

MTC 65641

2006-017205  
Klamath County, Oregon



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08/28/2006 11:20:06 AM

Fee: \$41.00

AFTER RECORDED RETURN TO:  
Bank of America, N.A.  
ATTN: Construction  
9000 Southside Blvd., Ste. 700  
Jacksonville, FL 32256  
PARCEL NUMBER: 3808-010B0-12000-000  
LOAN NUMBER: 6360972670

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 **April 01, 2006**, between **Gary Winston, Trustee of the Winston Family Trust**, (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 **September 22, 2004**, in favor of **Bank of America, N.A.** and any previous modification(s) thereof, said Note being in the original principal amount of **\$375,000.00**, said Security Instrument having been recorded in/under Vol M04 Page 66020 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: **6710 Red Start 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.

41.00

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 principal amount evidenced by the Note is changed from **\$375,000.00** to **\$337,067.00**.

The annual interest rate set forth in paragraph 2 is changed from **5.875%** to **6.000%**.

The beginning date for monthly payments of principal and interest set forth in paragraph 3 is changed from **November 01, 2005** to **May 01, 2006**.

The Maturity Date is changed from **October 01, 2035** to **April 01, 2036**.

The amount of the monthly payments of principal and interest set forth in paragraph 3, is changed from **\$2,218.27** to **\$2,020.89**.

The maximum interest rate Borrower may be required to pay at the initial Change Date as defined and set forth in paragraph 4 is changed from **10.875%** to **11.000%**.

The minimum interest rate Borrower may be required to pay at the initial Change Date as defined and set forth in paragraph 4 is changed from **2.250%** to **2.250%**.

The highest interest rate Borrower shall ever be requested to pay as set forth in paragraph 4 is changed from **10.875%** to **11.000%**.

The lowest interest rate Borrower shall ever be requested to pay as set forth in paragraph 4 is changed from **2.250%** to **2.250%**.

The margin used in calculating Borrower's new interest rate as set forth in paragraph 4 is changed from **2.250%** to **2.250%**.

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

The principal amount evidenced by the Note is changed from **\$375,000.00** to **\$337,067.00**.

The "Rollover Date" as defined therein is changed from **October 01, 2005** to **April 01, 2006**.

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

Reference to the principal sum owed by Borrower to Lender is changed from **\$375,000.00** to **\$337,067.00**.

Reference to the maturity date of the debt secured by the Security Instrument is changed from **October 01, 2035** to **April 01, 2036**.

**The Adjustable Rate Rider to the Security Instrument shall be and hereby is amended as follows:**

The annual interest rate set forth in paragraph A is changed from **5.875%** to **6.000%**.

The maximum interest rate Borrower may be required to pay at the initial Change Date as defined and set forth in paragraph 4 is changed from **10.875%** to **11.000%**.

The minimum interest rate Borrower may be required to pay at the initial Change Date as defined and set forth in paragraph 4 is changed from **2.250%** to **2.250%**.

The highest interest rate Borrower shall ever be requested to pay as set forth in paragraph 4 is changed from **10.875%** to **11.000%**.

The lowest interest rate Borrower shall ever be requested to pay as set forth in paragraph 4 is changed from **2.250%** to **2.250%**.

The margin used in calculating Borrower's new interest rate as set forth in paragraph 4 is changed from **2.250%** to **2.250%**.

The address of the Property is modified to **6710 Red Start 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 23rd day of August to be effective **April 01, 2006.**

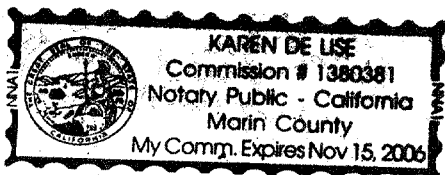
Gary Winston  
\_\_\_\_\_  
Gary Winston Individually and as Trustee of the Winston Family Trust  
for the benefit of Gary Winston *Separate Property*

Date 8/23/06

**Individual Acknowledgment**

Calif  
STATE OF OREGON, Marin County

On this 23rd day of August, 2006, personally appeared the above named Gary Winston, Individually and as Trustee of the Winston Family Trust and acknowledged the foregoing instrument to be (his) her / their voluntary act and deed.  
Before Me



Karen De Lise  
\_\_\_\_\_  
Notary Public

Karen De Lise, Notary  
\_\_\_\_\_  
Name and title

My commission expires: 11-15-06

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

By: Judy Beller  
Name: Judy L. Beller  
Title: Vice President

Witness: Judy Oakley

Witness: Jan Bissell

### Corporate Acknowledgement

STATE OF TEXAS  
COUNTY OF DALLAS

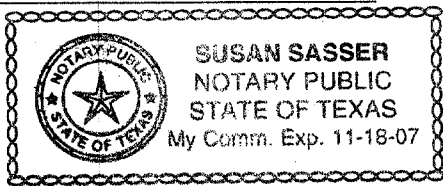
BEFORE ME, the undersigned authority, on this day personally appeared Judy L. Beller,  
as Vice President of Bank of America, N.A. known to me to be the person whose name is subscribed to the foregoing  
instrument and acknowledged to me that she executed the same for the purposes and consideration therein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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 21<sup>st</sup> day of August,  
2005. ss

My Commission Expires:

Susan Sasser  
Notary Public in and for  
The State of Texas

Name:



**EXHIBIT "A"**

Lot 894, Running Y Resort, Phase 11 First Addition, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.