

2008-010338

Klamath County, Oregon



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07/18/2008 02:45:20 PM

Fee: \$36.00

MAIL TAX STATEMENTS TO:

Thomas Provancha, Senior Vice President
West Coast Bank
5000 Meadows Road
Suite 220
Lake Oswego, OR 97035

AFTER RECORDING RETURN TO:

Erich M. Paetsch, Esq.
Saalfeld Griggs P.C.
P.O. Box 470
Salem, OR 97308
Ph: (503) 399-1070

DEED IN LIEU OF FORECLOSURE - NO MERGER
(TRUST DEED)

ATE: 65867

This Deed is by and between, ASPEN TREE HOMES, LLC AND JAMES R. BRYANT, hereinafter called "**Grantors**," and WEST COAST BANK, hereinafter called "**Grantee**."

For the consideration hereinafter stated, Grantors hereby grant, bargain, sell, and convey unto Grantee the following described real property located in Klamath County, Oregon:

LOT 74 IN TRACT 1438, 8TH ADDITION TO NORTH HILLS-PHASE 2, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

Real property commonly known as 871 West View Drive, Klamath Falls, OR 97603 (hereinafter the "**Property**").

together with all of the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

To Have and To Hold the same unto the said Grantee and Grantee's heirs, successors, and assigns forever.

This Deed is absolute in effect and conveys fee simple title of the above-described Property to the Grantee and does not operate as a mortgage, trust conveyance, or security of any kind. Grantors are the owners of the Property, subject to all liens and encumbrances of record, and also subject to a trust deed from Aspen Tree Homes, LLC and James Bryant, Grantors, to West Coast Trust, (the "**Trustee**") for the benefit of West Coast Bank, (the "**Beneficiary**"), said trust deed dated September 26, 2006, and recorded September 28, 2006 as Recording Document 2006-019553, Klamath, Oregon.

#36-A

Grantors transfer and assign to Grantee all rights, titles and interests Grantors may now have, or hereafter acquire, in: (a) any property tax appeals pending as of the date of this deed pertaining to the Property; (b) any right to appeal the valuation of the Property for property tax purposes for the time periods both before and after the date of this Deed; and (c) the right to receive any tax refunds arising from any such appeals described above.

Grantors acknowledge that at the time this conveyance is made the balance of the indebtedness against the Property (including resale costs) is equal to or exceeds the fair market value of the Property, and, therefore, this conveyance does not create a preference against any other creditor of Grantors within the meaning of the bankruptcy laws. Grantors each acknowledge that at the time of this conveyance that neither of them are insolvent as that term is defined under the U.S. Bankruptcy Code.

This Deed does not affect a merger of the fee ownership and the lien of the trust deed described above. The fee and lien shall hereafter remain separate and distinct. Recordation of this Deed shall not impair the priority of the lien of the trust deed referenced herein over other liens, changes or encumbrances, if any, known or unknown. This Deed does not affect any power of the Grantee to commence, prosecute, discontinue or reinstate the sale of the Property pursuant to the power of sale granted by the Deed of Trust.

The consideration for this conveyance, stated in terms of dollars, is none. The actual consideration consists of the contingent limitation of the liability of Grantors to Grantee for repayment of the promissory note secured by a security interest in the Property together with the Release of Grantee executed contemporaneously.

Grantee does not nor shall expressly or implicitly agree to assume or pay any contract balances, debts, liens charges or obligations which relate to, or attach to, the Property. Delivery and acceptance of this Deed shall only occur if and only if recordation of the Deed occurs at the request of the Grantee.

Upon recordation of this Deed, Grantee covenants and agrees that Grantee shall forever forebear taking any action whatsoever to collect against Grantors on the promissory note secured by the above described trust deed, other than by foreclosure of that trust deed, and that in any proceeding to foreclose the trust deed, Grantee will not seek, obtain, or permit any deficiency judgment against Grantors or Grantors' heirs, successors, or assigns, such rights and remedies being hereby waived.

Provided, however, that Grantee's waiver of its rights to pursue Grantors does not apply to Grantee's rights to any claim or liability arising out of any fraud, misrepresentation or misappropriation by Grantors, any right or claim to insurance proceeds, condemnation award or rents relating to the property or the presence or release of any hazardous, toxic or other substance prohibited or regulated in any manner by any law or governmental requirement relating to the property and such waiver shall only take affect after there are no liens or encumbrances against the Property. In addition, if this conveyance is set aside as a preference, fraudulent conveyance or otherwise, the Grantee's rights to sue on the promissory note or other obligations secured by the Property, to obtain a deficiency judgment against the Grantors or otherwise, shall be reinstated as if this Deed had never been granted.

Grantors represent and warrant to Grantee that there are no environmentally hazardous materials or wastes contained on the Property and that there are no potentially hazardous

environmental conditions on the Property and that the Property has not been identified by any government agency of the site upon which, or potentially upon which, environmentally hazardous materials have been (or may have been) located or deposited.

Grantors are not acting under any misapprehension as to the legal effect of this Deed nor under any duress, undue influence, or misrepresentation of Grantee and Grantee's agents, attorneys, or other persons.

The following is the notice as required by Oregon law: "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, ORS 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

In construing this Deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

The parties hereby submit to jurisdiction in Klamath County, Oregon and agree that any and all disputes arising out of or related to this Deed shall be litigated exclusively in the Circuit Court for Klamath County, Oregon and in no federal court or court of another county or state. Any rule of construction interpreting this instrument against its drafter shall be inapplicable.

The law firm of Saalfeld Griggs PC, of Salem, Oregon, has been employed by the Grantee to prepare the documents in conjunction with this Deed, and such attorneys represent only the Grantee in this matter.

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Prior to signing this Deed, Grantors Aspen Tree Homes LLC and James R. Bryant are hereby encouraged to seek and obtain legal counsel and/or an accounting professional to discuss the tax implications of signing this Deed.

Dated this 21 day of June, 2008.

James R. Bryant
Grantor James R. Bryant
Colorado
State of ~~Oregon~~
County of Douglas) ss.

Donald Loyd
Grantor Donald Loyd, Member
Aspen Tree Homes, LLC

On this 27 day of June, 2008, personally appeared James R. Bryant and Donald Loyd, an authorized representative of Aspen Tree Homes, LLC, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:
Donald Loyd

[Signature]
Notary Public for Oregon
My Commission Expires: 03/24/2012

FARSHAD FARZAD
Notary Public
State of Colorado
My Commission Expires March 24, 2012

State of OREGON

County of Deschutes

This instrument was acknowledged before me on July 11, 20 08

by James R. Bryant

Ann C. Gates
Notary Public - State of Oregon

OFFICIAL SEAL
ANN C GATES
NOTARY PUBLIC-OREGON
COMMISSION NO. 426829
MY COMMISSION EXPIRES MARCH 11, 2012