015

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this day, before me, the undersigned Notary Public, personally appeared **Matthew B. Harper**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual described in and who executed the foregoing instrument, and acknowledged that he or she signed the said instrument as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 9th day of July, 2013

By Colette Hernandez Residing at 803 Main St

Notary Public in and for the State of Oregon My commission expires May 29, 2015

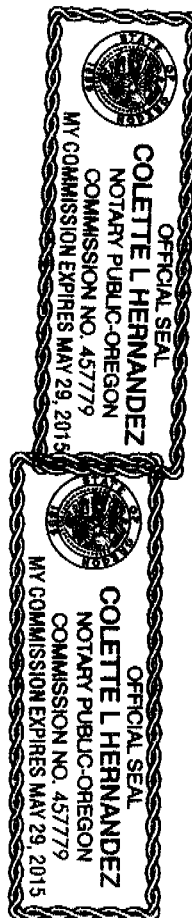


EXHIBIT A**(Legal Description)**

Lot 3 of GIENGER HOME TRACTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, EXCEPTING THEREFROM that portion granted to the State of Oregon, by and through its State Highway Commission by Final Judgment filed October 25, 1964 in Case No. 64-163L for the widening of South Sixth Street.