



200908180042

Skagit County Auditor

8/18/2009 Page 1 of 16 3:03PM

After Recording, Mail to:
U.S. Bank National Association
c/o Loeb & Loeb LLP
321 North Clark Street
23rd Floor
Chicago, IL 60654
Attention: James V. Inendino

CHICAGO TITLE CO.
1C35587

Modification Agreement for Deed

Document Title(s) (or transactions contained herein): of Trust

Reference Number(s) of Documents assigned or released: 200605120083

Grantor/Borrower: Chaffey Homes Incorporated

Grantee/Assignee: U.S. Bank National Association

Legal Description (abbreviated): Lots 1-26, 54, 67-78 and Tracts 905, 907 and 909,
MONTREAUX PHASE 1, according to the plat
thereof, Skagit County, Washington

Complete legal description is attached hereto as
Exhibit A

Assessor's Tax Parcel ID# 340422-3-009-0336
340422-3-014-0016

MODIFICATION AGREEMENT FOR DEED OF TRUST

(Cross-Default / Cross-Collateralization)

This Modification Agreement is dated as of July 27, 2009, by and between U.S. Bank National Association ("Beneficiary") and Chaffey Homes Incorporated, a Washington corporation ("Trustor").

RECITALS

- A. By the terms of that certain Construction Loan Agreement dated April 12, 2006, as amended and modified from time to time, between Trustor and Beneficiary, and that certain note, and other loan documents, Beneficiary has made a loan to Trustor in the amount of \$6,497,532.89. The loan is secured by a deed of trust dated April 12, 2006 from Trustor, in favor of Beneficiary recorded in the office of the Recorder of Skagit County, Washington as document No. 200605120083 (the "Deed of Trust"); and
- B. By the terms of those certain other loan agreements, as modified from time to time, by and among Trustor, Chaffey Development Corporation, a Washington corporation ("CDC"), Chaffey Customs LLC, a Washington limited liability company ("Customs"), Chaffey Arizona, Inc., a Washington corporation ("Arizona"), Glacier Ridge, LLC, a Washington limited liability company ("Glacier"), Noll Valley, LLC, a Washington limited liability company ("Noll"), The Estates at Gig Harbor, LLC, a Washington limited liability company ("Estates") and Clear Creek Estates, LLC, a Washington limited liability company ("Clear Creek"; collectively with Trustor, CDC, Customs, Arizona, Glacier, Noll, and Estates referred to as the "The Borrower Group") and Beneficiary as set forth on Schedule 1 attached hereto, and those certain promissory notes, and other loan documents issued in connection with the loans set forth on Schedule 1 (other than the loan referred to in Recital A above), Beneficiary made those certain other loans to each and every other member of The Borrower Group in the principal amounts set forth therein and secured by those several deeds of trust recorded in the office of the Recorder of Pierce County, Kitsap County, Skagit County, Snohomish County, King County, Washington and Maricopa County, Arizona (collectively referred to as the "Other Deeds of Trust"); and
- C. Trustor and Beneficiary have agreed to modify the Deed of Trust to provide for cross collateralization and cross-default of the obligations secured by the Deed of Trust with the obligations secured by the Other Deeds of Trust.



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THEREFORE, Trustor and Beneficiary agree as follows:

1. **ADDITIONAL SECURITY – OTHER DEEDS OF TRUST.** In addition to the obligations secured by the Deed of Trust, the Deed of Trust shall also secure the payment and performance of all obligations secured by the Other Deeds of Trust, as defined in Recital B, and which Other Deeds of Trust, including their recordation information, are identified specifically on Schedule 1, attached hereto and incorporated herein by this reference.
2. **ADDITIONAL SECURITY – DEED OF TRUST.** In addition to the obligations secured by the Other Deeds of Trust, the Other Deeds of Trust shall also secure the payment and performance of all obligations secured by the Deed of Trust.
3. **DEFAULT – OTHER DEEDS OF TRUST.** A Default under any one or all of the Other Deeds of Trust, as defined therein, shall, at Beneficiary's option, constitute a Default under the Deed of Trust.
4. **DEFAULT – DEED OF TRUST.** A Default under the Deed of Trust, as defined therein, shall, at Beneficiary's option, constitute a Default under any one or all of the Other Deeds of Trust.
5. **WAIVER OF MARSHALLING RIGHTS.** Trustor waives all rights to have all or part of the property covered by the Deed of Trust and/or by the Other Deeds of Trust (described in each of said deeds of trust, respectively, as the "Subject Property"), marshalled upon any foreclosure of the Deed of Trust or the Other Deeds of Trust. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of the Subject Property of each or all of said deeds of trust, or any part thereof, as a whole or in separate parcels, in any order that Beneficiary may designate. Trustor makes this waiver for itself, and for all persons and entities claiming through or under Trustor, and for persons and entities who may acquire a lien on all or any part of the Subject Property described in any of the deeds of trust, or on any interest therein.
6. **INSPECTIONS AND APPRAISALS.** The following is hereby inserted as Section 6.14 of the Deed of Trust:

Each deed of trust for the Loans, to the extent not included therein, shall be amended to include the following section therein where appropriate:

"Borrower agrees that the Bank shall have the right to obtain, at Borrower's expense, an appraisal of the



Property, prepared by an appraiser acceptable to the Bank and in substantial conformance with governmental regulations applicable to the Bank and approved by Bank at any time that (a) an event of default has occurred hereunder or under the Loan Documents, (b) any damage or destruction of the Property occurs, (c) Bank determines in its sole opinion that the security for the Note has been physically or financially impaired in any material manner, or (d) such appraisal is required by then current banking laws or regulations. In the event that Bank shall elect to obtain such an appraisal, Bank may immediately commission an appraiser acceptable to Bank, at Borrower's cost and expense, to prepare the appraisal and Borrower shall fully cooperate with Bank and the appraiser in obtaining the necessary information to prepare such appraisal. In the event that Borrower fails to cooperate with Bank in obtaining such an appraisal or in the event that Borrower shall fail to pay for the cost of such appraisal and Bank's internal appraisal review fee, immediately upon demand, such event shall constitute an event of default hereunder and under the Loan Documents and Bank shall be entitled to exercise all remedies available to it under the Loan Documents. In the event that any such appraisal shall determine that the then outstanding principal balance of the Loan Commitment, together with the undisbursed portion of the Loan Commitment which Bank may be obligated to disburse to Borrower in accordance with the terms and conditions thereof or the Loan Documents, is greater than the lesser of 75% of the fair market value of the Property or 75% of the discounted value or 90% of the cost of the Improvements and the Borrower fails to prepay, within ten (10) business days after written notice from Bank to Borrower, the outstanding principal balance of the Loan Commitment to the extent necessary to reduce the sum of said principal balance and such amounts Bank may be obligated to disburse to Borrower down to the lesser of 75% of the fair market value of the Property or 75% of the discounted value or 90% of the cost of the Improvements, such event



shall constitute an event of default hereunder and under the Loan Documents, and Bank shall be entitled to exercise all remedies available to it hereunder and under the Loan Documents. In the event such appraisal is required by reason of the damage or destruction of a portion of the Property, the fair market value shall be calculated on the Property after restoration of the Improvements.”

Notwithstanding the foregoing, Bank agrees that it will not require Borrower to remargin the Loans prior to May 1, 2010.

7. **WARRANTIES AND REPRESENTATIONS.** Trustor represents and warrants that the lien of the Other Deeds of Trust are a first lien on the property described therein and covered thereby and that this Modification Agreement will not cause intervening liens to become prior to the lien of the Other Deeds of Trust. If any intervening lien exists or hereafter arises, Trustor shall cause the same to be released or subordinated to the lien of the Other Deeds of Trust, without limiting any other right or remedy available to Beneficiary. Trustor further warrants that Trustor has no legal or equitable claim against any trustor named in the Other Deeds of Trust which would entitle Trustor to a judgment entitling Trustor to an equitable lien on all or any portion of that property prior in lien to the Other Deeds of Trust.
8. **ACKNOWLEDGMENT AND WAIVER.** Trustor represents and warrants to Beneficiary that one or more of the trustors/borrowers for the Other Deeds of Trust are not the same entity as Trustor. Trustor hereby waives any and all claims or defenses it may have to the cross-defaulting and cross-collateralization of this loan and the other loans based on the fact that Trustor and one or more of the trustors for the Other Deeds of Trust are separate entities and/or individuals. Trustor acknowledges that it has received actual and sufficient consideration in exchange for the cross-defaulting and cross-collateralization of this loan to the other loans and acknowledges that there is or may be disparate treatment between the Trustor and the trustors/borrowers under the other loans.
9. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Modification Agreement, all of the terms, covenants, and conditions contained in the Other Deeds of Trust and any loan documents executed in connection therewith shall remain in full force and effect.



10. **EXECUTION IN COUNTERPART.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.



"Beneficiary"

U.S. BANK NATIONAL ASSOCIATION

By: _____

Name: Jaysen Buechler

Its: Vice-President

"Trustor"

CHAFFEY HOMES INCORPORATED,
a Washington corporation

By: _____

Name: Robert Chaffey

Title: Co-president



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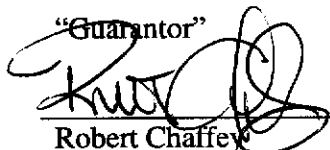
Skagit County Auditor

GUARANTOR'S CONSENT

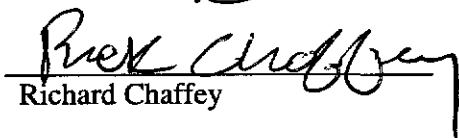
The undersigned ("Guarantor") consents to the foregoing Modification Agreement and the transactions contemplated thereby and reaffirms its obligations under the guaranty ("Guaranty") and its waivers, as set forth in the Guaranty, of each and every one of the possible defenses to such obligations. Guarantor further reaffirms that its obligations under the Guaranty are separate and distinct from Borrower's obligations.

AGREED:

Dated: July 27, 2009

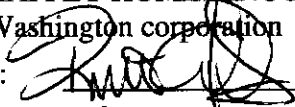
"Guarantor"


Robert Chaffey




Richard Chaffey

CHAFFEY HOMES INCORPORATED,
a Washington corporation

By: 

Name: Robert Chaffey
Title: Co-president

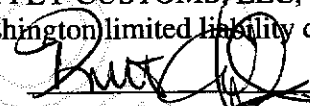
CHAFFEY DEVELOPMENT CORPORATION,
a Washington corporation

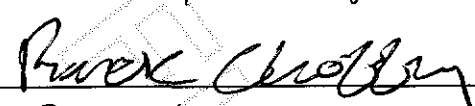
By: 

Name: Robert Chaffey
Title: Co-president

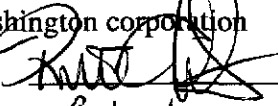


CHAFFEY CUSTOMS, LLC,
a Washington limited liability company

By: 
Name: Robert Chaffey
Title: Member / manager

By: 
Name: Richard Chaffey
Title: Member / manager

CHAFFEY ARIZONA, INC.,
a Washington corporation

By: 
Name: Robert Chaffey
Title: Co-president



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HAZARDOUS INDEMNITOR'S CONSENT

The undersigned ("Indemnitor") consents to the foregoing Modification Agreement and the transactions contemplated thereby and reaffirms its obligations under the Unsecured Real Estate Environmental Indemnity ("Indemnity") dated April 12, 2006, and its waivers, as set forth in the Indemnity, of each and every one of the possible defenses to such obligations. Indemnitor further reaffirms that its obligations under the Indemnity are separate and distinct from Borrower's obligations.

AGREED:

Dated: July 27, 2009

"Indemnitor"

CHAFFEY HOMES INCORPORATED,
a Washington corporation

By: 

Name: Robert Chaffey

Title: Co-president



STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Robert Chaffey is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Co-President of CHAFFEY HOMES INCORPORATED, a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: July 29, 2009.

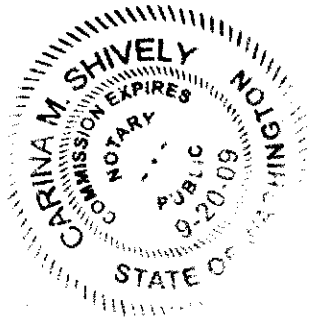
Carina M. Shively
(Print or stamp name of Notary)

Carina M. Shively

NOTARY PUBLIC in and for the State of

Washington, residing at: Kirkland

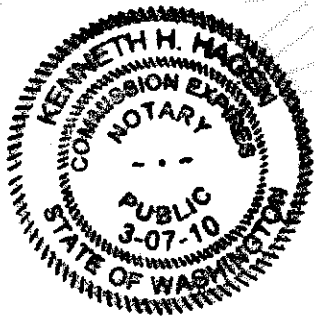
My appointment expires: 9/20/09



STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Jayson Buechler is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Vice-President of U.S. BANK NATIONAL ASSOCIATION, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: July 24, 2009.



Kenneth H. Hazen
(Print or stamp name of Notary)

Kenneth H. Hazen
NOTARY PUBLIC in and for the State of

Washington, residing at: Seattle, WA

My appointment expires: 3/7/10



**EXHIBIT A
(Property Description)**

Real property in the County of Skagit, State of Washington, described as follows:

Lots 1-26, 54, 67-78 and Tracts 905, 907 and 909, MONTREAUX PHASE 1, according to the plat thereof, recorded July 23, 2007, under Auditor's File No. 200707230124, records of Skagit County, Washington.



CH54814.2
214164.10003



Schedule 1
Loans to Trustor and The Borrower Group

CH54814.2
214164-10003



Schedule 1 to Amendment - Loans to Borrowers

<u>Name of Borrower</u>	<u>Loan No.</u>	<u>Date of Note</u>	<u>Deed of Trust Date</u>	<u>Document No.</u>	<u>County</u>	<u>Loan Amount</u>
Glacier Ridge, LLC, a Washington limited liability company - SFR	0608766246-42	12/5/2005	12/5/2005	200512090313 and 200606080666	Pierce	\$4,600,000.00
Glacier Ridge, LLC, a Washington limited liability company - A&D	0608766246-26	7/26/2001	3/19/2008	200803260984	Pierce	\$3,507,909.39
Chaffey Homes Incorporated, a Washington corporation - Finn Hill (Poulsbo)	1474855634-828&844	8/1/2005	8/1/2005	200508100254 and 20050860254	Kitsap	\$282,750.00
Chaffey Homes Incorporated, a Washington corporation - Hemming	1474855634-976	3/1/2006	3/1/2006	200603211283	Pierce	\$624,000.00
Chaffey Homes Incorporated, a Washington corporation - Montreaux (A&D/Lots)	1474855634-992	4/12/2006	4/12/2006	200605120083	Skagit	\$6,497,532.89
Chaffey Homes Incorporated, a Washington corporation - Dreamscape (A&D)	1474855634-1081	7/17/2007	7/17/2007	200707310778	Pierce	\$1,602,250.00
Chaffey Homes Incorporated, a Washington corporation - Raymond Ridge (A&D)	1474855634-1222	12/1/2007	12/1/2007	200712140246	Snohomish	\$3,250,497.00
Chaffey Homes Incorporated, a Washington corporation - Madison Pk (1 SFR)	1474855634-1263	4/21/2008	4/21/2008	20080512001786	King	\$1,422,206.00
Chaffey Homes Incorporated, a Washington corporation - Montanaro (A&D)	1474855634-1305	7/10/2008	7/10/2008	200807280449	Pierce	\$2,140,324.25
Chaffey Homes Incorporated, a Washington corporation - Garrison Glen (A&D)	1474855634-1388	5/25/2006	5/25/2006	20060530002706	King	\$3,060,246.00
Chaffey Homes Incorporated, a Washington corporation - Lancaster Lot 9 (SFR)	1474855634-1412	9/1/2008	9/1/2008	200809050457	Pierce	\$448,000.00
The Estates at Gig Harbor, LLC, a Washington limited liability company - Rosedale (SFR)	060881714-26	5/14/2008	5/14/2008	200806040305	Pierce	\$6,500,000.00
Clear Creek Estates, LLC, a Washington limited liability company - Clear Creek Estates (SFR&Lots)	0608814137-26	12/11/2007	12/11/2007	200712210166	Kitsap	\$5,000,000.00
Noll Valley, LLC, a Washington limited liability company Timberbrook (SFR&Lots)	0608809186-26	2/20/2007	2/20/2007	200702260257 and 20090510140	Kitsap	\$3,000,000.00
Chaffey Customs LLC, a Washington limited liability company - Clyde Hill (1 SFR)	608740357-372	7/9/2007	7/9/2007	20070710001820	King	\$1,217,000.00
Chaffey Customs LLC, a Washington limited liability company - Kirkland (1 SFR)	608740357-398	8/7/2007	8/7/2007	20070815000447	King	\$2,142,000.00
Chaffey Customs LLC, a Washington limited liability company - Yarrow Point (1 SFR)	608740357-414	8/23/2007	8/23/2007	20070828001426	King	\$2,476,000.00
Chaffey Arizona, Inc., a Washington corporation - Almarie (A&D)	0608814582-42	1/4/2008	1/4/2008	2008-0051736	Maricopa, AZ Kitsap and Pierce	\$5,531,000.00
Chaffey Homes Incorporated, a Washington corporation - LOC-8 Recorded Lots	1474855634-1354	7/1/2008	7/27/2009		Pierce	\$1,000,000.00



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Schedule 1 to Amendment - Loans to Borrowers

Chaffey Homes Incorporated, a Washington limited liability company - IR Loan-Yarrow Point Lot	1474855634-new	7/27/2009	7/27/2009	King	\$1,250,000.00
Total Current Loan Commitments					\$55,551,715.53



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