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Skagit County Auditor

4/12/2010 Page

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**RETURN TO:**

Casey L. Jorgensen, Esq.  
Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380

GUARDIAN NORTHWEST TITLE CO.

**AMENDMENT TO SUBORDINATION AGREEMENT**

98022-2

Grantors:

1. LINDAL LEGACY REALTY, LLC, a Washington limited liability company
2. SPRUCE STREET, LLC, a Washington limited liability company
3. LINDAL CEDAR HOMES, INC., a Washington corporation

Grantee:

KEYBANK NATIONAL ASSOCIATION

Legal Description:

Ptn. Blks. 3, 4, 7 and 8, Albertsons Add., located in Skagit County, Washington

Assessor's Tax Parcel Number:

4078-009-011-007(P72436)

Reference No. of Related Documents:

200908310136

## AMENDMENT TO SUBORDINATION AGREEMENT

THIS AMENDMENT TO SUBORDINATION AGREEMENT (this "**Amendment**") is made and executed this 8th day of April, 2010, by and among LINDAL LEGACY REALTY, LLC, a Washington limited liability company ("**Lindal Legacy**"), SPRUCE STREET, LLC, a Washington limited liability company ("**Spruce Street**" (each of Lindal Legacy and Spruce Street may individually or collectively be referred to herein as "**Obligor**")), LINDAL CEDAR HOMES, INC., a Washington corporation ("**Borrower**"), and KEYBANK NATIONAL ASSOCIATION ("**Lender**"), and amends and modifies that certain Subordination Agreement between the foregoing parties dated as of July 31, 2009 and recorded in the real property records for Skagit County under Recording No. 200908310136 (the "**Agreement**"). Capitalized Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

A. The Deed of Trust to which the Agreement relates, given by Spruce Street for the benefit of Lender, dated July 31, 2009 and recorded under Skagit County Recording No. 200908310135 ("**Lender's Deed of Trust**"), contemplated that Lender's Deed of Trust would be released upon full payment of Lender's Loan;

B. Contemporaneously herewith, Borrower and Lender have entered into that certain Fourth Amendment to Reimbursement Agreement (the "**Fourth Amendment**") and other related documents, which Fourth Amendment amends and modifies that certain Reimbursement Agreement dated December 1, 2000 by and between Borrower and Lender, as amended by that certain First Amendment to Reimbursement Agreement dated May 29, 2003, that certain Second Amendment to Reimbursement Agreement dated June 1, 2004, and that certain Third Amendment to Reimbursement Agreement dated July 31, 2009 (as amended, the "**Reimbursement Agreement**").

C. Pursuant to the Fourth Amendment, Borrower shall pay off all obligations under the Note (defined in the Agreement as "Lender's Loan"), and Lender shall agree to amend the Letter of Credit (as defined in the Reimbursement Agreement) to extend the expiration date of the Letter of Credit pursuant and subject to the terms of the Fourth Amendment.

D. A condition of Lender's obligations under the Fourth Amendment is that Spruce Street execute and deliver an Amendment to the Deed of Trust confirming that (notwithstanding Borrower's payment of all obligations under the Note and Loan Agreement) the Deed of Trust shall continue in full force and effect to secure Borrower's obligations under the Reimbursement Agreement, as amended.

E. A further condition of Lender's obligations under the Fourth Amendment is that the subordination of Borrower's rights under the Subordinated Note, and Borrower's rights and lien position under the Subordinated Deed of Trust, continue in full force and effect following repayment of Lender's Loan, and that Borrower's rights under the Subordinated Note, and Borrower's rights and lien position under the Subordinated Deed of Trust, shall also be subordinate to all of Lender's rights under Reimbursement Agreement (and any documents entered into in connection therewith) and Lender's Deed of Trust.



F. An additional condition of Lender's obligations under the Fourth Amendment is that Borrower's rights under that certain Lease between Spruce Street as the Landlord and Borrower as the Tenant, dated October 23, 2008, as memorialized in that certain Memorandum of Lease also dated October 23, 2008 and recorded under Skagit County Recording No. 200901290047 (together, the "*Lindal Lease*") shall be subordinate to Lender's Deed of Trust notwithstanding any provisions of the Lindal Lease.

NOW, THEREFORE, in consideration of the foregoing and the representations and acknowledgments contained in this Amendment and the Agreement, Borrower and Obligor agree with Lender as follows:

1. **Confirmation of Subordination.** Although the definition of "Superior Indebtedness" set forth in the Agreement includes "all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be now or hereafter owing from Borrower to Lender" and therefore includes all of Borrower's obligations under the Reimbursement Agreement, the parties hereto acknowledge, agree and confirm that the subordination of Borrower's rights under the Subordinated Note, and Borrower's rights and lien position under the Subordinated Deed of Trust, shall continue in full force and effect following repayment of Lender's Loan, and that Borrower's rights under the Subordinated Note, and Borrower's rights and lien position under the Subordinated Deed of Trust, shall also be subordinate to all of Lender's rights under Reimbursement Agreement (and any documents entered into in connection therewith) and Lender's Deed of Trust.

2. **Lindal Lease Subordination.** The Lindal Lease and all terms thereof, including, without limitation, any options to purchase, rights of first refusal, options to renew, and any similar rights, are and shall be subject and subordinate to Lender's Deed of Trust, and to all amendments, modifications, replacements, renewals and extensions thereof, to the full extent of the principal, interest, fees, expenses and all other amounts and obligations secured thereby. Pursuant to the preceding sentence, Borrower expressly waives any requirement of the Lindal Lease, including without limitation the provisions of Section 7.5 of the Lindal Lease, that Spruce Street obtain a non disturbance agreement as a condition of the subordination set forth herein.

3. **Remaining Terms Unchanged.** Except as amended hereby, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

4. **Representations and Warranties Still True and Correct.** By signing hereunder, Borrower and each Obligor affirms that the representations and warranties made in the Agreement and all representations and warranties made in this Amendment, are true and correct as of the date of this Amendment.

5. **No Waiver.** Lender's agreement to amend the Agreement and other documents amended contemporaneous herewith shall not operate as a waiver of any Default or Event of Default by Borrower or any Obligor and shall not preclude Lender from further exercise of any rights, remedies or privileges under the Agreement, Note, Reimbursement Agreement, Deed of Trust, other Related Documents, or applicable law.



**BORROWER AND EACH OBLIGOR ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AMENDMENT, THE SUBORDINATION AGREEMENT, AND BORROWER AND EACH OBLIGOR EACH TO ITS TERMS.**

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**BORROWER:**

**LENDER:**

**LINDAL CEDAR HOMES, INC.**

**KEYBANK NATIONAL ASSOCIATION**

By: 

Robert W. Lindal, Chairman

By: 

James R. Putnam, its Vice President

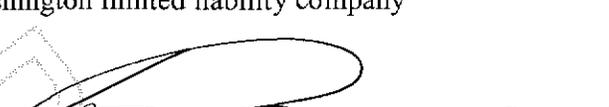
**OBLIGOR:**

**SPRUCE STREET, LLC, a Washington limited liability company**

**LINDAL LEGACY REALTY, LLC, a Washington limited liability company**

By: 

Robert W. Lindal, Manager

By: 

Robert W. Lindal, Manager

By: 

Martin J. Lindal, Manager

By: 

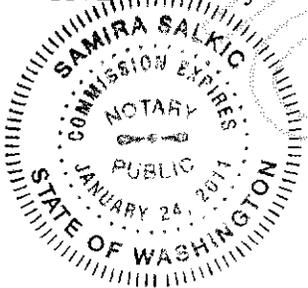
Martin J. Lindal, Manager



STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Robert Lindal, to me known to be the Manager of Spruce Street, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the same instrument.

GIVEN under my hand and official seal this 8<sup>th</sup> day of April, 2010.



[Signature]  
\_\_\_\_\_  
Samira Salkic  
(print notary's name)

Notary Public in and for the State of Washington,  
residing at 9255 Rainier Ave S Seattle WA 98108  
My commission expires: 1/24/2011

STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Martin Lindal, to me known to be the Manager of Spruce Street, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the same instrument.

GIVEN under my hand and official seal this 8<sup>th</sup> day of April, 2010.



[Signature]  
\_\_\_\_\_  
Samira Salkic  
(print notary's name)

Notary Public in and for the State of Washington,  
residing at 9255 Rainier Ave S Seattle WA 98108  
My commission expires: 1/24/2011



STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Robert Lindal, to me known to be the Manager of LINDAL LEGACY REALTY, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the same instrument.



GIVEN under my hand and official seal this 21st day of April, 2010.

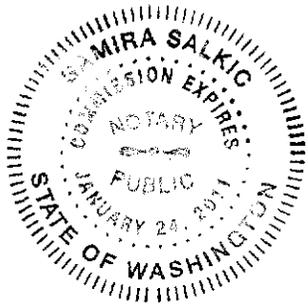
[Signature]  
\_\_\_\_\_  
Samira Salkic

(print notary's name)

Notary Public in and for the State of Washington,  
residing at 9255 Rainier Ave S Seattle WA 98148  
My commission expires: 1/24/2011

STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Martin Lindal, to me known to be the Manager of LINDAL LEGACY REALTY, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the same instrument.



GIVEN under my hand and official seal this 21st day of April, 2010.

[Signature]  
\_\_\_\_\_  
Samira Salkic

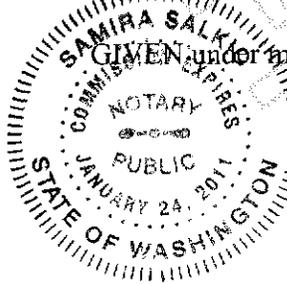
(print notary's name)

Notary Public in and for the State of Washington,  
residing at 9255 Rainier Ave S Seattle WA 98148  
My commission expires: 1/24/2011



STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Robert Lindal, to me known to be the Chairman of Lindal Cedar Homes, Inc., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the same instrument.



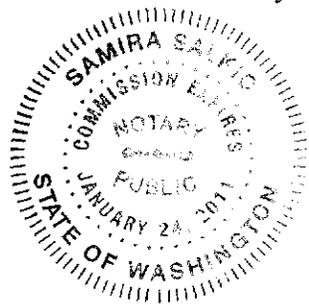
GIVEN under my hand and official seal this 8<sup>th</sup> day of April, 2010.

[Signature]  
\_\_\_\_\_  
Samira Salkic  
(print notary's name)

Notary Public in and for the State of Washington  
residing at 9255 Rainier Ave S Seattle WA 98148  
My commission expires: 1/24/2011

STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me James R. Putnam, to me known to be the Vice President of KeyBank National Association, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the same instrument.



GIVEN under my hand and official seal this 8<sup>th</sup> day of April, 2010.

[Signature]  
\_\_\_\_\_  
Samira Salkic  
(print notary's name)

Notary Public in and for the State of Washington  
residing at 9255 Rainier Ave S Seattle WA 98148  
My commission expires: 1/24/2011

