

**M05-66988**

Klamath County, Oregon

10/20/2005 10:02:26 AM

Pages 5 Fee: \$41.00

MT 67028

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

§

KNOW ALL MEN BY THESE PRESENTS:

County of Klamath

§

§

**Recitals**

This agreement is made on **September 1, 2005**, between **Paul T. Digaudio and Nancy R. Digaudio**, 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 **December 7, 2004**, in favor of **Bank of America, N.A.** and any previous modification(s) thereof, said Note being in the original principal amount of **\$258,310.00**, said Security Instrument having been recorded in/under MOY-84730 of the Official Records of Real Property of **Klamath County, Oregon**, covering property described as follows:

**Lot 1035, Running Y Resort, Phase 12, First Addition, Tract 1426, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon**

**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: **12636 Turnstone Drive, 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:**

4/0

The principal amount evidenced by the Note is changed from **\$258,310.00** to **\$258,020.00**.

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

The Maturity Date is changed from **October 1, 2035** to **September 1, 2035**.

The amount of the monthly payments of principal and interest set forth in paragraph 3, is changed from **\$1,466.66** to **\$1,465.01**.

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

The principal amount evidenced by the Note is changed from **\$258,310.00** to **\$258,020.00**.

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

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

Reference to the principal sum owed by Borrower to Lender is changed from **\$258,310.00** to **\$258,020.00**.

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

The address of the Property is modified to **12636 Turnstone Drive, 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 22nd day of September, 2005 to be effective **September 1, 2005**.



Paul T. Digaudio

-Borrower



Nancy R. Digaudio

-Borrower

-Borrower

-Borrower

Individual Acknowledgment

STATE OF OREGON

§

COUNTY OF

§

§

On this 22nd day of September, 2005, personally appeared the above named **Paul T. Digaudio and Nancy R. Digaudio**, as tenants by the entirety and acknowledged the foregoing instrument to be their voluntary act and deed.

(Official Seal)

Before me:

Claudia J. Long

Notary Public for Oregon

My Commission expires: Oct. 11, 2005

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



By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Corporate Acknowledgment

STATE OF OREGON

§

COUNTY OF

§

§

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

My commission expires:

\_\_\_\_\_  
Notary Public

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

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

Witness: Wendy Simm

Witness: Gaytha 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 30th day of September, 2005.

My Commission Expires:

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

Name: Tamica S. Fuller

