



200710190059

Skagit County Auditor

AFTER RECORDING MAIL TO:

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Skagit Highlands, LLC  
7981 - 168<sup>th</sup> Ave. NE  
Redmond, WA 98052

## LAND TITLE OF SKAGIT COUNTY

M-17095

SUBORDINATED DEED OF TRUST  
(For Use in the State of Washington Only)

THIS SUBORDINATED DEED OF TRUST (collectively "Deed of Trust" or "Deed") made this 28 day of September 2007 by WINDWARD REAL ESTATE SERVICES, INC., Grantor, whose address is 7981 - 168<sup>th</sup> Avenue NE Redmond, WA 98052 and FIRST AMERICAN TITLE INSURANCE COMPANY Trustee, whose address is 2101 4<sup>th</sup> Avenue, Suite 712, Seattle, WA 98121 in trust for BOSS CONSTRUCTION, INC. whose address is and/or their successors and assigns, Beneficiary, whose address is 4945 Guide Meridian Bellingham, WA 98226.

WITNESSETH: Grantor hereby bargains, sells, assigns and conveys:

A. To Trustee in trust, with power of sale, the following described real property ("Property") in Skagit County, Washington, described as:

See Exhibit "A" attached hereto and incorporated by this reference  
Ptn NE 1/4, 23-34-14 E. W.M. P27604; P27611; P27647; P27650  
which real property is not used principally for agricultural or farming purposes, together with all rents, income, contract rights, issues and profits which are due or may become due, all tenements, hereditament, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof, all amounts, compensation and settlements in lieu of taking of the Property by the power of eminent domain of the whole or the part of the Property.

B. To Beneficiary, as secured party, a security interest in any portion of the Real Property owned by Grantor which may be construed to be personal property and in all other personal property of every kind and description, whether now existing or hereafter acquired and owned by Grantor, now or at any time hereafter attached to, erected upon, situated in or

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upon, forming a part of or appurtenant to and which is used or useful in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any lease or agreement pertaining to, the Real Property.

This Deed is for the purpose of securing performance the Partial Settlement Agreement between Skagit Highlands, LLC and Beneficiary dated August 30, 2007 for payment of the sum of ONE HUNDRED TWENTY TWO THOUSAND ONE HUNDRED AND SEVENTY NINE AND 11/100 Dollars (\$122,179.11), in accordance with the terms of the Partial Settlement Agreement. This is not a debt of Windward Real Estate Services, Inc.

To protect the security of the Deed of Trust, Grantor covenants and agrees:

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.

2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.

3. To defend any action or proceeding purported to affect the security thereof or the rights or power of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclosure this Deed of Trust.

4. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorneys' fees actually incurred, as provided by statute.

5. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set for in the note secured hereby, shall be added to and become a part of the debt secured by this Deed of Trust.

6. No portion of the funds described above for personal or household purposes.

7. Grantor will pay for the costs of any real property appraisal required in connection with any deficiency judgment proceedings instituted by the Beneficiary.

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IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion thereof as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.

2. That this Deed of Trust secures real property that is not principally used for agricultural purposes.

3. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

4. The Trustees shall reconvey all or any part of the property covered by the Deed of Trust to the person entitled thereto on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

5. Upon default by Grantor in payment under the Partial Settlement Agreement and upon written request of the Beneficiary, Trustee or its authorized agent shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a reasonable Trustee's fee and attorneys' fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto.

6. Trustee shall delivery to the purchaser at the sale of the deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

7. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

8. In the event of the death, incapacity or disability or resignation of Trustee,

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Beneficiary shall appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

9. If foreclosure be made by Trustee, to the extent allowed by law, reasonable attorneys' fees for services in the supervision of foreclosure proceedings shall be allowed by Trustee as part of the costs of foreclosure. After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Rate as herein provided; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

10. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors, successors, legal representatives and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as a Beneficiary herein.

11. Beneficiary acknowledges that this Deed of Trust is subordinate to the excising Deed of Trust in favor of PACIFIC CONTINENTAL BANK

Dated this 11<sup>th</sup> day of September 2007.

GRANTOR:

WINDWARD REAL ESTATE SERVICES, INC

  
James Tosti, President

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF KING                )

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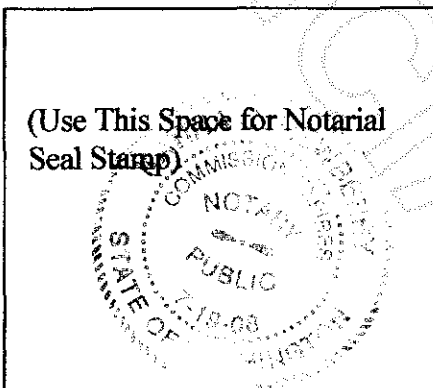
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Skagit County Auditor

I certify that I have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this day personally appeared before me James Tosti, to me known to be the Managing Member of WINDWARD REAL ESTATE SERVICES, INC, a Washington corporation the individual who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 11<sup>th</sup> day of ~~September~~ <sup>Oct</sup> 2007.



Katina G. Newberry  
Notary Public in and for the State of Washington,  
residing at Fall City  
My commission expires: 7/19/08  
Katina G. Newberry  
[Type or Print Notary Name]

REQUEST FOR FULL RECONVEYANCE  
(Do not record. To be used only when note has been paid.)

TO: TRUSTEE

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to convey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

Dated \_\_\_\_\_, 20\_\_\_\_.

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Mail reconveyance to:

Skagit Highlands, LLC  
7981 – 168<sup>th</sup> Ave. NE  
Redmond, WA 98052

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The land referred to in this report/policy is situated in the State of Washington, County of Skagit, and is described as follows:

Parcel "A":

Tract 2 of Revised Short Plat No. 89-79, approved December 17, 1979 and recorded December 19, 1979, under Auditor's File No. 7912190032 in Volume 4 of Short Plats, page 15, records of Skagit County, Washington; being a portion of the Northeast  $\frac{1}{4}$  of Section 23, Township 34 North, Range 4 East, W.M.

TOGETHER WITH a non-exclusive easement over and across a portion of the North 20 feet of Lot 1 of said Short Plat, as delineated on the face of said short plat.

Parcel "B":

That portion of the Northeast  $\frac{1}{4}$  of Section 23, Township 34 North, Range 4 East, W.M., lying Easterly of the Nookachamps Creek, Southerly of the road known as the J. W. Knapp Road, and South of a line drawn from a point in the East line of said Northeast  $\frac{1}{4}$ , which is 1225 feet North of the Southeast corner of said subdivision and running North 89 degrees 10' West to said Nookachamps Creek, EXCEPT the following described two tracts therein:

1. Beginning at a point on the East line of said Northeast  $\frac{1}{4}$  which is 330 feet North of the Southeast corner of said Northeast  $\frac{1}{4}$ ; run thence North along said East line, 330 feet; thence West parallel to the South line of said Northeast  $\frac{1}{4}$ , a distance of 660 feet; thence South parallel to said East line 330 feet; thence East parallel to said South line, 660 feet to the point of beginning.
2. The County road right-of-way commonly known as the Baker Heights Road.

EXHIBIT A



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