

38755

Vol. 197 Page 17191

Account Number:	1142231
ACAPS Number:	971201453320
Date Printed:	5/28/1997
Reconveyance Fee:	\$ 95.00

97 JUN -5 AM 1:42

WHEN RECORDED MAIL TO:

Bank of America  
 Northwest Regional Loan Service Center  
 P.O. Box 3828  
 Seattle, WA 98124-3828

MTC 41597-SD

RESERVED FOR AUDITOR'S USE ONLY.

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST is made this 30<sup>th</sup> day of May, 1997, BETWEEN Randell J Whiting And Millicent F Whiting as Grantor, whose address is 11823 FINLEY COURT AMERITITLE Bank of America NT&SA as Beneficiary, whose address is P. O. Box 34525, Seattle, WA 98124-1525 as Trustee, and

Grantor irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, for the benefit and security of Beneficiary, the following property in Klamath County, Oregon, described on page 3 hereof and incorporated herein by reference together with all interest and estate therein that the Grantor may hereafter acquire and together with the rents, issues and profits therefrom, all waters and water rights however evidenced or manifested, and all appurtenances, fixtures, attachments, tenements and hereditaments, new or hereafter belonging or appurtenant thereto ("Property"). Grantor grants a security interest to Beneficiary in any part of the Property which is personal property and also grants a security interest in the personal property described on page 3 hereof, together with all interest therein that Grantor may hereafter acquire.

Grantor covenants the Property is not currently used for agricultural, timber or grazing purposes. THIS DEED IS FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor incorporated by reference or contained herein and payment of the sum of fifty one thousand eight hundred twenty dollars and seventy four cents DOLLARS (\$ 51,820.74 ) with interest thereon according to the terms of a promissory note dated of even date herewith, payable to Beneficiary or order and made by Grantor with maturity date of 6/4/2027 and payment of all other sums, with interest thereon, which may be loaned by Beneficiary to Grantor when the promissory note or other writing evidencing the loan recites that it is secured by this Deed of Trust ("Note"). Extensions, renewals or modification of the Note, or of the indebtedness evidenced by the Note, may be made, at the option of Beneficiary, by new notes or otherwise, and this Deed of Trust will stand as continuing security for the indebtedness evidenced by the Note as extended, renewed, modified or replaced until paid in full. The interest rate, payment terms or balance due on the obligation(s) secured hereby may be indexed, adjusted, renewed or renegotiated.

- The Grantor covenants and agrees as follows:
- To pay all debts and monies secured hereby, when from any cause the same shall become due. To keep the Property free from statutory and governmental liens of any kind. That the Grantor is seized in fee simple of the Property and owns outright every part thereof, that he has good right to make this Deed of Trust and that he will forever warrant and defend the Property unto the Beneficiary, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. The Grantor upon request by mail will furnish a written statement duly acknowledged of the amount due on this Deed of Trust and whether any offsets or defenses exist against the debt secured hereby.
  - To maintain the buildings and other improvements of the Property in a rentable and tenantable condition and state of repair, to neither commit nor suffer any waste, and to promptly comply with all requirements of Federal, State and Municipal authorities and all other laws, ordinances, regulations, covenants, conditions and restrictions respecting said property or the use thereof, and pay all fees or charges of any kind in connection therewith. Grantor shall permit Beneficiary or its agents the opportunity to inspect the Property, including the interior of any structures, at reasonable times and after reasonable notice.
  - To maintain unceasingly, insurance, with premiums prepaid, on all of the Property, or hereafter becoming part of the Property, against any loss by fire and other hazards, casualties and contingencies, including war damage, as may be required from time to time by the Beneficiary. Such insurance shall be in such amounts and for such periods of time as Beneficiary designates and shall provide loss payable clauses (without contribution) in favor of and in form satisfactory to the Beneficiary. Grantor covenants upon demand on Beneficiary to deliver to Beneficiary such policies and evidences of payment of premiums as Beneficiary requests. If Grantor fails to maintain all insurance required from time to time by Beneficiary, including flood insurance, Beneficiary may pay the premium on behalf of the Grantor and any sums expended shall be added to principal and bear interest at the rate provided in the Note.
  - In event that any payment or portion thereof is not paid when due, Beneficiary may collect, and Grantor agrees to pay, a late charge as set forth in the Note. This paragraph shall not relieve the Grantor of the obligation to make payments on or before the date on which they are due nor do the terms of this paragraph in any way affect Beneficiary's remedies pursuant to the terms of the Note or this Deed of Trust.
  - To pay in full at least thirty (30) days before delinquent all rents, taxes, assessments and encumbrances, charges or liens with interest, that may now or hereafter be levied, assessed or claimed upon the Property that is the subject of this Deed of Trust or any part thereof, which at any time appear to be prior or superior hereto for which provision has not been made heretofore, and upon request will exhibit to Beneficiary official receipts therefor, and to pay all taxes imposed upon, reasonable costs, fees and expenses of this Trust. On default under this paragraph Beneficiary may, at its option, pay any such sums, without waiver of any other right of Beneficiary by reason of such default of Grantor, and Beneficiary shall not be liable to Grantor for a failure to exercise any such option.
  - To repay immediately on demand to Grantor all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advances or expenditure at the rate, provided in the Note until paid and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of the mailing of such demand will, at Beneficiary's option, constitute an event of default hereunder, or, Beneficiary may, at its option, commence an action against Grantor for the recovery of such expenditure or advance and interest thereon, and in such event Grantor agrees to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney's fee.
  - Time is of the essence hereof in connection with all obligations of the Grantor herein or in the Note. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

- 8. All sums secured hereby shall become immediately due and payable, at the option of the Beneficiary without demand or notice, after any of the following occur, each of which shall be an event of default: (a) default by Grantor in the payment of any indebtedness secured hereby or in the performance or observance of any agreement contained herein; or (b) a default in any provision of any other instrument which may be held by Beneficiary as security for the Note, including the loan agreement and related documents, the terms and covenants of which are incorporated herein by reference as though fully set forth herein; or (c) if Grantor or any party liable on the Note (including guarantors) shall make any assignment for the benefit of creditors or shall permit the institution of any proceedings under any federal or state statutes pertaining to bankruptcy, insolvency, arrangement, dissolution, liquidation or receivership, whether or not an order for relief is entered. In the event of a default Beneficiary may declare all amounts owed under the loan documents immediately due and payable without demand or notice and/or exercise its rights and remedies under the loan documents and applicable law including foreclosure of this Deed of Trust judicially or non-judicially by the Trustee pursuant to the power of sale. Beneficiary's exercise of any of its rights and remedies shall not constitute a waiver or cure of a default. Beneficiary's failure to enforce any default shall not constitute a waiver of the default or any subsequent default. In the event the loan documents are referred to an attorney for enforcement of Beneficiary's rights or remedies, whether or not suit is filed or any proceedings are commenced, Grantor shall pay all Beneficiary's costs and expenses including Trustee's and attorney's fees (including attorneys' fees for any appeal, bankruptcy proceeding or any other proceeding), accountant's fees, appraisal and inspection fees and cost of a title report. The Property may be sold separately or as a whole, at the option of Beneficiary. Trustee and/or Beneficiary may also realize on the personal property in accordance with the remedies available under the Uniform Commercial Code or at law. In the event of a foreclosure sale, Grantor and the holders of any subordinate liens or security interests waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation. Beneficiary may at any time discharge the Trustee and appoint a successor Trustee who shall have all of the powers of the original Trustee.
- 9. If the Property or any part thereof is sold, conveyed, transferred, encumbered, or full possessory rights therein transferred, or if a controlling interest in Grantor (if a corporation) or a general partnership interest in Grantor (if a partnership) is sold, conveyed, transferred or encumbered, without the prior written consent of the Beneficiary, then Beneficiary may declare all sums secured by the Deed of Trust immediately due and payable. This provision shall apply to each and every sale, transfer, conveyance or encumbrance regardless of whether or not Beneficiary has consented or waived its rights, whether by action, or non-action, in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more.
- 10.
  - a. Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee.
  - b. If Beneficiary so requires, Grantor shall pay to Beneficiary monthly, together with and in addition to any payments of principal and/or interest due under the Note, a sum, as estimated by the Beneficiary, equal to the ground rents, if any, the real estate taxes and assessments next due on the Property and the premiums next due on insurance policies required under this Deed of Trust, less all sums already paid therefor, divided by the number of months to elapse before 2 months prior to the date when the ground rents, real estate taxes, assessments and insurance premiums will become delinquent. No interest will be paid on the funds in the reserve account.
  - c. Grantor hereby absolutely and irrevocably assigns to Beneficiary all Grantor's interest in the rents and leases. So long as Grantor is not in default under the loan documents, Grantor may collect the rents as they become due. Grantor's right to collect the rents shall not constitute Beneficiary's consent to the use of cash collateral in any bankruptcy proceeding. In the event of a default, Beneficiary shall be entitled, without notice, without bond, and without regard to the adequacy of the Property, to the appointment of a receiver for the Property.
  - d. This Deed of Trust shall also serve as a financing statement filed for record in the real estate records as a fixture filing pursuant to the uniform Commercial code. To the extent applicable, this is a security agreement under the Uniform Commercial Code. This Deed of Trust may be given to secure an obligation incurred for the construction of an improvement on the Property, including the acquisition of the Property or to secure an obligation incurred to refinance an obligation incurred for the construction of an improvement on the Property, including the acquisition of the Property.
  - e. Grantor shall deliver to Beneficiary within 90 days following the end of each fiscal year of Grantor during the term of the loan, at Grantor's expense, Grantor's and all guarantors' certified financial statements and certified operating statements in form satisfactory to the Beneficiary covering the Property, including tenant lists and current rent schedule.
  - f. If any payment made or to be made under the loan documents shall constitute a violation of the applicable usury laws, then the payment made or to be made shall be reduced so that in no event shall any obligor pay or Beneficiary receive an amount in excess of the maximum amount permitted by applicable usury laws.
  - g. If Grantor is in default, any tender of payment sufficient to satisfy all sums due under the loan documents made at any time prior to foreclosure sale shall constitute an evasion of the prepayment terms of the Note, if any, and shall be deemed a voluntary prepayment. Any such payment, to the extent permitted by law, shall include the additional payment required under the prepayment privilege in the Note or if at that time there is no prepayment privilege, then such payment, to the extent permitted by law, will include an additional payment of 5% of the then principal balance.
  - h. The right, duties, liabilities and obligations of the parties under the Note shall be construed and governed by and under the law of the state where the Property is located. The right, duties, liabilities, and obligations of the parties with respect to the Property shall be governed by the laws of the state where the property is located. It is the intent of the parties that, to the fullest extent allowable by law, the law of the state where the Property is located shall apply to the transaction of which this Deed of Trust is a part.
  - i. The Note secured hereby may contain provisions allowing for changes in the interest rate based on changes in an external index, which is not under the control of Beneficiary.
- 11.
  - a. Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge after due and diligent inquiry, no hazardous or toxic waste or substances are being stored on the Property or any adjacent property nor have any such waste or substances been stored or used on the Property or any adjacent property prior to Grantor's ownership, possession or control of the Property. Grantor agrees to provide written notice to Beneficiary immediately upon Grantor becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Deed of Trust, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or any similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.
  - b. Grantor shall promptly comply with all statutes, regulations and ordinances which apply to Grantor or the Property, and with all orders, decrees or judgements of governmental authorities or courts having jurisdiction by which Grantor is bound, relating to the use, collection, storage, treatment, transportation, disposal, control, removal or cleanup of hazardous or toxic substances in, on or under the Property or in, on or under any adjacent property that becomes contaminated with hazardous or toxic substances as a result of construction, operations or other activities on, or the contaminations of, the Property, at Grantor's expense. Beneficiary may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest as Beneficiary; and whether or not Grantor has actual knowledge of the existence of hazardous or toxic substances in, on or under the Property or an adjacent property as of the date hereof, Grantor shall reimburse Beneficiary on demand for the full amount of costs and expenses incurred by Beneficiary prior to Beneficiary acquiring title to the Property through foreclosure or deed in lieu of foreclosure, in connection with such compliance activities.
- 12. If a fee owner and a leasehold owner execute this Deed of Trust, the following shall apply:
  - a. That the fee owner and the leasehold owner have executed this Deed of Trust conveying their separate estates in the Property herein conveyed for the purpose of granting to the Beneficiary such a lien as would cause there to be sold, at public auction by Trustee or at foreclosure sale, the fee simple title to the Property described herein free and clear of the leasehold interest now owned by the leasehold owner, to the extinguishment of such leasehold interest, and to this end the fee owner and the leasehold owner do jointly and severally waive any right, legal or equitable, which they might now have, or which might subsequently accrue to them, or to anyone holding or claiming under or through them, to have their separate estate sold separately by Trustee or upon foreclosure.
  - b. That the fee owner hereby (i) waives presentment, demand, protest and notice of acceptance, demand, protest and nonpayment; (ii) waives any and all lack of diligence or delays in collection or enforcement, the right to plead laches and any and all statutes of limitation as a defense to any demand, or any other indulgence or forbearance whatsoever with respect to any and all obligations secured by this Deed of Trust; (iii) waives notice of acceptance hereof by Beneficiary to Trustee under this Deed of Trust; (iv) waives notice of any and all advances made under the note secured by this Deed of Trust; (v) agrees that other security for the obligations secured by this Deed of trust may be released or subordinated by Beneficiary, including without limitation all or any part of the Property or security described in this Deed of Trust, without affecting the right of Beneficiary hereunder, and hereby waives notice thereof; and (vi) in any action or proceeding to recover any sum secured by this Deed of Trust, waives any defense or right that resort must first be had to other security or to any other person.

13. If the Property that is the subject of this Deed of Trust or any part thereof is a leasehold estate the following shall apply:

a. The following described estate, property and rights of Grantor are also included as Security for the performance of each covenant and agreement of Grantor contained herein and the payment of all sums of money secured hereby:

(1) All right, title and interest of Grantor in and to options to purchase, options of first refusal and renewal options with respect to said Ground Lease or the Property or any portion thereof or any interest therein and in and to any greater estate and said property, including the fee simple estate, as may be subsequently acquired by or released to Grantor.

(2) All interest, estate or other claim, both in law or equity, which Grantor now has or may hereafter acquire in the Property.

b. Grantor has good and marketable title to a leasehold estate created by said Ground Lease.

c. Said Ground Lease shall not be modified or changed in any way without the written consent of Beneficiary.

d. Beneficiary shall be immediately furnished with all notices of default served by Lessor of said Ground Lease on Grantor.

e. Beneficiary is hereby granted the right to participate in all legal proceedings, including arbitration proceedings, affecting or pertaining to said Ground Lease or the demised premises.

f. Grantor does hereby assign and set over to Beneficiary all right, title and interest in and to Grantor's interest in said Ground Lease, including without limitation Grantor's option to extend the term of said Ground Lease, if any, and Beneficiary shall have the right to exercise said option to extend said Ground Lease in the event that Grantor fails so to do, and if in the judgment of the Beneficiary the exercise of such option is necessary to protect its interest as Beneficiary.

g. In the event Grantor shall fail to make payment due on said Ground Lease or to perform any term or covenant as provided therein, in addition to any such default constituting a default under this Deed of Trust, Beneficiary may, at its option, make the defaulted payments or perform the term or covenant and add the same to the amount due under this Deed of Trust without waiving any of its rights under this Deed of Trust and the Note which it secures.

h. If both the lessor's and lessee's estate under said Ground Lease shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger, and in such event, Beneficiary shall continue to have and enjoy all of the rights, title, interest and privileges of Beneficiary as to the separate estates. In addition, foreclosure of said property shall not destroy or terminate said Ground Lease by application of the doctrine of merger or as a matter of law or as a result of foreclosure unless Beneficiary or any purchaser at sale shall so elect. In the event that Grantor shall, at any time prior to the payment in full of all indebtedness secured by this Deed of Trust, acquire fee simple title to the Property, such fee simple title shall not merge with the leasehold estate encumbered by this Deed of Trust, but such fee simple title shall immediately, without further action on the part of Grantor, become subject to the lien hereof. In the event of such acquisition by Grantor, Grantor agrees to execute and deliver to Beneficiary such further instruments, conveyances and assurances as Beneficiary may reasonably require in order to further confirm and assure that the fee simple title so acquired by Grantor is subject to the terms, provisions and lien of this Deed of Trust. The provisions of this paragraph shall not apply in the event Beneficiary acquires the fee of the Property, except if Beneficiary shall so elect.

14. If the Property is located in Oregon, the following shall apply:

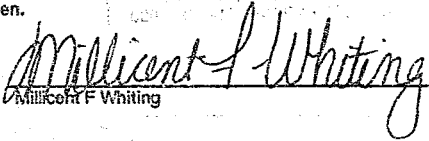
a. Warning Required by ORS 93.090. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

b. ORS 41.580 Disclosure.

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY BENEFICIARY AFTER OCTOBER 3, 1989, 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 AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY TO BE ENFORCEABLE.

WITNESS the hand(s) and seal(s) of the Grantor(s) on the day and year first written.

  
Randall J Whiting

  
Millicent F Whiting

N/A

N/A

PROPERTY ADDRESS

11623 Finley Court  
KLAMATH FALLS OR 97603

LEGAL DESCRIPTION

Lot 1 in Block 2 of Pine Grove Ranchettes, According To The Official Plat Thereof On File I The Office Of The County Clerk Of Klamath County, Oregon. It Is Covenanted And Agreed That Said Real Property Includes As An Improvement Thereto And Thereon That Certain: 1994 Fuqua Northbrooke 60x28 Vin:8157, As A Part Thereof; It Shall Not Be Severed Nor Removed Therefrom.

PERSONAL PROPERTY

All existing and future improvements, equipment, appliances, machinery, furnishings and other articles located on, attached to or used or acquired for use in connection with the Property, including, but not limited to, heating and incinerating apparatus and equipment, boilers, engines, computer equipment, telephone and other communication systems, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, laundry equipment, cooling, ventilation, sprinkling and vacuum cleaning systems, fire extinguishing apparatus and alarm systems, gas and electric fixtures, carpeting, elevators, escalators, partitions, and similar items.

All right, title and interest of Grantor in and to all leasehold estates and all existing and future leases and agreements for use and occupancy of the Property and/or improvements, whether written or oral, including all extensions, renewals and subleases and all guaranties of lessees' performance under the leases and agreements.

All present and future rents, income and other benefits derived from leases, the Property and/or improvements (in any form) including all security deposits; liquidated damages following default in any lease; all proceeds payable under any policy of insurance covering loss of rents; all proceeds payable as result of a lessee's exercise of an option to purchase the Property and/or improvements and all other rights and claims which Grantor may have against any lessee or occupant of the Property and/or improvements.

All general intangibles not listed which relate to the development or operation of the Property.

STATE OF Oregon  
COUNTY OF Clatsop )  
SS

On this 30<sup>th</sup> day of May, A.D., 19 97, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn personally appeared Randell J. Whiting personally known to me (or identified to me or proved to me on the basis of satisfactory evidence) to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged to me that they signed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate above written.



OFFICIAL SEAL  
SUSAN E DAVIS  
NOTARY PUBLIC-OREGON  
COMMISSION NO. 056859  
MY COMMISSION EXPIRES AUG 18, 2000

Susan E. Davis  
Notary Public in and for the State of Oregon  
residing at Plamath Falls, Oregon  
My commission expires Aug. 18, 2000

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19 \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn personally appeared \_\_\_\_\_ personally known to me (or identified to me or proved to me on the basis of satisfactory evidence) to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the corporation which executed the foregoing instrument or the person(s) who executed the instrument on behalf of said corporation, and acknowledged to me that said corporation executed the same.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of \_\_\_\_\_  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

REQUEST FOR FULL RECONVEYANCE

TO: TRUSTEE.

The undersigned is the legal owner and holder of the Note and all other indebtedness secured by the within Deed of Trust. You are hereby requested, upon payment of all sums owing to you, to reconvey without warranty, to the persons entitled thereto, the right, title and interest now held by you thereunder.

STATE OF OREGON: COUNTY OF KLAMATH : ss.

Filed for record at request of Amerititle the 5<sup>th</sup> day of June A.D., 19 97 at 11:42 o'clock A. M., and duly recorded in Vol. M97 of Mortgages on Page 17191.

FEE \$30.00

Bernetha G. Letsch, County Clerk  
By Kathleen Row