

2006-015838

Klamath County, Oregon



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08/07/2006 03:11:38 PM

Fee: \$61.00

MTC 69264-LW

**AFTER RECORDED RETURN TO:**

**Bank of America, N.A.**

**ATTN: Construction**

**9000 Southside Blvd., Ste. 700**

**Jacksonville, FL 32256**

**PARCEL NUMBER: 3808-010B0-00700-000**

**LOAN NUMBER: 6091402633**

Prepared by:

**Barbara Leuellen**

**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 ("Modification Agreement") is made on **June 01, 2006**, between **Christopher R. Snell and Ann Snell, husband and wife**, (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 **May 16, 2005**, in favor of **Bank of America, N.A.** and any previous modification(s) thereof, said Note being in the original principal amount of **\$266,153.00**, said Security Instrument having been recorded in/under **M 05 pg 38720** of the Official Records of Real Property of **Klamath County, Oregon**, covering property described as follows:

**See Exhibit "A" 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: **6245 Coopers Hawk Road, Klamath, 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.

61.00

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:**

The beginning date for monthly payments of principal and interest set forth in paragraph 3 is changed from **April 01, 2006** to **July 01, 2006**.

The Maturity Date is changed from **March 01, 2036** to **June 01, 2036**.

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

The "Rollover Date" as defined therein is changed from **March 01, 2006** to **June 01, 2006**.

**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 **March 01, 2036** to **June 01, 2036**.

The address of the Property is modified to **6245 Coopers Hawk Road, Klamath, 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.

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.

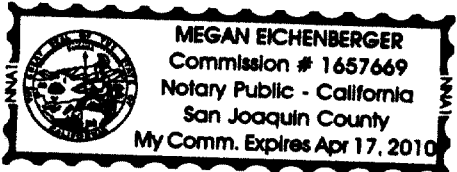
EXECUTED this the 19 day of June to be effective **June 01, 2006**.

Christopher R. Snell 6/19/06  
Christopher R. Snell Date

Ann Snell 6-19-06  
Ann Snell Date

California Individual Acknowledgment  
STATE OF OREGON, San Joaquin county

On this 19 day of June, 2006, personally appeared the above named  
Christopher R. Snell and Ann Snell and acknowledged the foregoing instrument to be ~~his~~ their voluntary  
act and deed.  
Before Me



[Signature] Notary Public  
4-17-10  
My commission expires: Name and title



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 Simon  
Witness: Judy Oakley

### 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.

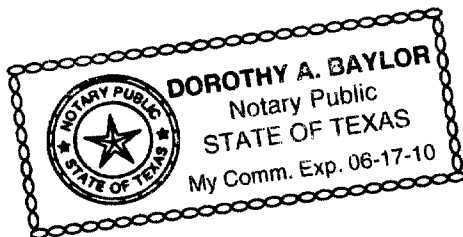
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14th day of July, 2006.

My Commission Expires:

\_\_\_\_\_

Dorothy A. Baylor  
Notary Public in and for  
The State of Texas

Name: Dorothy A. Baylor



**EXHIBIT "A"**

LOT 270, RUNNING Y RESORT, PHASE 3, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon

## 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 **Christopher R. Snell and spouse, Ann Snell** ("Borrower"), located at \* **Coppers Hawk Road Klamath, 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>280,653.00</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 5<sup>th</sup> day of June, 2006

[Signature]  
Affiant

Cavallaro & Company

By: [Signature]  
Name: CHRISTIAN H. CAVALLARO  
Title: OWNER

#### INDIVIDUAL ACKNOWLEDGEMENT

STATE OF Oregon §  
COUNTY OF Klamath §

This instrument was acknowledged before me on June 5, 2006, by Christian Cavallaro.

My commission expires: Dec. 01, 2009

[Signature]  
Notary Public, State of Oregon  
Tammy P. Foltz  
Printed Name of Notary Public

#### CORPORATE ACKNOWLEDGEMENT

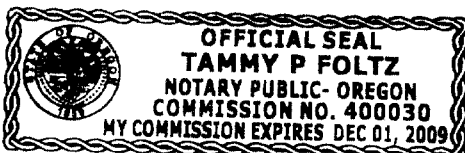
STATE OF Oregon §  
COUNTY OF Klamath §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of Cavallaro & Company, a \_\_\_\_\_ Corporation, on behalf of said corporation.

My commission expires: \_\_\_\_\_

Notary Public, State of Oregon

Printed Name of Notary Public



## AFTER RECORDING RETURN TO:

Bank of America, N.A.  
Construction Lending Department  
1201 Main St., 11th Floor  
Dallas, TX 75202

Affidavit of Posting the Completion Notice

STATE OF OREGON §  
§  
COUNTY OF \_\_\_\_\_ §

I/We, Christopher R. Snell and spouse, Ann Snell, being first duly sworn, depose and say: I/We are the owner(s) of the above described Property and we either personally posted a Completion Notice or caused our agent to post a Completion Notice, of which a true and correct copy is attached, in a conspicuous place upon the Property or upon the improvement situated thereon, to-wit: by posting, nailing, tacking, pasting, fastening or otherwise affixing such notice at or to the front entrance of the building or improvement constructed, altered or repaired on the above described Property or in the event no building existed at the time of posting, then we posted the notice as hereinafter described: \_\_\_\_\_

PLEASE NOTE NEW  
WORDING FOR JURATS  
& AFFIDAVITS AS  
OF JANUARY 1, 2005

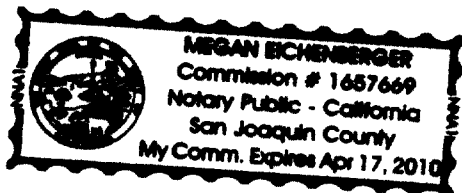
State of California County of -  
San Joaquin  
Subscribed and sworn to (or affirmed)  
Before me on this 17 day of May 2006 by  
Christopher Snell and Ann Snell  
personally known to me or proved to me on  
the basis of satisfactory evidence to be the  
person(s) who appeared before me.  
Signature \_\_\_\_\_  
Notary Public

5/17/06 Chris Snell  
5/17/06 Ann Snell

Sworn to and subscribed before me on the  
undersigned authority by \_\_\_\_\_

Notary Public for State of Oregon

My Commission expires: \_\_\_\_\_



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AFTER RECORDING RETURN TO:  
Bank of America, N.A.  
Construction Lending Department  
1201 Main St., 11th Floor  
Dallas, TX 75202

Affidavit of Posting the Completion Notice

STATE OF OREGON      §  
COUNTY OF \_\_\_\_\_ §  
§

I/We, Christopher R. Snell and spouse, Ann Snell, being first duly sworn, depose and say: I/We are the owner(s) of the above described Property and we either personally posted a Completion Notice or caused our agent to post a Completion Notice, of which a true and correct copy is attached, in a conspicuous place upon the Property or upon the improvement situated thereon, to-wit: by posting, nailing, tacking, pasting, fastening or otherwise affixing such notice at or to the front entrance of the building or improvement constructed, altered or repaired on the above described Property or in the event no building existed at the time of posting, then we posted the notice as hereinafter described: \_\_\_\_\_

PLEASE NOTE NEW  
WORDING FOR JURATS  
& AFFIDAVITS AS  
OF JANUARY 1, 2005

State of California County of \_\_\_\_\_  
Subscribed and sworn to (or affirmed) \_\_\_\_\_  
Before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2006 by  
Christopher Snell and Ann Snell  
personally known to me or proved to me on  
the basis of satisfactory evidence to be the  
person(s) who appeared before me.  
Signature \_\_\_\_\_  
Notary Public

5/17/06 Christopher Snell  
5/17/06 Ann Snell  
Sworn to and subscribed before me on the  
undersigned authority by \_\_\_\_\_  
\_\_\_\_\_  
Notary Public for State of Oregon  
My Commission expires \_\_\_\_\_

