



MISC 2009120818



NOV 10 2009 10:03 P 4

Fee amount: 20.50
FB: 64-40589
COMP: BW

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
11/10/2009 10:03:25.00



2009120818

RETURN TO: Steven J. Woolley, MCGILL, GOTSDINER, WORKMAN & LEPP, P.C., L.L.O., 11404 West Dodge Road, Suite 500, Omaha, NE 68154

AMENDMENT TO CONSTRUCTION DEED OF TRUST

THIS AMENDMENT TO CONSTRUCTION DEED OF TRUST, made as of the 6th day of November, 2009, between **West Bay, Inc**, a Nebraska corporation, as TRUSTOR, and **Great Western Bank**, a South Dakota banking corporation, as TRUSTEE and BENEFICIARY:

WITNESSETH:

TRUSTOR previously executed and delivered its CONSTRUCTION DEED OF TRUST ("2003 DOT"), dated as of July 18, 2003 to TRUSTEE, for the benefit of BENEFICIARY, which 2003 DOT was recorded in the office of the Douglas County, Nebraska Register of Deeds on September 16, 2003 as document 2003178219.

TRUSTOR, TRUSTEE and BENEFICIARY now desire to amend the 2003 DOT, as follows:

I. All capitalized terms contained in the 2008 DOT shall have the same meanings in this amendment, unless otherwise specified herein.

II. The following described real estate:

Lot 5, Walnut Grove Plaza Replat Three, an Addition to the City of Omaha, Douglas County, Nebraska

and the improvements thereon and the rents and income generated thereby, described in the 2003 DOT as "REAL PROPERTY", shall, in addition to the Indebtedness and other obligations now referenced by the 2003 DOT, secure payment and performance of the following:

1. Payment of the indebtedness from time to time evidenced by a Line of Credit Note in the original maximum principal amount of \$50,000.00 dated November 6, 2009, from Grantor, One Storm Lake Plaza, LLC, a Nebraska limited liability company, Walnut Grove Plaza II, LLC, a Nebraska limited liability company, 96th & Blair High Road, LLC, a Nebraska limited liability company, Wichita Place I, LLC, a Nebraska limited

liability company, Timber Ridge Shopping Center, LLC, a/k/a Timber Ridge, LLC, a Nebraska limited liability company, One Yankton Place, LLC, a Nebraska limited liability company, York NE Plaza, LLC, a Nebraska limited liability company, Osborne Place, LLC, a Nebraska limited liability company, Thomas E. Smith and Patricia Smith, as Borrowers (collectively the "Borrowers"), to Lender, as Lender, together with interest thereon and any and all late charges, and all renewals, extensions and modifications thereof;

2. Payment of the indebtedness from time to time evidenced by any and all "Tenant Improvement Notes" (as that term is defined within the certain Debt Resolution Agreement dated November 6, 2009, entered into by and among Borrowers and Lender) now or hereafter issued by Borrowers and payable to the order of Lender, together with interest thereon and any late charges, and all renewals, extensions and modifications thereof;

3. Payment of the indebtedness from time to time evidenced by the promissory note from One Storm Lake Plaza, LLC, a Nebraska limited liability company, as Borrower, to Lender, as Lender, dated March 25, 2004, in the original principal amount of \$1,840,000.00, as from time to time modified, together with interest and any late charges thereon, and all renewals, extensions and modifications thereof;

4. Payment of the indebtedness from time to time evidenced by the promissory note from 96th & Blair High Road, LLC, a Nebraska limited liability company, as Borrower, to Lender, as Lender, dated February 21, 2007, in the original principal amount of \$700,000.00, as from time to time modified, together with interest and any late charges thereon, and all renewals, extensions and modifications thereof;

5. Payment of the indebtedness from time to time evidenced by the promissory note from Walnut Grove Plaza II, LLC, a Nebraska limited liability company, as Borrower, to Lender, as Lender, dated December 5, 2003, in the original principal amount of \$1,672,000.00, as from time to time modified, together with interest and any late charges thereon, and all renewals, extensions and modifications thereof;

6. Payment of the indebtedness from time to time evidenced by the promissory note from Wichita Place II, LLC, a Nebraska limited liability company, as Borrower, to Lender, as Lender, dated September 17, 2004, in the original principal amount of \$450,000.00, as from time to time modified, together with interest and any late charges thereon, and all renewals, extensions and modifications thereof;

7. Payment of the indebtedness from time to time evidenced by the promissory note from Timber Ridge Shopping Center, LLC, a/k/a Timber Ridge, LLC, a Nebraska limited liability company, as Borrower, to Lender, as Lender, dated February 29, 2008, in the original principal amount of \$700,000.00, as from time to time modified, together with interest and any late charges thereon, and all renewals, extensions and modifications thereof;

8. Payment of the indebtedness from time to time evidenced by the promissory note from West Bay, Inc., a Nebraska corporation, as Borrower, to Lender, as Lender, dated May 13, 2005, in the original principal amount of \$890,000.00, as from time to time modified, together with interest and any late charges thereon, and all renewals, extensions and modifications thereof;

9. Performance, discharge of and compliance with every obligation, covenant and agreement of Grantor incorporated by reference or contained herein or in any other security agreement, deed of trust or mortgage at any time given to secure any indebtedness hereby secured, or any part thereof; and

10. Payment of all fees and charges of Lender, whether or not set forth herein.

III. The "MAXIMUM LIEN" sentence of the 2003 DOT is amended to read as follows:

MAXIMUM LIEN. The lien of the Deed of Trust shall not exceed at any one time \$8,000,000.00.

IV. All terms and provisions of the 2003 DOT not amended herein are ratified and confirmed.

IN WITNESS WHEREOF, TRUSTOR, TRUSTEE and BENEFICIARY have executed this Amended Construction Deed of Trust on the date first above written.

WEST BAY, INC., a Nebraska corporation, Trustor

By:


Thomas E. Smith, President

GREAT WESTERN BANK,
a South Dakota banking corporation,
Trustee and Beneficiary

By:


Michael Gough, Executive Vice President

ACKNOWLEDGMENT

State of Nebraska)
) ss.
 County of Douglas)

Before me, a Notary Public, personally came Thomas E. Smith, President of West Bay, Inc., a Nebraska corporation, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be a voluntary act and deed and the voluntary act and deed of said company, duly authorized as required by law.

Witness my hand and Notarial Seal this 6 day of November, 2009.



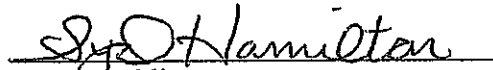
 Notary Public



State of Nebraska)
) ss.
 County of Douglas)

Before me, a Notary Public, personally came Michael Gough, Executive Vice President of Great Western Bank, a South Dakota banking corporation, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be a voluntary act and deed and the voluntary act and deed of said corporation as trustee and beneficiary, duly authorized as required by law.

Witness my hand and Notarial Seal this 6 day of November, 2009.



 Notary Public

