



200404160160

Skagit County Auditor

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**AFTER RECORDING RETURN TO:**

D. B. Johnson Construction, Inc.  
1801 Grove St., Unit B  
Marysville, WA 98270

**Document Title**

Deed of Trust

**ACCOMMODATION RECORDING**

**Grantor**

Edward Herring

Chicago Title Company has placed  
this document for recording as a  
customer courtesy and accepts no  
liability for its accuracy or validity

**Grantee:**

D. B. Johnson Construction, Inc.

Chicago Title Insurance Company

**Legal Description:**

LOTS 6 OF SAUK MOUNTAIN VIEW ESTATES SOUTH - A PLANNED RESIDENTIAL  
DEVELOPMENT, AS RECORDED JUNE 9, 2003 ACCORDING TO THE PLAT RECORDED  
UNDER AUDITOR'S FILE NUMBER 200306090032, RECORDS OF SKAGIT COUNTY,  
WASHINGTON.

SITUATED IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

**Assessor's Property Tax Parcel/Account Number:**

P120667

Initials: Grantor Z.A. Date 4-16-04

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## DEED OF TRUST

### DEFINITIONS:

Words used in multiple sections of this document are defined below and other words are defined in Sections 7, 8, and 12. Certain rules regarding the usage of words used in this document are also provided in Section 11.

**Security Instrument** means this document which is dated April 15, 2004.

**Grantor/Borrower** is Edward Herring, a single individual. Borrower is the trustor under this Security Instrument.

**Beneficiary/Lender** is D. B. Johnson Construction, Inc., a Washington corporation.

**Trustee** is Chicago Title Insurance Company.

**Note** means the promissory note signed by Borrower and dated April 15, 2004. (\$118,171.00)

### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender (i) the repayment of the Loan and all renewals, extension and modifications of the Note, (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note and (iii) the repayment of any future advances, with interest, which are secured by this deed of trust. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, for the benefit of the beneficiary, with the power of sale, the following described property located in the County of Skagit:

LOTS 6 OF SAUK MOUNTAIN VIEW ESTATES SOUTH – A PLANNED RESIDENTIAL DEVELOPMENT, AS RECORDED JUNE 9, 2003 ACCORDING TO THE PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 200306090032, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

Together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. Such property is not used principally for agricultural purposes. This Security Instrument shall also cover all replacements and additions. All of the foregoing is referred to in this Security Instrument as the "Property."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for the encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances.

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Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest and Late Charges.** Borrower shall pay when due the principal of, and interest on the debt evidenced by the Note and any late charges due under the Note. Payments are deemed received by lender when received at the location designated in the Note or at such other location as may be designated by Lender.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due.

**3. Charges, Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property that can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. Should Borrower fail to pay any of the above-mentioned items when due, Borrower may pay the same, and the amount so paid, with interest at the rate set forth in the Note secured hereby, shall be added to and become a part of the debt secured in this deed of trust.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien, which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one of more of the actions set forth in this Section 3.

**4. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards including, but not limited to, earthquakes and

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floods, for which Lender requires insurance. This insurance shall be maintained for the full insurable value of the improvements. The insurance carrier providing the insurance shall be chosen by the Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee.

The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Lender shall determine. Such application by the Lender shall not cause discontinuance of any proceedings to foreclose the Deed of Trust. In the event of foreclosure, all rights of the Borrower in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

**5. Preservation, Maintenance and Protection of the Property, Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined that repair or restoration is not economically feasible, Borrower shall promptly repair or restore the Property if damaged to avoid further deterioration or damage. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

**6. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeitures, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations) or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 6, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 6.

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Any amounts disbursed by Lender under this Section 6 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

**7. Assignment of Miscellaneous Proceeds; Forfeiture.** "Miscellaneous Proceeds" shall be defined as any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to or destruction of the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to the value and/or condition of the Property. In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 12, by causing the action or proceeding to be dismissed with a ruling that, in Lender's

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judgment, precludes forfeiture of the Property or other material award or claim for damages. All Miscellaneous Proceeds that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**8. Borrower Not Released; Forbearance by Lender Not a Waiver.** Successor in Interest of Borrower shall mean any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this security Instrument. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or Successor in Interest of Borrower shall not operate to release the liability of Borrower or Successor in Interest of Borrower. Lender shall not be required to commence proceedings against Borrower or any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

Subject to the provisions of Section 12, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liabilities under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender.

**9. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by the Security Instrument or applicable law.

If this Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note.) Borrower's acceptance of any such refund made by

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direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**10. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. The notice address shall be 514 Cedar Lane, Granite Falls, WA 98252, unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to D. B. Johnson Construction, Inc. at 1801 Grove Street, Unit B, Marysville, WA 98270 unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender.

**11. Governing Law; Severability; Rules of Construction.** Federal law and the law of the jurisdiction in which the Property is located shall govern this Security Instrument. All rights and obligations contained in the Security Instrument are subject to any requirements and limitation of applicable law. Applicable law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**12. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 12, "Interest in the Property" means any legal or beneficial interest in the Property, including but not limited to those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a Purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred or if a beneficial interest in Borrower is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

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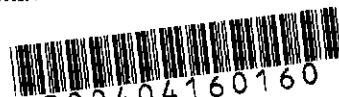
If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 10 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**13. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) ten days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as applicable law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if not acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 12.

**14. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 12 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by the Security Instrument and the sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by applicable law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 14, including but not limited to, reasonable attorney's fees and costs of title evidence.

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If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as applicable law may require. After the time required by applicable law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by applicable law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including but not limited to, reasonable Trustee's and attorney's fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

**15. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

**16. Substitute Trustee.** In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**17. Attorney's Fees.** Lender shall be entitled to recover its reasonable attorney's fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The terms "attorney's fees" whenever used in the Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

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