

- MTC - 64854

State Of Oregon, County Of Klamath
M05-61283
08/05/2005 10:58:44 AM
Of Page 8 Fee \$56.00

Prepared by:
Robertson & Anschutz, P.C.
10333 Richmond Avenue, Suite 550
Houston, TX 77042
713-871-9600

NOTE AND SECURITY INSTRUMENT MODIFICATION AGREEMENT

The State of Oregon
County of Klamath

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

Recitals

This agreement is made on **June 1, 2005**, between **Sheree W. Everett and Douglas R. Everett**, as tenants by the entirety, (herein "Borrower") and **Bank of America, N.A.** (herein "Lender"), whose loan servicing address is **P.O. Box 9000, Getzville, NY 14068-9000**, for a Modification of that certain Deed of Trust, Mortgage or Security Deed (the "Security Instrument") and Note executed on **June 24, 2004**, in favor of **Bank of America, N.A.** and any previous modification(s) thereof, said Note being in the original principal amount of **\$535,000.00**, said Security Instrument having been recorded in/under **0m04-42973** of the Official Records of Real Property of **Klamath County, Oregon**, covering property described as follows:

**SEE EXHIBIT 'A' LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART
HEREOF FOR ALL PURPOSES**

WITNESSETH:

WHEREAS, Borrower now desires to modify the Note and ratify said liens against the Property; and

WHEREAS, Lender, the legal owner and holder of said Note and liens securing same, in consideration of the premises and at the request of the Borrower has agreed to modify the Note as hereinafter provided; and

WHEREAS, Borrower and Lender desire that the address on the Security Instrument and Note be modified to read as follows: **6254 Coopers Hawk Road, Klamath Falls, OR 97601**; and

WHEREAS, Borrower and Lender desire that the Security Instrument and Note be modified as herein provided but that all terms not so modified remain unchanged and in full force and effect.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree that the Note and Security Instrument are hereby modified as follows:

The Note shall be and hereby is amended as follows:

56.0

The beginning date for monthly payments of principal and interest set forth in paragraph 3 is changed from **May 1, 2005** to **July 1, 2005**.

The Maturity Date is changed from **April 1, 2035** to **June 1, 2035**.

The Addendum or Rider to Note shall be and hereby is amended as follows:

The "Rollover Date" as defined therein is changed from **April 1, 2005** to **June 1, 2005**.

The Security Instrument shall be and hereby is amended as follows:

Reference to the maturity date of the debt secured by the Security Instrument is changed from **April 1, 2035** to **June 1, 2035**.

The address of the Property is modified to **6254 Coopers Hawk Road, Klamath Falls, OR 97601**.

Further, it is expressly agreed that for and in consideration of this Modification Agreement, Borrower hereby releases and forever discharges Lender and its officers, directors, counsel, employees, agents, predecessors, successors, and assigns from all causes of action, claims, rights, and controversies, known or unknown, which Borrower had, now has, or may hereafter acquire which relate to, are based on, arise out of, or are in any way connected with any acts of Lender or its above affiliates occurring prior to the execution of this Agreement and relating in any manner to the above described Note or Security Instrument or the Property described herein or therein. This is a general release of all possible claims and causes of action of every kind and character related to the above described subject matter and is to be interpreted liberally to effectuate maximum protection of Lender and its above affiliates.

The Borrower hereby ratifies said liens on the Property until the Note as so modified hereby has been fully paid, and agrees that this renewal, extension and/or modification shall in no manner affect or impair the Note or the liens securing same and that said liens shall not in any manner be waived, but are acknowledged by Borrower to be valid and subsisting, the purpose of this instrument being simply to modify the Security Instrument and the time and manner of payment of the Note and ratify all liens securing same, and the Borrower further agrees that all terms and provisions of the Note, the Security Instrument and the other instruments creating or fixing the liens securing same shall be and remain in full force and effect as therein written except as otherwise expressly provided herein.

A breach or other default of any of the terms of this Agreement by Borrower shall constitute a breach or default under the Note and Security Instrument, and Lender shall thereupon have the right to seek all remedies available to it under the aforesaid loan instruments.

Borrower covenants and agrees that the rights and remedies of Lender under this Agreement are cumulative of, are not in lieu of but are in addition to, and their exercise or the failure to exercise them shall not constitute a waiver of, any other rights and remedies which Lender shall have under the Note or the Security Instrument.

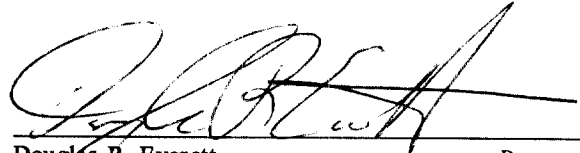
It is agreed that time and the unimpaired security of Lender are of the essence of this Agreement.

Borrower covenants and agrees that this Agreement represents the final agreement between Borrower and Lender relating to the above described subject matter and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto. Borrower further covenants and agrees that there are no unwritten oral agreements between parties hereto relating to the above described subject matter.

As used herein "Lender" shall mean **Bank of America, N.A.** or any future holder, whether one or more, of the Note.

EXECUTED this the 29 day of June 2005 to be effective **June 1, 2005**.


Sherree W. Everett -Borrower


Douglas R. Everett -Borrower

-Borrower

-Borrower

Individual Acknowledgment

STATE OF OREGON, Klamath County ss:

On this 29 day of June 2005, personally appeared the above named **Sheree W. Everett and Douglas R. Everett, as tenants by the entirety** and acknowledged the foregoing instrument to be their voluntary act and deed.

(Official Seal)

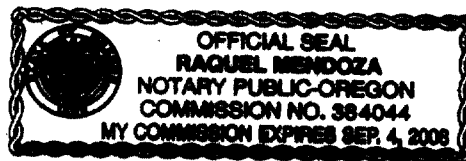
Before me:

Raquel Mendoza

Notary Public for Oregon

My Commission expires: Sep. 4, 2008

ACCEPTED AND AGREED TO BY
THE OWNER AND HOLDER OF SAID NOTE:
Bank of America, N.A.



By: _____

Name: _____

Title: _____

Corporate Acknowledgment

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____
by _____ of _____
_____, on behalf of the said corporation.

My commission expires: _____

Notary Public

AFTER RECORDED RETURN TO:
Bank of America, N.A.
9000 Southside Blvd, Bldg 700 [CONSTRUCTION]

ACCEPTED AND AGREED TO BY
THE OWNER AND HOLDER OF SAID NOTE:
BANK OF AMERICA, N.A.

By: Freda L. Clement
Name: Freda L. Clement
Title: Vice President

Witness: Wendy Simon
Witness: Danytha Smith

Corporate Acknowledgement

STATE OF TEXAS
COUNTY OF DALLAS

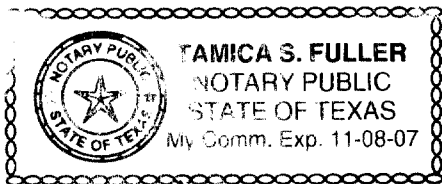
BEFORE ME, the undersigned authority, on this day personally appeared Freda L. Clement, as Vice President of Bank of America, N.A. known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, in the capacity therein stated, as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14th day of July, 2005.

My Commission Expires:

Tamica S. Fuller
Notary Public in and for
The State of Texas

Name: Tamica S. Fuller



Lot 176, RUNNING Y RESORT, PHASE 3, according to the official plat thereof on file in the office of the
County Clerk of Klamath County, Oregon.

Account No.:

3808-010B0-00400-000

Key No.:

882593

FINAL WAIVER AND RELEASE OF LIEN

The undersigned ("Affiant"), being first duly sworn, deposes and says:

Affiant is a general contractor, subcontractor, materialman, other entity, or an officer, agent, or representative of same, who or which has furnished services, labor, or materials ("Contractor") in the construction, repair, and/or replacement (the "Work") of improvements upon real property owned by **Sheree W. Everett and Douglas R. Everett, as tenants by the entirety** ("Borrower"), located at **1763 Running Y Ranch Resort Klamath Falls, OR 97601** in **Klamath County, Oregon**, and described as follows:

**SEE EXHIBIT 'A' LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART
HEREOF FOR ALL PURPOSES**

Contractor has furnished:

(Describe nature of Labor/Materials on the above project.)

Original contract sum:	\$ <u>549,260.00</u>
Net change by change orders:	\$ _____
Contract sum to date:	\$ _____
Total Completed and stored to date:	\$ _____
Retainage:	\$ _____
Total earned less retention:	\$ _____
Less: Previous certificates for payment:	\$ _____
Current Payment:	\$ _____

The total of all charges for and in connection with all such services, labor and/or materials performed or furnished by Contractor has been paid in full to Contractor. Affiant, as Contractor or as an officer, agent, or representative of Contractor hereby acknowledges complete satisfaction of and in consideration thereof hereby absolutely and forever waives and releases all claims of every kind against Borrower, each and every party making a loan on said real property, as improved and **Amerititle** Title Insurance Company, and their respective successors and assigns, or the property referred to above or any other property of Borrower, including, but not limited to all liens and claims of liens, that Contractor may have as a result of or in connection with the performance or furnishing of such services, labor and/or materials.

Affiant, as Contractor or as an officer, agent, or representative of Contractor, has further represented and warranted and does hereby represent and warrant that (a) Contractor has not assigned and will not assign any claim for payment or any right to perfect a lien against said property, (b) all persons or entities who have furnished services, labor, or materials to Contractor in connection with the Work have been paid all amounts to which they have or may become entitled therefore, and (c) Contractor's portion of the Work is fully completed in accordance with the final plans and specifications therefore.

Affiant does further represent that this affidavit and waiver is made and given for the purpose of inducing the construction loan lender **Bank of America, N.A.** to advance all remaining funds due under its construction loan to borrower and to induce **Amerititle** Title Insurance Company to issue its policies of title insurance (owner's and lender's) and endorsement to those policies without exception to the claims of mechanics or materialmen.

Affiant, as Contractor or as an officer, agent, or representative of Contractor, hereby agrees unconditionally to indemnify Borrower and hold Borrower harmless from and against all liability, loss, cost, or expense (including, but not limited to, attorneys' fees) now or hereafter incurred, paid, or suffered by or asserted against Borrower or any of Borrower's property because of any claim or action by Contractor with respect to

the claims, liens, and rights herein waived and released or arising out of any breach or untruth of any warranty or representation herein made.

In consideration of the sum of One Dollar (\$1.00) cash in hand paid to the undersigned, the receipt and sufficiency of which is hereby acknowledged, and other benefits accruing, the undersigned does hereby waive, release, and quitclaim in favor of (1) the owner of said real estate, as improved; (2) each and every party making a loan on said real estate, as improved; and (3) **Amerititle** ("Title Insurance Company"), and their respective successors and assigns, all right or claim that the undersigned may have to a lien upon the above-described land and improvements.

Affiant represents that Affiant is duly authorized to execute this document on behalf of Contractor.

All of the provisions of this document shall bind Affiant, Contractor, and their heirs, legal representatives, successors and assigns, and shall inure to the benefit of Borrower and Borrower's heirs, legal representatives, successors, assigns and sureties.

IT IS UNDERSTOOD AND AGREED THAT THIS WAIVER AND RELEASE IS FOR ALL SERVICES RENDERED, WORK DONE AND MATERIAL FURNISHED HERETOFORE OR HEREAFTER and is for all such services rendered, work done and material furnished and not only for the particular item indicated above.

WITNESS the following signature and seal this 1st day of June, 2005

Del Ellis
Affiant

Del Ellis Construction LLC

By: Del Ellis
Name: DEL ELLIS
Title: owner

INDIVIDUAL ACKNOWLEDGEMENT

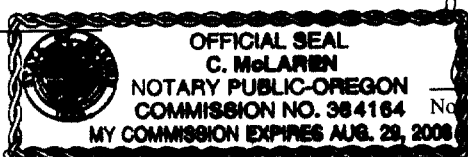
STATE OF Oregon §

COUNTY OF Klamath §

This instrument was acknowledged before me on June 1, 2005, by C. McLaren

My commission expires:

Aug. 29, 2008



C. McLaren Notary Public, State of Oregon

C. McLaren
Printed Name of Notary Public

CORPORATE ACKNOWLEDGEMENT

STATE OF Oregon §

COUNTY OF Klamath §

This instrument was acknowledged before me on this _____ day of _____, by _____ of Del Ellis Construction LLC, a _____ Corporation, on behalf of said corporation.

Notary Public, State of Oregon

My commission expires:

Printed Name of Notary Public