

When Recorded Return to:

WASHINGTON FEDERAL SAVINGS
Attn: Norm Culbert
425 Pike Street
Seattle, WA 98101



201107130051
Skagit County Auditor

7/13/2011 Page 1 of 9 3:43PM

GUARDIAN NORTHWEST TITLE CO.

NON-MERGER STATUTORY WARRANTY
DEED IN LIEU OF FORECLOSURE

101246

Grantor:	CHAFFEY HOMES INCORPORATED, which acquired title as Chaffey Homes, Inc.
Grantee:	WASHINGTON FEDERAL SAVINGS
Legal Description (abbreviated):	LOT 4, BLOCK 9, AND LOTS 2 THROUGH 5, BLOCK 10, "PLAT OF WOOD'S ADDITION TO ANACORTES"
	<input checked="" type="checkbox"/> Complete legal on <u>EXHIBIT A</u>
Assessor's Tax Parcel Identification No(s):	P60647 (3839-009-004-0008); P60655 (3839-010-005-0005)
Reference No. of Related Documents:	200612110176

This NON-MERGER STATUTORY WARRANTY DEED IN LIEU OF FORECLOSURE (this "Deed in Lieu") dated for reference purposes as of June 30, 2011, is made by and between CHAFFEY HOMES INCORPORATED, a Washington corporation, which acquired title as Chaffey Homes, Inc. ("Grantor"), and WASHINGTON FEDERAL SAVINGS, a United States corporation ("Grantee").

1. **Grant.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby irrevocably and unconditionally grants, conveys, warrants, assigns, and transfers to Grantee, effective as of the recording of this Deed in Lieu, the following real and personal property (the "Property"):

1.1 **Land, Appurtenances, Easements.** That certain real property and all interests therein located in Skagit County, Washington, more particularly described in EXHIBIT A attached hereto and incorporated herein by this reference, subject to all matters of record as of the recording date of this Deed in Lieu, together with all existing and future easements, access rights, appurtenances, privileges, licenses, hereditaments, franchises and tenements, including all minerals, oil, gas, and other commercially valuable substances that may be in, under, or produced from any part of such real property (collectively, the "Land");

Deed in Lieu (Chaffey Homes - Skagit County)
ND: 15419.12205 4837-2743-8345v3

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

2089

JUL 13 2011

Amount Paid \$25
Skagit Co. Treasurer
By *AMM* Deputy

1.2 Improvements. All buildings, structures, and improvements now located or later to be constructed on the Land (the "*Improvements*");

1.3 Related Real Property and Improvements. All real property and improvements on the Land, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not, that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements;

1.4 Leases and Licenses. All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, and concessions ("*Leases*") relating to the use and enjoyment of all or any part of the Project (as defined below), and any and all deposits, guaranties and other agreements relating to or made in connection with any of the Leases; *provided, however*, that nothing herein shall be construed as an assumption by Grantee of Grantor's obligations under any Lease absent an express written assumption thereof by Grantee;

1.5 Goods, Materials, Fixtures, Etc. All of Grantor's right, title, and interest in and to goods, materials, supplies, chattels, furniture, appliances, furnishings, fixtures, equipment, inventory, general intangibles, and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Project, whether stored on the Land or elsewhere;

1.6 Construction Materials and Equipment. All of Grantor's right, title, and interest in and to building materials, equipment, work in process, or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into, or installed in or about the Land or Improvements;

1.7 Grantor Funds. All of Grantor's interest in and to the proceeds of the loan (the "*Loan*") secured by the Deed of Trust (defined below); all present and future monetary deposits given by Grantor to, or reimbursements of any kind due Grantor from, any governmental entity or public or private utility with respect to the development of the Land or the construction of the Improvements thereon, or relating to utilities or other services furnished to the Project; and all accounts maintained by Grantor with Grantee or any subsidiary or affiliate of Grantee, including, without limitation, any accounts established in connection with the Loan;

1.8 Rent, Issues, and Profits. All of Grantor's right, title, and interest in and to income, rents, security or similar deposits, revenues, issues, royalties, profits, leases, earnings, products and proceeds of the Land or Improvements, including, without limitation, all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, insurance or condemnation proceeds, payments and deposits, and any proceeds from the sale of any lots or units comprising the Land, and any deposits on account thereof;

1.9 Insurance; Eminent Domain. All of Grantor's rights under any and all contracts and policies of insurance with respect to the Land or Improvements, including, without limitation, the proceeds from any claims made or to be made under any such insurance policy, as well as the right to settle and compromise any such claims made or to be made with respect to the Land or Improvements, and all of Grantor's rights to any and all awards made in connection with any eminent domain or condemnation proceedings, or purchases in lieu thereof, of the whole or any part of the Land or Improvements;



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1.10 Permits, Contracts, and Plans. All of Grantor's right, title, and interest in all permits, approvals, commitments, designs, plans, specifications, surveys, plats, plat approvals, hearing examiner decisions, as-built drawings, architectural and engineering contracts, construction contracts and subcontracts, consulting agreements, financing commitments and agreements, joint development agreements, service and maintenance agreements, marketing and listing agreements, lot reservation agreements, purchase and sale agreements, surveys, environmental or other reports, appraisals, warranties, and any and all other contracts, work product, development rights and general intangibles relating to the Land or Improvements or any part thereof and now or hereafter owned by Grantor, including, without limitation, any and all rights or claims that relate to the construction of Improvements on or to the Land that Grantor may have against any person or entity supplying, or who has supplied, labor, materials, or services in connection with the construction of Improvements on the Land; *provided, however,* that nothing herein shall be construed as an assumption by Grantee of Grantor's obligations under any contract or other agreement in the absence of an express written assumption thereof by Grantee;

1.11 Miscellaneous Personal Property. All of Grantor's right, title, and interest in and to any and all personal property of any kind whatsoever, whether tangible or intangible, that is used or will be used in the development or construction of, or is or will be placed upon or is derived from or used in connection with the use, operation, occupancy, or enjoyment of, the Land or Improvements;

1.12 Rights Under Condominium Laws. All of Grantor's right, title, and interest in and to any and all units, special declarant rights, development rights, and any other rights relating to the Land or the Improvements, whether now existing or subsequently arising, under any and all laws now existing or later enacted relating to condominiums, including Grantor's rights and powers to elect, appoint, and remove officers and directors of any condominium association governing any of the Property;

1.13 Rights Under Covenants, Homeowners' Associations. All of Grantor's rights under any declarations of covenants, conditions, and restrictions recorded for the Land or Improvements, including declarant rights, development rights, and all rights of Grantor in connection with any homeowner's association, architectural control committee, or similar association or committee, established in connection with the Project, including Grantor's rights and powers to elect, appoint, and remove officers and directors of any such associations or committees;

1.14 Additional Property. All of Grantor's right, title, and interest in and to any additional personal property otherwise set forth herein or listed on any UCC financing statement filed to perfect the security interest under the Deed of Trust, as such financing statements may have been amended or continued;

1.15 Deposits and Accounts. Any and all escrow deposits, replacement reserve accounts, operating accounts, and other sums previously deposited by Grantor and held by Grantee or Grantee's affiliates on Grantor's behalf;

1.16 Books and Records. All of Grantor's right, title, and interest in and to all books and records pertaining to any and all of the property described above, including records stored on computer readable media, and a license to use the computer hardware or software necessary to access such records; and



1.17 Proceeds. All of Grantor's right, title, and interest in and to all proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

The Land, Improvements, related real property, and all personal property now or hereafter installed on or used in connection with the Land and/or Improvements are collectively referred to as the "**Project.**"

2. Deed in Lieu. This Deed in Lieu, when recorded, shall be an absolute conveyance, assignment, and transfer of Grantor's entire interest in the Property and is executed and delivered by Grantor in connection with that certain Short Form Deed of Trust dated December 7, 2006, granted by Grantor for the benefit of Grantee, and recorded on December 11, 2006, in the Official Records of Skagit County, Washington, under Recording No. 200612110176, which Short Form Deed of Trust incorporates by reference a Master Form Deed of Trust recorded on October 11, 1995, in the Official Records of Skagit County, Washington, under Recording No. 9510110046 (collectively, and as they may have been amended, the "**Deed of Trust**") This Deed in Lieu is not being granted in connection with that certain Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing dated September 1, 2009, granted by Grantor and Chaffey North, LLC, for the benefit of Grantee, and recorded on September 30, 2009, in the Official Records of Skagit County, Washington, under Recording No. 200909300091 (the "**Second Position Deed of Trust**"), and in no way affects the debt secured by the Second Position Deed of Trust. The terms of this Deed in Lieu are subject to that certain Deed in Lieu of Foreclosure and Settlement Agreement (the "**Deed in Lieu Agreement**") executed concurrently herewith by and among Grantor, Grantee, and certain related parties and affiliates of Grantor (each a "**Related Party**," and collectively, the "**Related Parties**") with respect to the Property and certain other property securing additional loans from Grantee to Grantor or its affiliates.

3. Power of Attorney. Grantor hereby irrevocably appoints Grantee its attorney-in-fact to execute, acknowledge, deliver and, if appropriate, file and record such affidavits, certificates, and other documents, in form and substance satisfactory to Grantee, as Grantee may deem necessary to confirm or perfect the assignments and transfers provided for herein or to complete the development of the Land and the construction of the Improvements thereon or the management of any homeowner's association, architectural control committee, or similar association or committee, including, without limitation, any documentation that may be required from any governmental agency in connection with the development of the Land or the construction of the Improvements thereon, or with the release of any deposits or the reimbursement of any sums in connection therewith.

4. Warranties. In executing this Deed in Lieu, Grantor warrants and covenants, as of the date hereof and as of the recording date of this Deed in Lieu, and Grantee agrees in accepting this Deed in Lieu, as follows:

4.1 Grantor is the owner of the Property free and clear of all encumbrances except for the Second Position Deed of Trust and other encumbrances of record as of the recording date of this Deed in Lieu.

4.2 The consideration for granting this Deed in Lieu for the Property consists of Grantee's agreement, upon for recording of this Deed in Lieu, to be bound by the Covenant Not to Sue Grantor and the conditional release of the guarantors of the obligations secured by the Deed of Trust (collectively, "**Guarantors**"), as more fully described in, and subject to the terms, conditions, and limitations of, the Deed in Lieu Agreement. However, such Covenant Not to Sue does not prevent enforcement of the Shortfall Note (as defined in the Deed in Lieu Agreement) or the Second Position Deed of Trust or any other loans made by Grantee to Grantor, Guarantors, or any other Related Party, nor

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to enforcement of Guarantors' obligations pursuant to their respective guaranties of the Loan (collectively, the "Guaranties") unless or until Guarantors are released from their obligations under the Guaranties on the terms and conditions set forth in the Deed in Lieu Agreement. Nothing herein is intended or shall be construed to (i) limit Grantee's recourse against Grantor, Guarantors, or any other Related Party for any obligations to Grantee except as explicitly set forth in the Deed in Lieu Agreement; or (ii) to preclude or otherwise prejudice Grantee's right to proceed with a foreclosure action against the Property or any other property encumbered by a deed of trust securing the Loan or the Shortfall Note, including, without limitation, the Second Position Deed of Trust.

4.3 The consideration for conveying the Property pursuant to this Deed in Lieu is equal to or greater than the fair market value of the Property and includes the fair and reasonable value of Grantor's interest in the Property.

4.4 This Deed in Lieu is executed freely and voluntarily by Grantor, and not pursuant to duress or threats of any kind. Furthermore, it is executed and delivered in mutual good faith between Grantor and Grantee, is not made with the specific intention to avoid obligations owed to other creditors nor to grant any preference to Lender over other creditors, and is not given with the specific intention of hindering, delaying, or defrauding any creditor, or to contravene any of the bankruptcy laws of the United States or any other applicable laws.

4.5 This Deed in Lieu is not given as security for the payment of money or indebtedness, or as security of any kind or nature, and is not intended to create an equitable mortgage. There is no agreement or understanding, oral or written, between Grantor and Grantee, or any other person, relative to a conveyance of the Property back to Grantor, or to a sale or conveyance to anyone else for the benefit of Grantor, or to any division of any proceeds realized from the Property by sale or otherwise. Grantor waives, surrenders, and relinquishes any equity of redemption or statutory rights of redemption that Grantor may have in connection with the Property and the Deed of Trust.

4.6 Actual possession of the Property shall be surrendered and delivered to Grantee concurrently with the recording of this Deed in Lieu. Grantor intends the recording of this Deed in Lieu will vest the absolute and unconditional title to the Property in Grantee, and forever estop and bar Grantor, and all of Grantor's successors in interest, from having or claiming any right, title, or interest of any nature whatsoever, either in law or equity, or in possession or in expectancy, in and to the Property or any part thereof. In this regard, and in reliance upon this Deed in Lieu and all of Grantor's warranties and representations made herein, upon recording of this Deed in Lieu, Grantee shall be entitled to exercise and enjoy all of the rights, responsibilities, powers, and privileges associated with the Property, including, without limitation, maintaining and improving the Property as Grantee deems appropriate, selling the Property at such time and on such terms as Grantee deems appropriate, paying taxes and assessments levied against the Property, and otherwise acting with respect to the Property consistent with the quiet enjoyment and ownership thereof by Grantee.

4.7 Grantor represents and warrants that, during the entire period that the Property was owned by Grantor (including any period between the execution and recording of this Deed in Lieu), the Property was never used for the generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous substance, as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act ("SARA"), other applicable federal, state or local laws, or regulations adopted pursuant to any of the foregoing. Grantor agrees to indemnify and hold Grantee harmless from and against any and all claims, losses, and liabilities resulting from a breach of this representation and warranty. This duty of indemnification arises concurrently with the



execution of this Deed in Lieu and survives recording of this Deed in Lieu and subsequent transfers of the Property.

4.8 Grantor further warrants and represents that: (a) Grantor has full power and authority to execute and deliver this Deed in Lieu; (b) Grantor is not acting under the influence or misrepresentations of Grantee, Grantee's agents or lawyers, or any other person; (c) the consideration given to Grantor by Grantee for this conveyance equals or exceeds the value of the right, title, and interest of Grantor in and to the Property; (d) Grantor has been advised by Grantee to seek independent legal counsel and has had the opportunity to consult with legal counsel of Grantor's choosing; (e) there are no agreements, oral or written, other than those reflected in this Deed in Lieu and the Deed in Lieu Agreement, between Grantor and Grantee with respect to the ownership or possession of the Property; and (f) Grantor fully understands the terms and effect of this Deed in Lieu.

5. Non-Merger. It is the express intent of Grantor and Grantee that this Deed in Lieu shall not operate to extinguish or satisfy the indebtedness secured by, or in any way affect, the Deed of Trust or the security agreements incorporated therein and the Deed of Trust shall not be merged into the fee title conveyed herein. The Deed of Trust shall remain a lien on the Property. Although Grantee has agreed, upon recording of this Deed in Lieu, not to take any action to seek or obtain a personal judgment against Grantor for each of Grantor's payment obligations secured by the Deed of Trust, Grantee retains the right to proceed with foreclosure actions under the Deed of Trust and any related security agreements against the Property on the basis of existing or future defaults under the obligations secured thereby in the event that a foreclosure is deemed necessary by Grantee for any reason, including to clear title to the Property of any existing or future encumbrances subordinate to the Deed of Trust.

6. No Assumption by Grantee. Grantee does not expressly or impliedly agree to assume or pay any contract balances, debts, liens, charges, obligations, or liabilities that relate or attach to the Property or any other liability of Grantor, arising prior to the execution of this Deed in Lieu.

7. Other Security Interests. Nothing herein shall be construed to limit or affect Grantee's recourse under any other deed of trust or security instrument encumbering the Property and held by Grantee or its affiliates, including, without limitation, the Second Position Deed of Trust, and all such security instruments shall remain enforceable in accordance with their terms.

8. Counterparts. This Deed in Lieu may be executed in counterparts, all of which shall be considered together as a single instrument. Separate signature pages may be attached to this Deed in Lieu for recording purposes.

9. Effective Date. The effective date of Grantor's conveyance of the Property to Grantee shall be the date upon which this Deed in Lieu is recorded in the records of Skagit County, Washington.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



201107130051
Skagit County Auditor

DATED as of the day and year first above written.

GRANTOR:

CHAFFEY HOMES INCORPORATED,
a Washington corporation

By

Rick Chaffey
Name: *Rick Chaffey*
Its: *Co-President*

GRANTEE:

WASHINGTON FEDERAL SAVINGS,
a United States corporation

By

Randall J. Mackenzie
Name: *Randall J. Mackenzie*
Its: *SVP*



STATE OF WA
COUNTY OF King }

ss.

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

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 11th day of July, 2011.



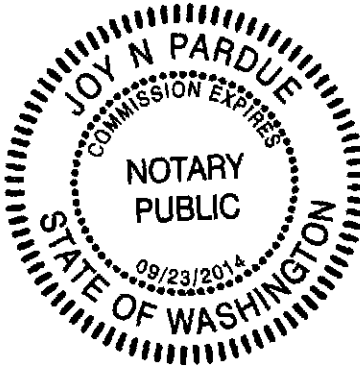
Carina M. Shively
Printed Name Carina M. Shively
NOTARY PUBLIC in and for the State of WA
residing at Kingland
My Commission Expires 9/20/13

STATE OF Washington
COUNTY OF King }

ss.

I certify that I know or have satisfactory evidence that Ronald L. McKenzie is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as Senior Vice President of WASHINGTON FEDERAL SAVINGS, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 12th day of July, 2011.



Joy N. Pardue
Printed Name Joy N. Pardue
NOTARY PUBLIC in and for the State of Washington
residing at Seattle, WA
My Commission Expires 9-23-2014



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE FOLLOWING PROPERTY SITUATED IN SKAGIT COUNTY, WASHINGTON:

PARCEL A:

LOT 4, BLOCK 9, "PLAT OF WOOD'S ADDITION TO ANACORTES", ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 4 OF PLATS, PAGE 35, RECORDS OF SKAGIT COUNTY, WASHINGTON.

PARCEL B:

LOTS 2 THROUGH 5, INCLUSIVE, BLOCK 10, "PLAT OF WOOD'S ADDITION TO ANACORTES", ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 4 OF PLATS, PAGE 35, RECORDS OF SKAGIT COUNTY, WASHINGTON.

