

**First American Title Insurance Company**  
NATIONAL DEFAULT TITLE SERVICES – TSG DIVISION  
818 STEWART STREET, SUITE 800, SEATTLE, WA 98101

**JANUARY 11, 2011**

**PEOPLE JOHNSON CANTU & SCHMIDT**  
**1501 WESTERN AVENUE, STE 600**  
**SEATTLE, WA 98101**  
**ATTN: JEFFREY W. HAWKINSON**

REFERENCE: **HEMMINGER/CHAFFEY HOMES INC**  
OUR ORDER NUMBER: **4966698**

THE ITEMS ENCLOSED WERE PREPARED FOR THE SOLE USE OF THE HEREIN-NAMED TRUSTEE. THESE ITEMS SHOULD NOT BE RELIED UPON BY ANY THIRD PARTY AS A CONDITION OF TITLE.

**First American Title Insurance Company**  
**National Default Title Services**

MARCY SAVAGE  
ASSISTANT SECRETARY  
TITLE OFFICER  
PH: 206-728-7215  
**FX: 206-448-6248**

ENCLOSURE

ORDER NO: 4966698  
REFERENCE NO: HEMMINGER  
TITLE OFFICER: MARCY SAVAGE  
PRODUCT TYPE: WA TSG

## TRUSTEE'S SALE GUARANTEE

ORDER NO.: 4966698

REFERENCE NO.: HEMMINGER

LIABILITY: \$624,000.00

FEE: \$1593.00

TAX: \$151.34

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE.

*First American Title Insurance Company*  
a corporation, herein called the Company,

GUARANTEES

**TRUSTEE AND CORPORATE SERVICES, INC, & PEPPLER JOHNSON CANTU & SCHMIDT,  
PLLC &  
US BANK NATIONAL ASSOCIATION**

HEREIN CALLED THE ASSURED, AGAINST LOSS NOT EXCEEDING THE LIABILITY AMOUNT STATED ABOVE WHICH THE ASSURED SHALL SUSTAIN BY REASON OF ANY INCORRECTNESS IN THE ASSURANCE WHICH THE COMPANY HEREBY GIVES THAT, ACCORDING TO THE PUBLIC RECORDS, ON THE DATE STATED BELOW,

1. THE TITLE TO THE HEREIN DESCRIBED ESTATE OR INTEREST WAS VESTED IN THE VESTEE NAMED, SUBJECT TO THE MATTERS SHOWN AS EXCEPTIONS HEREIN, WHICH EXCEPTIONS ARE NOT NECESSARILY SHOWN IN THE ORDER OF THEIR PRIORITY;
2. THE NAMES AND ADDRESSES OF PERSONS WHO HAVE RECORDED REQUESTS FOR A COPY OF THE NOTICE OF SALE AND OF ADDITIONAL PERSONS WHO ARE ENTITLED TO RECEIVE A COPY OF THE NOTICE OF SALE, AS PROVIDED BY RCW 61.24.040(1)(b), (c) AND (d), ARE AS SHOWN HEREIN.

DATED: **DECEMBER 29, 2010 AT 7:30 AM**

*First American Title Insurance Company*

BY DENNIS J. GILMORE - PRESIDENT

BY MARCY SAVAGE  
ASSISTANT SECRETARY  
TITLE OFFICER  
PH: 206-728-7215  
FX: 206-448-6248

ORDER NO: 4966698  
REFERENCE NO: HEMMINGER  
TITLE OFFICER: MARCY SAVAGE  
PRODUCT TYPE: WA TSG

TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

**CHAFFEY HOMES, INC., A WASHINGTON CORPORATION.**

THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS GUARANTEE IS:

**A FEE.**

THE LAND REFERRED TO IN THIS GUARANTEE IS SITUATED IN THE **STATE OF WASHINGTON, COUNTY OF PIERCE** AND IS DESCRIBED AS FOLLOWS:

(SEE EXHIBIT "A" ATTACHED)

**EXCEPTIONS:**

ANY FAILURE BY THE FORECLOSING TRUSTEE OR BENEFICIARY TO COMPLY WITH THE REQUIREMENTS OF A COUNTY OR CITY ORDINANCE, IF ANY, AS IT PERTAINS TO THE MAINTENANCE OF THE PROPERTY DESCRIBED HEREIN, PRIOR TO OR DURING THE FORECLOSURE PROCESS.

1. LIABILITY FOR ASSESSMENTS AND/OR PERSONAL PROPERTY TAXES, IF ANY.
2. GENERAL AND SPECIAL TAXES FOR THE CALENDAR YEAR **2011**, A LIEN NOT YET DUE OR PAYABLE.

3. DELINQUENT GENERAL TAXES.

YEAR:	<b>2010.</b>
AMOUNT BILLED:	<b>\$5,904.26.</b>
AMOUNT PAID:	<b>\$0.00.</b>
DELINQUENT:	<b>\$5,904.26, PLUS INTEREST AND PENALTY.</b>
TAX ACCOUNT NO.:	<b>052027-3039.</b>
LAND:	<b>\$356,000.00.</b>
IMPROVEMENTS:	<b>\$69,600.00.</b>

4. THE LIEN OF DEFAULTED TAXES FOR THE YEAR **2009** AND SUBSEQUENT DELINQUENCIES.

<b>AMOUNT TO REDEEM</b>	<b>PLUS INTEREST AND PENALTY</b>
<b>\$7,048.84</b>	
TAX ACCOUNT NO.:	<b>052027-3039</b>

5. A DEED OF TRUST TO SECURE AN ORIGINAL INDEBTEDNESS OF **\$75,000.00**, AND ANY AMOUNTS OR OBLIGATIONS SECURED THEREBY, RECORDED **OCTOBER 16, 2003** AS INSTRUMENT NO. **200310160551** OF OFFICIAL RECORDS.

DATED: **OCTOBER 10, 2003.**  
GRANTOR: **DOUGLAS L HEMMINGER AND DOROTHY W HEMMINGER, HUSBAND AND WIFE.**  
TRUSTEE: **OLD REPUBLIC TITLE.**  
BENEFICIARY: **U.S. BANK NATIONAL ASSOCIATION ND., A NATIONAL BANKING ASSOCIATION.**

NOTE 1: AN INSTRUMENT ENTITLED "**CORPORATE ASSIGNMENT OF DEED OF TRUST**", RELATING TO THE ABOVE MENTIONED DEED OF TRUST, WAS RECORDED **MARCH 27, 2006** AS INSTRUMENT NO. **200603271337** OF OFFICIAL RECORDS, EXECUTED BY **U.S. BANK NATIONAL ASSOCIATION ND TO FIRST UNION HOME EQUITY BANK, NA.**

NOTE 2: A DOCUMENT RECORDED **MARCH 27, 2006** AS INSTRUMENT NO. **200603271346** OF OFFICIAL RECORDS PROVIDES THAT **RELEASE SYSTEMS, INC** WAS SUBSTITUTED AS TRUSTEE UNDER THE DEED OF TRUST.

NOTE 3: A DOCUMENT ENTITLED "**DEED OF RECONVEYANCE**" RECORDED **MARCH 27, 2006** AS INSTRUMENT NO. **200603271358** OF OFFICIAL RECORDS.

NOTE 4: AN INSTRUMENT ENTITLED "**ASSIGNMENT OF DEED OF TRUST**", RELATING TO THE ABOVE MENTIONED DEED OF TRUST, WAS RECORDED **MARCH 29, 2006** AS INSTRUMENT NO. **200603290207** OF OFFICIAL RECORDS, EXECUTED BY **US BANK NATIONAL ASSOCIATION ND TO WACHOVIA BANK OF DELAWARE, NA, FKA FIRST UNION NATIONAL BANK OF DELAWARE, FKA FIRST UNION HOME EQUITY BANK, NA, SUCCESSOR IN INTEREST TO FIRST UNION HOME EQUITY CORPORATION.**

NOTE 5: SAID DOCUMENT IS NOT EXECUTED BY THE **BENEFICIARY** OF RECORD.

NOTE 6: WE ARE CURRENTLY IN THE PROCESS OF INVESTIGATING THE STATUS OF THE ABOVE MENTIONED ITEM. IF WE ARE SUCCESSFUL IN OUR INVESTIGATION, SAID ITEM WILL NO LONGER BE PART OF THE TRUSTEE SALE GUARANTEE AND WILL NOT APPEAR IN THE REO POLICY.

6. A DEED OF TRUST TO SECURE AN ORIGINAL INDEBTEDNESS OF **\$2,784,800.00**, AND ANY AMOUNTS OR OBLIGATIONS SECURED THEREBY, RECORDED **MARCH 21, 2006** AS INSTRUMENT NO. **200603211283** AND RE-RECORDED **MAY 11, 2006** AS INSTRUMENT NO. **200605110245**, BOTH OF OFFICIAL RECORDS.

DATED: **MARCH 01, 2006.**  
GRANTOR: **CHAFFEY HOMES INCORPORATED.**  
TRUSTEE: **U.S. BANK TRUST COMPANY, N.A.**  
BENEFICIARY: **U.S. BANK N.A.**

NOTE 1: A DOCUMENT RECORDED **DECEMBER 02, 2010** AS INSTRUMENT NO. **201012020136** OF OFFICIAL RECORDS PROVIDES THAT **TRUSTEE AND CORPORATE SERVICES, INC** WAS SUBSTITUTED AS TRUSTEE UNDER THE DEED OF TRUST.

NOTE 2: A DOCUMENT RECORDED **AUGUST 05, 2009** AS INSTRUMENT NO. **200908050402** OF OFFICIAL RECORDS PROVIDES THAT THE DEED OF TRUST OR THE OBLIGATION SECURED THEREBY HAS BEEN MODIFIED.

NOTE 3: THE TRUSTEE NAMED AS THE ASSURED ON THIS TRUSTEE'S SALE GUARANTEE DOES NOT APPEAR TO BE THE TRUSTEE OF RECORD.

7. ANY AND ALL OFFERS OF DEDICATION, CONDITIONS, RESTRICTIONS, EASEMENTS, FENCELINE/BOUNDARY DISCREPANCIES, NOTES AND/OR PROVISIONS SHOWN OR DISCLOSED BY THE FILED OR RECORDED MAP REFERRED TO IN THE LEGAL DESCRIPTION.

8. RESERVATIONS AND EXCEPTIONS, INCLUDING THE TERMS AND CONDITIONS THEREOF:

RESERVING: **MINERALS**  
RESERVED BY: **LYLE H. PEASLEY AND BEATRICE PEASLEY, HUSBAND AND WIFE**  
RECORDED: **JULY 08, 1964**  
RECORDING NO.: **2062385**

9. AN EASEMENT, INCLUDING TERMS AND CONDITIONS CONTAINED THEREIN, RECORDED **JULY 08, 1964** AS INSTRUMENT NO. **2062385** OF OFFICIAL RECORDS.

FOR: **THE RIGHT TO CONSTRUCT A WATER PIPELINE OVER THE EASTERLY PORTION OF THE HEREIN DESCRIBED PROPERTY AND A ROAD ON THE WEST LINE OF THE HEREIN DESCRIBED PROPERTY.**

IN FAVOR OF: **LYLE H. PEASLEY AND BEATRICE PEASLEY, HUSBAND AND WIFE.**

AFFECTS: **AS DESCRIBED THEREIN.**

10. AN EASEMENT, INCLUDING TERMS AND CONDITIONS CONTAINED THEREIN, RECORDED **JULY 08, 1991** AS INSTRUMENT NO. **9107080198** OF OFFICIAL RECORDS.

FOR: **ELECTRIC TRANSMISSION AND/OR DISTRIBUTION SYSTEM.**

IN FAVOR OF: **PUGET SOUND POWER AND LIGHT COMPANY, A WASHINGTON CORPORATION.**

AFFECTS: **AS DESCRIBED THEREIN.**

11. LEASE AND THE TERMS AND CONDITIONS THEREOF.

LESSOR: **CHAFFEY HOMES, INC. A WASHINGTON CORPORATION.**  
LESSEE: **DOUGLAS L. HEMMINGER AND DOROTHY W. HEMMINGER, HUSBAND AND WIFE.**

TERM: **30 YEARS.**

DATED: **AUGUST 15, 2006.**

RECORDED: **SEPTEMBER 01, 2006.**

RECORDING NO.: **200609010229.**

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TITLE OFFICER: MARCY SAVAGE  
PRODUCT TYPE: WA TSG

12. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED **"ANNEXATION AND UTILITIES AGREEMENT"** RECORDED **OCTOBER 16, 2006** AS INSTRUMENT NO. **200610161191** OF OFFICIAL RECORDS.

13. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED **"DECLARATION OF LOT-LINE ADJUSTMENT"** RECORDED **FEBRUARY 13, 2008** AS INSTRUMENT NO. **200802130940** OF OFFICIAL RECORDS.

14. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED **"PIERCE COUNTY PLANNING AND LAND SERVICES WETLAND AND/OR WETLAND BUFFER NOTICE APPLICATION NOS. 400785, 399763"** RECORDED **JUNE 11, 2009** AS INSTRUMENT NO. **200906110003** OF OFFICIAL RECORDS.

15. UNLESS THE PROPERTY DESCRIBED IN THIS REPORT IS LOCATED IN KING, PIERCE OR SPOKANE COUNTIES NO SEARCH OF THE RECORDS OF THE UNITED STATES BANKRUPTCY COURT HAS BEEN MADE.

ORDER NO: 4966698  
REFERENCE NO: HEMMINGER  
TITLE OFFICER: MARCY SAVAGE  
PRODUCT TYPE: WA TSG

**EXHIBIT "A"**

**THE LAND REFERRED TO IN THIS GUARANTEE IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF PIERCE AND IS DESCRIBED AS FOLLOWS:**

BEGINNING 330 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 20 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON;  
THENCE NORTH 660 FEET;  
THENCE EAST 521 FEET, MORE OR LESS, TO THE WEST LINE OF A TRACT OF LAND CONVEYED TO R.H. CARNAKAN AND EMMA CARNAKAN, HUSBAND AND WIFE, BY DEED RECORDED MARCH 12, 1928 UNDER RECORDING NO. 892764;  
THENCE SOUTH ALONG SAID WEST LINE 660 FEET TO THE SOUTH LINE OF SAID SECTION 27;  
THENCE WEST ALONG SAID SOUTH LINE 521 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

EXCEPT ANY PORTION LYING WITHIN CHURCH LAKE COUNTY ROAD;

ALSO EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 20 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, SITUATED 745.00 FEET EAST OF A BRASS MONUMENT MARKING THE SOUTHWEST CORNER OF SAID SUBDIVISION;  
THENCE NORTH 210.00 FEET PERPENDICULAR WITH SAID LINE;  
THENCE EAST PARALLEL WITH SAID LINE TO THE WEST LINE OF A TRACT OF LAND CONVEYED TO R.H. CARNAKAN AND EMMA CARNAKAN, HUSBAND AND WIFE, BY DEED RECORDED MARCH 12, 1928 UNDER RECORDING NO. 892764;  
THENCE SOUTH ALONG SAID LINE TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE WEST TO THE POINT OF BEGINNING.

**INFORMATION FOR TRUSTEE**

RELATIVE TO THE **DEED OF TRUST** SHOWN AS EXCEPTION **6**.

1. CITY IN WHICH SAID LAND IS LOCATED: **CITY OF BONNEY LAKE**
2. PROPERTY ADDRESS: **20321 CHURCH LAKE ROAD EAST, BONNEY LAKE, WA 98391.**  
ASSESSORS PARCEL NO: **052027-3039.**  
ABBREVIATED LEGAL: **SW QTR. SEC. 27, TWN 20 N., RG. 5 E., W.M.**
3. THE NAMES AND ADDRESSES OF PERSONS WHO HAVE RECORDED REQUESTS FOR, OR ARE ENTITLED TO RECEIVE A COPY OF THE NOTICE OF SALE, AS PROVIDED BY THE REVISED CODE OF WASHINGTON CHAPTER 61.24 ET. SEQ:

**CHAFFEY HOMES INCORPORATED  
20321 CHURCH LAKE ROAD EAST  
SUMNER WA 98390  
(GRANTOR UNDER FCL DEED OF TRUST)**

**CHAFFEY HOMES INCORPORATED  
205 LAKE STREET SUITE 101  
KIRKLAND WA 98083  
(GRANTOR UNDER FCL DEED OF TRUST)**

**CHAFFEY HOMES INCORPORATED  
1804 WEST UNION AVENUE, SUITE 201  
TOCOMA WA 98405  
(VESTEE)**

**CHAFFEY HOMES INCORPORATED  
PO BOX 560  
KIRKLAND WA 98083-0560  
(VESTEE)**

**CHAFFEY HOMES, INC.  
20321 CHURCH LAKE ROAD EAST  
SUMNER WA 98390  
(VESTEE)**

**CHAFFEY HOMES, INC.  
1804 WEST UNION AVENUE, SUITE 201  
TOCOMA WA 98405  
(VESTEE)**

**CHAFFEY HOMES, INC.  
PO BOX 560  
KIRKLAND WA 98083-0560  
(VESTEE)**

**ORDER NO: 4966698**  
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**TITLE OFFICER: MARCY SAVAGE**  
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PRODUCT TYPE: WA TSG

**DOUGLAS L. HEMMINGER  
20321 CHURCH LAKE ROAD EAST  
BONNEY LAKE WA 98391  
(REGARDING ITEM # 11)**

**DOROTHY W. HEMMINGER  
20321 CHURCH LAKE ROAD EAST  
BONNEY LAKE WA 98391  
(REGARDING ITEM # 11)**

**CITY OF BONNEY LAKE CLERK  
P.O. BOX 7380  
BONNEY LAKE WA 98391-8850  
(REGARDING ITEM # 12)**

**CRAIG WHEELER  
C/O BARRY C. KOMBOL  
P.O. BOX 100  
BLACK DIAMOND WA 98010  
(REGARDING ITEM # 13)**

**CHAFFEY HOMES INC.  
1804 W. UNION AVENUE, SUITE 201  
TACOMA WA 98405-2062  
(REGARDING ITEM # 14)**

**CAROL WHEELER  
C/O BARRY C. KOMBOL  
P.O. BOX 100  
BLACK DIAMOND WA 98010  
(REGARDING ITEM # 13)**

**CHAFFEY HOMES, INC.  
205 LAKE STREET SUITE 101  
KIRKLAND WA 98083  
(VESTEE)**

**OCCUPANT  
20321 CHURCH LAKE RD E  
BONNEY LAKE WA 98391  
(OCCUPANT)**

**CHAFFEY HOMES INCORPORATED  
20321 CHURCH LAKE RD E  
BONNEY LAKE WA 98391  
(VESTEE)**

**CHAFFEY HOMES, INC.  
20321 CHURCH LAKE RD E  
BONNEY LAKE WA 98391  
(VESTEE)**

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4. ATTENTION IS CALLED TO THE FEDERAL TAX LIEN ACT OF 1966 (PUBLIC LAW 89-719) WHICH, AMONG OTHER THINGS, PROVIDES FOR THE GIVING OF WRITTEN NOTICE OF SALE IN A SPECIFIED MANNER TO THE SECRETARY OF TREASURY OR HIS DELEGATE AS A REQUIREMENT FOR THE DISCHARGE OR DIVESTMENT OF A FEDERAL TAX LIEN IN A NON-JUDICIAL SALE, AND ESTABLISHES WITH RESPECT TO SUCH LIEN A RIGHT IN THE UNITED STATES TO REDEEM THE PROPERTY WITHIN A PERIOD OF 120 DAYS FROM THE DATE OF ANY SUCH SALE:

**NONE**

5. ATTENTION IS CALLED TO THE SERVICEMEMBERS CIVIL RELIEF ACT WHICH CONTAINS INHIBITIONS AGAINST THE SALE OF THE LAND UNDER A MORTGAGE IF THE VESTEE IS ENTITLED TO THE BENEFITS OF THE ACT.
6. THE MAP ATTACHED HERETO MAY OR MAY NOT BE A SURVEY OF THE LAND DEPICTED THEREON. YOU SHOULD NOT RELY UPON IT FOR ANY PURPOSE OTHER THAN ORIENTATION TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS DEPICTED. FIRST AMERICAN EXPRESSLY DISCLAIMS ANY LIABILITY FOR ALLEGED LOSS OR DAMAGE WHICH MAY RESULT FROM RELIANCE UPON THIS MAP.

ORDER NO: 4966698  
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PRODUCT TYPE: WA TSG

**EXHIBIT "A"**

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BEGINNING 330 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 20 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON;  
THENCE NORTH 660 FEET;  
THENCE EAST 521 FEET, MORE OR LESS, TO THE WEST LINE OF A TRACT OF LAND CONVEYED TO R.H. CARNAKAN AND EMMA CARNAKAN, HUSBAND AND WIFE, BY DEED RECORDED MARCH 12, 1928 UNDER RECORDING NO. 892764;  
THENCE SOUTH ALONG SAID WEST LINE 660 FEET TO THE SOUTH LINE OF SAID SECTION 27;  
THENCE WEST ALONG SAID SOUTH LINE 521 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

EXCEPT ANY PORTION LYING WITHIN CHURCH LAKE COUNTY ROAD;

ALSO EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 20 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, SITUATED 745.00 FEET EAST OF A BRASS MONUMENT MARKING THE SOUTHWEST CORNER OF SAID SUBDIVISION;  
THENCE NORTH 210.00 FEET PERPENDICULAR WITH SAID LINE;  
THENCE EAST PARALLEL WITH SAID LINE TO THE WEST LINE OF A TRACT OF LAND CONVEYED TO R.H. CARNAKAN AND EMMA CARNAKAN, HUSBAND AND WIFE, BY DEED RECORDED MARCH 12, 1928 UNDER RECORDING NO. 892764;  
THENCE SOUTH ALONG SAID LINE TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE WEST TO THE POINT OF BEGINNING.

## SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurance are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
  - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
  - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
  - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
  - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps, or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
  - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
  - (c) The identity of any party shown or referred to in Schedule A.
  - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

## GUARANTEE CONDITIONS AND STIPULATIONS

### 1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A) (C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A) (C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records" : records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

### 2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to

notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

**3. No Duty to Defend or Prosecute.**

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

**4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.**

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

**5. Proof of Loss Damage.**

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss damage. All information designated as confidential by the Assured provided to the Company, pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

**6. Options to Pay or Otherwise Settle Claims: Termination of Liability.**

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim Assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

**7. Determination and Extent of Liability.**

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The Liability of the Company under this Guarantee to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and

Stipulations, at the time the loss or damage Assured against by this Guarantee occurs, together with interest thereon; or (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance Assured against by this Guarantee.

**8. Limitation of Liability.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter Assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

**9. Reduction of Liability or Termination of Liability.**

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

**10. Payment of Loss.**

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

**11. Subrogation Upon Payment or Settlement.**

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

**12. Arbitration.**

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**13. Liability Limited to This Guarantee; Guarantee Entire Contract.**

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, and Assistant Secretary, or validating officer or authorized signatory of the Company.

**14. Notices, Where Sent.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at 2 First American Way, Bldg 2, Santa Ana, California, 92707.