

NJC 85235

2009-010890

Klamath County, Oregon



00070988200900108900030036

08/13/2009 03:23:47 PM

Fee: \$36.00

After recording return to:

Bradley S. Copeland
800 Willamette Street, Suite 800
Eugene, OR 97401

Until a change is requested, send tax statements to:

Taylor Day and Lisa Day
38380 Modoc Point Road
Chiloquin, OR 97624-6771
Tax Account #

**ESTOPPEL DEED
(Non-Merger)**

THIS INDENTURE between Thomas A. Huntsberger, Trustee for the Bankruptcy Estate of 10 Bears at Chiloquin, Inc., hereinafter called the Grantor, pursuant to an Order of the U.S. Bankruptcy Court for the District of Oregon entered on August 5, 2009 in the matter of In re 10 Bears of Chiloquin, Inc., Case No. 06-62079, and Taylor Day and Lisa Day, as joint tenants, hereinafter called the Grantee;

WHEREAS, the title to the real property hereinafter described is vested in fee simple in the Grantor, subject to a lien of a trust deed dated June 23, 1994 and recorded in the Official Records of Klamath County, Oregon, on July 1, 1994, at Volume M94, Page 20579, reference to said Official Records hereby being made, for the benefit of L.A. Gienger and Pauline Gienger, dba Gienger Investments and whose beneficial interest was subsequently assigned to Leroy Albert Gienger and Pauline Helene Gienger, Trustees of the Gienger Family Revocable Trust dated October 25, 2005 pursuant to an instrument dated December 30, 2005 and recorded in the Official Records of Klamath County, Oregon on January 19, 2009 at Volume M06, Page 01151 ("Gienger Trust Deed"); and further subject to a lien of a trust deed dated May 17, 2004 for the benefit of Taylor Day and Lisa Day evidenced by a Memorandum of Trust Deed dated May 17, 2004, and recorded in the Official Records of Klamath County, Oregon on May 17, 2004 at Volume M04, Page 30782 ("Day Trust Deed"), and the indebtedness secured by the Day Trust Deed as evidenced by a Promissory Note in favor of Grantee, on which indebtedness there is now due and owing the unpaid sum of approximately \$1,080,000.00, the same being now in default; and

WHEREAS, 10 Bears at Chiloquin, Inc. and the Grantor, being unable to pay the same, Grantor has offered and Grantee has agreed to accept a deed of conveyance of the property in consideration of the covenants and agreements of Grantee set forth herein;

NOW, THEREFORE, for the consideration hereinafter stated, Grantor does hereby grant, bargain, sell and convey unto Grantee and to Grantee's successors and assigns all of the following described real property, with the tenements, hereditaments and appurtenances thereunto belonging or in anyway appertaining, including, but not limited to, any and all timber lying, standing, growing or down thereon, situated in the County of Klamath, State of Oregon, to-wit:

PARCEL 1

All of Government Lots 2, 3, 9, 14, 40 and 41 in Section 21, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, lying East of Highway 97 and Northwesterly of the Williamson River.

36amt

PARCEL 2

A part of Lots 33 and 32, Section 16, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, lying East of U.S. Highway Number 97 and being more particularly described as follows:

Beginning at the quarter section on the South boundary of Section 16, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon; thence North along the center section line of Section 16 a distance of 1320.0 feet to the Northwest corner of Lot 33, which corner is marked with a ¾ inch iron pipe; thence East along the North boundary of Lot 33 a distance of 323.30 feet more or less to a point on the Easterly right of way boundary of U.S. Highway Number 97, which point is marked with a ¾ inch iron pipe; thence South 2° 22' West along said right of way boundary a distance of 333.30 feet to a ¾ inch iron pipe marking the true point of beginning of this description; thence North 62° 07' East a distance of 395.00 feet to the center of an existing water well; thence continuing North 62° 07' East 234.30 feet to a ¾ inch iron pipe which bears South 40.00 feet distant from the North boundary of Lot 33; thence East parallel with aforesaid boundary, 454.20 feet to the East boundary of Lot 33; thence South along same, 95.00 feet; thence in Lot 32, East 107.27 feet; thence South 32° 20' East 381.50 feet; thence South 9° 30' West 205.30 feet to a 2 inch iron pipe on the South boundary of Lot 32; thence West along the South boundary of Lots 32 and 33 a distance of 1301.30 feet more or less to the Easterly right of way boundary of U.S. Highway Number 97; thence North 2° 22' East along same, 326.00 feet to the true point of beginning.

Saving and excepting that portion acquired by the State of Oregon in Stipulated Final Judgment filed in Circuit Court Case 90-493CV, and recorded in M-91, page 4868, Records of Klamath County, Oregon.

PARCEL 3

Government Lots 38 and 39 of Section 16, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, lying East of Highway 97.

Saving and excepting that portion acquired by the State of Oregon in Stipulated Final Judgment filed in Circuit Court Case 90-493CV, and recorded in M-91, page 4868, Records of Klamath County, Oregon.

The true consideration for this conveyance is good and valuable consideration other than cash plus the sum of \$75,000.00, which consideration is the whole consideration.

Grantor covenants that:

(i) This Deed is absolute in effect and conveys fee simple title of the premises described herein to Grantee and does not operate as a mortgage, trust conveyance, or security of any kind;

(ii) Grantor is the owner of the premises free of all encumbrances except the aforesaid Gienger Trust Deed and Day Trust Deed, and liens, encumbrances, conditions, restrictions of record as of the date hereof.

THIS DEED DOES NOT EFFECT A MERGER OF THE FEE OWNERSHIP AND THE LIEN OF THE DAY TRUST DEED DESCRIBED ABOVE. THE FEE OWNERSHIP AND LIEN SHALL HEREAFTER REMAIN SEPARATE AND DISTINCT.

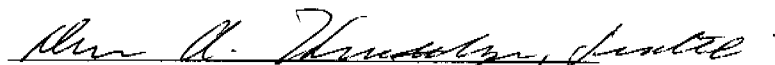
In consideration of Grantee's covenants herein and Grantor's benefit from remaining in possession of the premises described above until relinquished at the time of this conveyance, Grantee may retain all payments previously made on the secured debt referred to above with no duty to account therefore.

By acceptance of this Deed, Grantee covenants and agrees that it shall forever forbear taking any action whatsoever to collect against Grantor on the Promissory Note secured by the Day Trust Deed described above, other than by foreclosure of the Day Trust Deed, and that in any proceeding to foreclose the Day Trust Deed, it shall not cause, obtain, or permit a deficiency judgment against Grantor or the bankruptcy estate of 10 Bears of Chiloquin, Inc., such rights and remedies being waived.

Grantor waives, surrenders, conveys, and relinquishes any equity of redemption and statutory rights of redemption concerning the real property and Day Trust Deed described above, and any notices it might otherwise be entitled to in the event the Day Trust Deed described above is foreclosed.

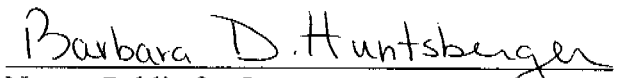
Grantor is not acting under any misapprehension as to the legal effect of this Deed, nor any duress undue influence, or misrepresentation of Grantee, Grantee's agent or attorney, or any other person.

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, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.


Thomas A. Huntsberger, Trustee for the
Bankruptcy Estate of 10 Bears at Chiloquin, Inc.

STATE OF OREGON)
) ss.
County of Lane)

The foregoing instrument was acknowledged before me this 11th day of August, by Thomas A. Huntsberger, Trustee for the Bankruptcy Estate of 10 Bears at Chiloquin, Inc.


Notary Public for Oregon
My Commission Expires: Dec. 11, 2009

