



200310310183
Skagit County Auditor

AFTER RECORDING RETURN TO:

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BANK OF AMERICA - HOME BUILDER DIVISION
WA3-504-04-01
10500 N.E. 8TH STREET, SUITE 400
BELLEVUE, WA 98004
Attention: Loan Administration

FIRST AMERICAN TITLE CO.

76082-3

		[space above line reserved for recorder's use]	
Document Title:	TAX # 5 :	4824-000-001-0000	-017-0000 -033-0000
1. Deed of Trust		-002-0000	-018-0000
2. Security Agreement		-003-0000	-019-0000
3. Fixture Filing		-004-0000	-020-0000
Grantor(s): D. B. Johnson Construction, Inc.		-005-0000	-021-0000
Grantee: Bank of America, N.A.		-006-0000	-022-0000
Legal Description:		-007-0000	-023-0000
Abbreviated: Lots 1-33, "Kulshan Ridge P.U.D."		-008-0000	-024-0000
Full Legal Description: See Schedule "A" attached		-009-0000	-025-0000
Assessor's Tax Parcel No(s):		-010-0000	-026-0000
Reference Nos. of Documents Released or Assigned: Not Applicable		-011-0000	-027-0000
		-012-0000	-028-0000
		-013-0000	-029-0000
		-014-0000	-030-0000
		-015-0000	-031-0000
		-016-0000	-032-0000

NOTICE TO RECORDER: THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER THE WASHINGTON UNIFORM COMMERCIAL CODE. This Financing Statement covers goods described herein by item or type some or all of which are affixed or are to be affixed to the real property described in Schedule A to this document. For purposes of this fixture filing the Debtor and the Secured Party and their respective addresses are:

Debtor: D. B. Johnson Construction, Inc.	Secured Party: Bank of America, N.A.
1801 Grove Street, Unit B	REBG - Home Builder Division
Marysville, WA 98270	WA3-504-04-01
	10500 N.E. 8 th Street, Suite 400
	Bellevue, WA 98004

Debtor's Organizational Identification No.: 601672046



Loan No. 208975-407325
Title Co. & no.: First American Title Company of Skagit County #00076082

**DEED OF TRUST,
SECURITY AGREEMENT and FIXTURE FILING**
(Washington)

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of October 29, 2003, by D. B. JOHNSON CONSTRUCTION, INC., a Washington corporation ("Grantor"), whose address is 1801 Grove Street, Unit B, Marysville, WA 98270; in trust to PRLAP, Inc., a Washington corporation ("Trustee"), whose address is P.O. Box 515351, Los Angeles, California 90051-6651, for the benefit of BANK OF AMERICA, N.A., ("Beneficiary"), whose address is Home Builder Division, WA3-504-04-01, 10500 N.E. 8th Street, Suite 400, Bellevue, WA 98004, Attention: Loan Administration.

FOR VALUABLE CONSIDERATION, Grantor covenants and agrees for the benefit of Beneficiary:

1. **CONVEYANCE - GRANT OF SECURITY INTEREST.** As security for payment and performance of the Secured Obligations, Grantor irrevocably grants, bargains, sells and conveys to Trustee, in trust, **with power of sale**, and with right of entry and possession, for the benefit of

Beneficiary, and assigns and grants to Beneficiary a security interest in, all of Grantor's right, title and interest, now owned or hereafter acquired, in and to the following (the "Property"):

(a) The real property described in Schedule A attached to this Deed of Trust, together with all buildings, structures and other improvements now or in the future located or to be constructed thereon, and all tenements, hereditaments, appurtenances, privileges and other rights and interests now or in the future benefiting or otherwise relating thereto including, without limitation, easements, licenses, rights-of-way, development rights, oil and gas rights, royalties, minerals and mineral rights, irrigation, well, ditch, reservoir and water rights, permits and stock, and the right to construct, use, connect to or have the benefit and enjoyment of any offsite improvement or utility (collectively, the "Project").

(b) All rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Project or the ownership, use, management, operation, leasing or occupancy of the Project including, without limitation, those past due and unpaid;

(c) All present and future right, title and interest of Grantor in and to all inventory, equipment, materials, supplies, fixtures and other goods and property of every kind, type and description now or in the future located at, upon or about, or affixed or attached to or installed in the Project, or used or to be used in connection with or otherwise relating to the Project or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Project wherever such property may be actually located including, without limitation, building materials and supplies, tools and equipment, machinery, furnaces, water tanks, ventilating and air conditioning equipment, furniture, furnishings, appliances, and all other types of tangible personal property and fixtures of any kind or nature, and all accessories, additions, attachments, parts, replacements, substitutions, products and proceeds of or to any such property;

(d) All present and future right, title and interest of Grantor in and to all accounts and proceeds (whether cash or non-cash and including payment intangibles), general intangibles, chattel paper, money, deposit accounts, loan disbursement accounts, accounts receivable, instruments, documents, letter of credit rights and all other agreements, contract rights, obligations, rights, claims, causes of action and written materials now or in the future relating to or otherwise arising in connection with or derived from the Project or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Project including, without limitation, (i) studies, reports, maps, diagrams, surveys, plats, design and consulting work, and land use permit applications, filings and supporting information, (ii) permits, approvals and other governmental and non-governmental consents, licenses and authorizations, (iii) improvement plans and specifications and architectural drawings, (iv) agreements with contractors, subcontractors, suppliers, project managers and supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (v) takeout, refinancing, standby and permanent loan commitments, (vi) warranties, guaranties, indemnities and insurance policies, insurance payments and unearned insurance premiums, (vii) claims, demands, awards, settlements and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, or injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Project, (viii) Grantor's funds or any other amounts deposited by or on behalf of Grantor with Beneficiary or with another in connection with the making of on-site or off-site Project related improvements, (ix) leases, rental agreements, license agreements, service and maintenance agreements, listing agreements, signs, telecommunication numbers, purchase and sale agreements and purchase options, together with advance payments, earnest money, security deposits, and other amounts paid to or deposited with Grantor under such agreements, (x) reserves, deposits, bonds, surety bonds, payment and performance bonds, letters of credit, deferred payments, latecomer payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and all other rights to the payment of money, trade names, trademarks, service marks, logos, goodwill and all other type of intangible personal property of any kind or nature, and (xi) all supplements, modifications, amendments, renewals, restatements, extensions, proceeds, repairs, replacements and substitutions of such property; and

(e) All books and records pertaining to the Property including, without limitation, all computer readable memory and any computer hardware or software necessary to access and process such memory.

Grantor represents and warrants to the Beneficiary that **THE REAL PROPERTY CONVEYED BY THIS DEED OF TRUST IS NOT USED PRINCIPALLY FOR AGRICULTURAL PURPOSES.**

2. **SECURITY AGREEMENT; FIXTURE FILING.** This Deed of Trust also constitutes (a) a common law assignment for security and a security agreement under the Washington Uniform Commercial Code assigning and granting to Beneficiary a security interest in all or any of the Property now or hereafter constituting personal property or fixtures, and in any personal property, tangible or intangible, described in any UCC Financing Statement filed in connection with this Deed of Trust or the Secured Obligations, including products and proceeds thereof and all supporting obligations ancillary



thereto, and (b) a financing statement filed for record in the real estate records as a fixture filing pursuant to the Uniform Commercial Code of the State of Washington and covering items of property which are or are to become fixtures with respect to the Property. Grantor authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without signature of Grantor as authorized by applicable law, as applicable to the Property, and ratifies any such filings by Beneficiary made prior to the date of this Deed of Trust. For purposes of such filings, Grantor agrees to furnish any information requested by Beneficiary promptly upon request by Beneficiary.

3. **SECURED OBLIGATIONS.** The following obligations (the "**Secured Obligations**") are secured by this Deed of Trust:

(a) Payment of the sum of EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00) with interest thereon according to the terms of a promissory note dated March 7, 2002, payable to Beneficiary or order and made by Grantor, including all renewals, amendments, modifications, restatements and extensions thereof (the "**Note**"). THE NOTE MAY CONTAIN PROVISIONS ALLOWING FOR THE INTEREST RATE TO BE INDEXED, ADJUSTED, RENEWED, OR RENEGOTIATED. BY THIS REFERENCE THE NOTE IS INCORPORATED IN AND MADE A PART OF THIS DEED OF TRUST AS THOUGH SET FORTH IN FULL. If the Note evidences a revolving line of credit by Beneficiary to Grantor, then it is the express intent of Grantor and Beneficiary that this Deed of Trust and the estate held by the Trustee hereunder shall continue in effect notwithstanding that from time to time no Secured Obligations may exist, and shall survive as security for all new or additional Secured Obligations from time-to-time arising;

(b) Payment of such further sums as may now or hereafter be advanced or loaned by Beneficiary to Grantor or any of its successors and assigns, and payment and performance of every other present and future obligation owing by Grantor to Beneficiary of any kind, and all renewals, modifications, restatements and extensions thereof, including any interest, fees, costs, service charges, indemnifications and expenses connected with such obligations, if (i) the promissory note or other written document evidencing the future advance or loan or other obligation specifically states it is secured by this Deed of Trust, or (ii) the advance, loan or other obligation is made or incurred pursuant to the Note, this Deed of Trust or any other document, instrument or agreement evidencing, securing or relating to the loan evidenced by the Note (the "**Loan**"), whether executed prior to, contemporaneously with, or subsequent to this Deed of Trust (all such documents, including, without limitation, any loan commitments and any construction or other loan agreement, and all renewals, amendments, modifications, restatements or extensions thereof, are collectively referred to as the "**Loan Documents**"), together with interest thereon at the rate set forth in the Note, unless otherwise specified in the Loan Documents or agreed in writing;

(c) Performance of each agreement, term and condition contained in this Deed of Trust or set forth or incorporated by reference in the Loan Documents including, without limitation, any provisions relating to Loan funds set-aside for the benefit of third parties, as evidenced by a set-aside agreement between Grantor and Beneficiary; and

(d) Payment and performance of the obligations of Grantor to Beneficiary under any one or more interest rate swap transactions, forward rate transactions, interest rate cap, floor or collar transactions, swaptions, bond and bond price swaps, options or forwards, treasury locks, any similar transaction, any option to enter into any of the foregoing and any combination of the foregoing, with Beneficiary, whether now existing or hereafter entered into including, without limitation any master agreement relating to or governing any or all of the foregoing and any related schedules and confirmations, and in which this Deed of Trust is expressly referenced as a credit support document (each, a "**Swap Contract**"). As used in this Deed of Trust, the term "Loan Documents" includes each Swap Contract secured by this Deed of Trust.

The Secured Obligations shall not include the obligations of Grantor (or any other person or entity) under any Environmental Indemnity Agreement at any time executed by Grantor (or any other person or entity) in connection with the Loan.

The right is reserved to the Beneficiary, without actual notice to or the consent of Grantor, to amend this Deed of Trust to delete from the security of this Deed of Trust any one or more of the Secured Obligations, provided, that the original or a Beneficiary certified copy of such amendment is recorded in the County where the Project is located on or prior to the date the Trustee concludes a sale of the Property under applicable law.

4. **AFFIRMATIVE COVENANTS.** Grantor shall, unless waived in writing by Beneficiary:

(a) Maintain and preserve the Property in good condition and repair, and not commit or permit any waste thereof; with diligence obtain all required permits and approvals and construct and complete, in a good and workmanlike manner free of defective materials or workmanship and in accordance with the plan and Project budget approved by Beneficiary, the on-site and any off-site improvements to be constructed as part of the Project; restore any improvements which may be damaged



or destroyed; maintain the Property free and clear of all liens and encumbrances other than the encumbrance of this Deed of Trust, any lien specifically approved by Beneficiary in writing, and any lien for taxes or assessments not delinquent; not purchase or contract for any materials, equipment, furnishings, fixtures or personal property that the seller has the right to remove; and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights and powers of Beneficiary or Trustee;

(b) Comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property;

(c) Pay and perform promptly all Secured Obligations; all taxes, assessments and governmental liens or charges levied against the Property; and all claims for labor, materials, supplies or otherwise which, if unpaid, might become a lien or charge upon the Property;

(d) Keep all on-site and any off-site Project improvements and all Project related inventory, equipment, materials and supplies continuously insured, with premiums prepaid, against all risks, casualties and losses through standard fire and extended coverage insurance or otherwise, including, without limitation, insurance against fire, theft, casualty, vandalism and any other risk Beneficiary may reasonably request. During construction on the Project, such policies shall be in "Builders Risk" form. The insurance policies shall be in an aggregate amount of not less than the full replacement cost of said improvements and other property, including the cost of demolition and removal of debris, and shall name Beneficiary as loss payee under a lender loss payable endorsement in form satisfactory to Beneficiary. The amounts collected under the insurance policies may be applied to the Secured Obligations in any manner as Beneficiary determines, and such application shall not cause discontinuance of any proceeding to foreclose upon this Deed of Trust. In the event of foreclosure, all of Grantor's rights in the insurance policies shall pass to the purchaser at the foreclosure sale. Furthermore, Grantor shall (i) obtain flood insurance if the Project is located in a designated flood hazard area (as determined by Beneficiary, with such determination to be made at Grantor's expense); and (ii) maintain commercial general liability insurance insuring against liability from risks associated with the use, ownership, construction and operation of the Project, with coverage limits approved by Beneficiary. All insurance policies required hereunder shall be subject to Beneficiary's approval and obtained from financially reputable insurers acceptable to Beneficiary. All deductibles shall be in amounts acceptable to Beneficiary;

(e) Pay, reimburse and indemnify Beneficiary for all of Beneficiary's costs and expenses incurred in connection with the enforcement of Beneficiary's rights and Grantor's obligations under this Deed of Trust, foreclosing upon this Deed of Trust, defending any action or proceeding purporting to affect the rights or duties of Beneficiary or Trustee under this Deed of Trust, or managing the Property and collecting the rents from the Property, including, without limitation, all reasonable attorneys' fees and the value of the services of staff counsel (including on appeal or otherwise), collection costs, costs of title search, and trustee's and receiver's fees; and

(f) Not permit or allow any one to four family residential dwelling or condominium unit encumbered by this Deed of Trust to be occupied prior to closing the sale of that dwelling/condominium unit to an owner occupant and payment to Beneficiary of the amount required to obtain a reconveyance of this Deed of Trust with respect to that dwelling/condominium unit.

5. **INSPECTION OF COLLATERAL.** Beneficiary and/or its agents or representatives may at reasonable times enter upon and inspect the Project including, without limitation, inspecting work in progress, and the making of tests and the taking of samples. If Beneficiary and/or its agents or representatives believes it has a duty or obligation to disclose any report or findings made as a result of or in connection with any inspection of the Project, then Beneficiary and/or its agents or representatives may make such disclosure. In the event of a default Beneficiary may obtain a current regulatory conforming appraisal of the Project. In addition, Beneficiary may commission appraisals when required by laws and regulations, which govern Beneficiary's lending practices. The cost of all such appraisals (and related internal review fees and costs) will be paid by Grantor within fifteen (15) days after request by Beneficiary.

6. **PROTECTION OF BENEFICIARY'S INTEREST.** If Grantor fails to pay any amounts which may become a lien on the Property, or fails to maintain adequate insurance on the Property as required by Section 4(d) above, Beneficiary may at its sole option pay such obligations and/or obtain such insurance and all costs and expenses so incurred by Beneficiary shall be added to the Secured Obligations and payable by Grantor on demand together with interest at the default rate in the Note.

7. **DEFAULT.** Time is the essence of Grantor's obligations under this Deed of Trust and the other Loan Documents. The following events shall, at Beneficiary's option, and at any time without regard to any previous knowledge on Beneficiary's part, constitute a default under this Deed of Trust, and the other Loan Documents:

(a) Construction of any on-site or off-site Project improvements is abandoned or discontinued for 15 consecutive days or more, or Beneficiary determines that the work is not being performed in accordance with the plans, specifications or project budget approved by Beneficiary, or a stop work order is issued on all or any portion of the Project and the order is not dismissed within ten (10) days after the date the order is issued;

(b) Any payment is not made when due under the Note, this Deed of Trust or any other Loan Document;

(c) There is a default under, a breach of, or failure to perform any other covenant, agreement or obligation to be performed under this Deed of Trust or any other Loan Document or under any guaranty of all or any part of the Secured Obligations;

(d) Any representation or warranty contained in this Deed of Trust or any other Loan Document, or any financial or other information furnished to Beneficiary in connection with the Loan, proves to be false or misleading in any material respect;

(e) Grantor defaults under any contract or other agreement relating to the Property, and such default is not cured within the applicable cure period, if any;

(f) Grantor is in default with respect to any other loan from Beneficiary to Grantor;

(g) An event occurs which gives Beneficiary the right or option to terminate any Swap Contract;

(h) Grantor, or any guarantor of the Loan fails to pay his, her or its debts generally as they become due, or files a petition or action for relief under any bankruptcy, reorganization or insolvency laws or makes an assignment for the benefit of creditors; or

(i) An involuntary petition is filed against Grantor or any guarantor of the Loan under any bankruptcy, reorganization or other insolvency laws, or a custodian, receiver or trustee is appointed to take, possession, custody or control of the Property or any other properties or assets of Grantor or of any guarantor of the Loan, and such petition or appointment is not set aside, withdrawn or dismissed within thirty (30) days from the date of filing or appointment.

8. **REMEDIES.** If any default occurs and is continuing, and subject to any applicable notice and cure period provided for in the Note or any other Loan Document, Beneficiary may, at its option:

(a) Declare any or all of the Secured Obligations, together with all accrued interest, to be immediately due and payable without presentment, demand, protest or notice of any kind, all of which are expressly waived by Grantor;

(b) Pay such sums as may be necessary to obtain a current appraisal of the Project, to inspect and test the Project and/or other Property, to pay any tax, assessment, insurance premium, lien, encumbrance or other charge against the Property, to obtain a title report and/or Trustee's Sale Guaranty, all such expenditures to be paid for by Grantor on demand and added to the Secured Obligations; and

(c) Exercise its rights and remedies under this Deed of Trust, the other Loan Documents, and applicable law including, without limitation, foreclosure of this Deed of Trust judicially as a mortgage or non-judicially pursuant to the power of sale. In any judicial or non-judicial foreclosure of this Deed of Trust, the Property may be sold separately or as a whole at the option of Beneficiary, and in the event of a trustee's sale of the Property pursuant to the power of sale granted herein Beneficiary hereby assigns its security interest in the personal property collateral to the Trustee. Beneficiary may also realize on the personal property collateral in accordance with the remedies available to secured parties under the Uniform Commercial Code or at law. Grantor and the holder of any subordinate lien or security interest with actual or constructive notice hereof waive any equitable, statutory or other right to require marshalling of assets or to direct the order in which any of the Property will be sold.

Beneficiary's failure to exercise or enforce any of its rights or remedies in the event of a default shall not constitute a waiver or cure of the default, or of any subsequent default, or of its rights and remedies with respect to such default. In the event of default under this Deed of Trust or the other Loan Documents, and whether or not suit is filed or any proceedings are commenced, all of Beneficiary's costs and expenses incurred in connection therewith including, without limitation, Trustee's and attorneys' fees (including attorneys' fees for any appeal, bankruptcy proceeding or any other proceeding), accountants' fees, appraisal and internal appraisal review fees, inspection fees (including inspections for hazardous substances, asbestos containing materials, and compliance with building and land use codes and regulations), engineering fees, and expert witness fees and costs of title reports shall be added to and be

DEED OF TRUST

REBG Home Builder WA-OR-ID [202733 v.4 Rev. 05-23-03]
[D. B. Johnson Construction, Inc.]

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a part of the Secured Obligations and shall be payable by Grantor on demand together with interest on such sums at the default rate in the Note.

9. **ENTRY.** Upon the occurrence of an event of default, and if Grantor has not cured the default within any applicable notice and cure period, then Beneficiary shall have the right but not the obligation, in person or through a third party designated by Beneficiary, or by a court appointed receiver, to enter, take possession of, and manage or operate all or any part of the Project and the Property, and to perform or cause to be performed all work and labor necessary to complete construction of the Project. All sums expended by Beneficiary in doing so shall be deemed to have been advanced under the Note and together with interest at the default rate under the Note shall be secured by this Deed of Trust and any other collateral for the Loan. Any funds disbursed by Beneficiary in excess of the maximum principal amount of the Note will be considered an additional advance on the Loan to Grantor bearing interest at the default rate under the Note, and will be secured by this Deed of Trust and any other collateral for the Loan. Beneficiary, by electing to complete a Project will not be deemed to have assumed any liability to Grantor or any other person or entity for completing the Project or for the manner or quality of construction of the Project, and Grantor hereby expressly waives any such liability on behalf of Beneficiary. Grantor hereby designates, constitutes and appoints Beneficiary as its true and lawful attorney-in-fact with full power of substitution to complete the Project in the name of Grantor and to (a) use any undisbursed Loan proceeds or funds of Grantor held by Beneficiary for the purpose of completing the Project; (b) make such additions, changes and alterations to the Project, the plans and specifications for the Project, and to the Project budget as Beneficiary deems desirable; (c) employ contractors, subcontractors, architects, surveyors, engineers and other persons as may be required for such purposes; (d) to collect and receive any payment of money owing to Grantor and to pay, settle or compromise all existing bills and claims which may be liens against the Project, any of the Property or as may be necessary or desirable for the completion of the Project or for clearance of title; and (e) do any and all things which Grantor might do on its own behalf in order to complete the Project free and clear of all liens and encumbrances and in accordance with all governmental and other requirements applicable to the Project. The power of attorney granted pursuant to this paragraph shall be deemed a power coupled with an interest and irrevocable. Beneficiary, in the exercise of this power, shall not be deemed a trustee or fiduciary of Grantor and Beneficiary is authorized to take all such actions as Beneficiary in its sole determination may consider necessary or desirable to protect the security of this Deed of Trust. Grantor shall, within five (5) days following written demand from Beneficiary, surrender and deliver to Beneficiary the originals of all books and records, all plans and specifications, all permits, licenses and approvals, and all agreements with suppliers and contractors for the Project, and shall grant Beneficiary and its agents and contractors unrestricted possession of and access to and control over the Project. Grantor further agrees that any failure on its part to do so shall entitle Beneficiary, without further notice to Grantor, to make ex-parte application to a court of general jurisdiction in the county where the Project is located for immediate issuance of an order, without bond, granting specific performance of Beneficiary's rights under this paragraph and/or for appointment of a receiver to take possession and control of the Property and the Project. Beneficiary's attorneys' fees, costs and expenses to obtain the court order, and any payment or reimbursement by Beneficiary of a receiver's costs, expenses and attorneys' fees (including on appeal or otherwise), shall be deemed an additional advance to Grantor under the Note as provided above in this paragraph. All sums expended by Beneficiary shall be repayable by Grantor on demand together with interest at the default rate in the Note.

10. **APPOINTMENT OF RECEIVER.** In the event of a default, Grantor consents to, and Beneficiary, to the fullest extent permitted by applicable law, shall be entitled, without notice, bond or regard to the adequacy of the Property, to the appointment of a receiver for the Property. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Beneficiary by the Loan Documents. The receiver shall be entitled to receive a reasonable fee for management of the Property. If Grantor is an occupant of the Property, Beneficiary has the right to require Grantor to pay rent at fair market rates and the right to remove Grantor from Property if Grantor fails to pay rent.

11. **CUMULATIVE REMEDIES.** To the fullest extent allowed by law, all of Beneficiary's and Trustee's rights and remedies specified in this Deed of Trust or in any of the other Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law or in equity. Without waiving its rights in the Property, Beneficiary may proceed against Grantor, any other party obligated to pay or perform the Secured Obligations or against any other security or guaranty for the Secured Obligations, in such order or manner as Beneficiary may elect. Except where prohibited by applicable law, the commencement of proceedings to enforce a particular remedy shall not preclude the commencement of other proceedings to enforce a different remedy.

12. **PARTIAL RECONVEYANCES.** By the acceptance of this Deed of Trust, the Beneficiary agrees it will, upon request of the Grantor, if no default exists under this Deed of Trust or any of the other Loan Documents and no event has occurred which through the passage of time, the giving of notice or both, could constitute a default, join with the Grantor in requesting the Trustee to partially reconvey, at Grantor's expense, a portion(s) of the Property as specifically described in the Loan Documents, if the following conditions are met:



(a) Full compliance with the partial release provision(s) of the Loan Documents including, without limitation, payment to Beneficiary of the full partial release payment and payment to the Trustee of the Trustee's reconveyance fee and recording charges;

(b) Grantor delivers to Beneficiary evidence that the partial reconveyance will not have any adverse effect upon the priority position of the remaining security as evidenced by the title insurance held by the Beneficiary;

(c) If applicable, the remaining collateral must be platted in accordance with regulations of the local government authority, the plat must be properly recorded, and Beneficiary must receive evidence satisfactory to Beneficiary of final plat approval from the government authority;

(d) The reconveyance, in Beneficiary's opinion, will not result in the loss by any other part of the Project of reasonable access to a public street or the use of any necessary easements or utility services; and

(e) If the Project is a condominium, no partial reconveyance will be made of any unit until such time as all units to be constructed with the Loan are completed.

(f) The Property is part of a collateral pool securing a revolving loan to Grantor by Beneficiary evidenced by the Note and the other Loan Documents. Payment and performance of Grantor's obligations under the Loan may be secured by multiple deeds of trust covering the Property and other properties constituting the collateral pool from time to time. Grantor acknowledges and agrees the partial or full reconveyance of this Deed of Trust shall not in and of itself satisfy or extinguish the obligations secured by this Deed of Trust.

13. **EMINENT DOMAIN.** If any portion of the Property is taken or damaged through eminent domain (or pursuant to a transfer in lieu thereof), the amount of the award to which Grantor is entitled shall be paid to Beneficiary and applied to the Secured Obligations at Beneficiary's option.

14. **TRANSFERS.** Grantor shall not, without Beneficiary's prior written consent, directly or indirectly (i) transfer, assign or convey any interest in the Property, for security purposes or otherwise, or (ii) consent to, permit or allow the transfer of any interest in Grantor.

15. **SUCCESSORS AND ASSIGNS.** This Deed of Trust inures to the benefit of and is binding upon the respective heirs, administrators, successors and assigns of Grantor and Beneficiary.

16. **SUCCESSOR TRUSTEE.** In the event of Trustee's death, incapacity, disability, dissolution, resignation or refusal to act, Beneficiary may appoint a successor trustee and, upon the recording of such appointment in the 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.

17. **GOVERNING LAW.** This Deed of Trust shall be construed and enforced under the laws of the State of Washington. In any action or proceeding to construe or enforce this Deed of Trust or any of the Loan Documents, the prevailing party shall recover its costs and reasonable attorneys' fees including those incurred in any trial or arbitration proceeding, in any bankruptcy or receivership proceeding, and in any appeal therefrom.



WASHINGTON NOTICE: ORAL AGREEMENTS, PROMISES OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF THE LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO THE LOAN ARE ALL UNENFORCEABLE UNDER WASHINGTON LAW.

GRANTOR:
D. B. JOHNSON CONSTRUCTION, INC.,
a Washington corporation

By: David B. Johnson 10/30/03
David B. Johnson, President

STATE OF WASHINGTON)
COUNTY OF Snohomish) ss.

I certify that I know or have satisfactory evidence that David B. Johnson 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 the instrument and acknowledge it as the President of D. B. Johnson Construction, Inc., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 30, 2003

Robert M. Lavesay
Name Printed: Robert M. Lavesay
Notary Public in and for the State of WA
Washington, residing at Maple Valley
My appointment expires 6-9-05



SCHEDULE A

THIS SCHEDULE A is attached to and part of the DEED OF TRUST dated October 29, 2003, between D. B. JOHNSON CONSTRUCTION, INC., a Washington corporation, as GRANTOR, PRLAP, Inc., a Washington corporation, as TRUSTEE, and BANK OF AMERICA, N.A., as BENEFICIARY.

LEGAL DESCRIPTION:

LOTS 1-33, "KULSHAN RIDGE P.U.D.", RECORDED OCTOBER 9, 2003 UNDER AUDITOR'S FILE NO. 200310090064, RECORDS OF SKAGIT COUNTY, WASHINGTON.

