

After recording send to:

Bank of America, N.A.
NW Home Builder
WA3-504-04-01
10500 NE 8th Street, Suite 400
Bellevue, WA 98004
Attn: Loan Administration



200702160090

Skagit County Auditor

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CHICAGO TITLE CO. 1041454 ✓

(reserved for recorder's use only)

WASHINGTON STATE COUNTY AUDITOR'S/RECORDER'S INFORMATION (RCW 65.04)

INSTRUMENT TITLE: CONSENT TO SUBORDINATE FINANCING AND AGREEMENT OF SUBORDINATION

GRANTOR(S): DAVID B. AND ERIN JOHNSON, A MARRIED COUPLE

GRANTEE(S): BANK OF AMERICA, N.A.

LEGAL DESCRIPTION: N/A-See reference to related document recording number(s) below.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S): 340422-3-005-0009, 340422-3-006-0008, 340422-3-006-0107, 340422-3-013-0009, 340422-3-013-0108, 340422-3-013-0300, and 340422-3-006-0300

REFERENCE NUMBER OF RELATED DOCUMENTS:

1. Grantor Deed of Trust recording no. 200702160088
2. Grantee Deed of Trust recording no. 200702160089

Loan No. 00407325-003491001

Bank of America.



**CONSENT TO SUBORDINATE FINANCING
AND AGREEMENT OF SUBORDINATION**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE SUBORDINATOR'S DEED OF TRUST ON THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF A DIFFERENT OR LATER DEED OF TRUST.

THIS CONSENT TO SUBORDINATE FINANCING AND AGREEMENT OF SUBORDINATION ("Agreement") is made to be effective as of the 8th day of February, 2007, by and between:

"Lender"

- Bank of America, N.A., and Lender's universal successors, assigns, and participants, whose address is:

Bank of America, N.A.
NW Home Builder/Loan Administration
WA3-504-04-01
10500 NE 8th Street, Suite 400
Bellevue, WA 98004
Attn: Loan No. 00407325-003491001

"Subordinator" -

- David B. and Erin Johnson, a married couple, and Subordinator's universal successors assigns and participants, whose address is:

P.O. Box 1416
Marysville, WA 98270

"Owner" - D. B. Johnson Construction, Inc., a Washington corporation, and Owner's universal successors, assigns and participants, whose address is:

1801 Grove Street, Building B
Marysville, WA 98270

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with respect to the following facts:

RECITALS:

A. Lender is making a loan (the "Loan") to Owner in the principal amount of \$8,000,000.00 for the purpose of acquiring and/or making improvements to real property located in Mount Vernon, Skagit County, Washington (the "Project"), legally described in Exhibit "A" attached hereto and by this reference incorporated herein. The Loan is subject to the condition, among others, that payment and performance of Owner's obligations to Lender under the Loan be secured by a first lien deed of trust (the "First Deed of Trust") on the Project, with unconditional priority over all other permitted liens and encumbrances thereon.

B. Owner is the owner of all of the property both real and personal, tangible and intangible, described in and encumbered by the First Deed of Trust.

C. The terms of the Loan prohibit any lien or encumbrance on the Project other than the First Deed of Trust and Owner and Subordinator have requested that Lender permit all or a portion of the Project to be encumbered by a deed of trust (the "Subordinate Deed of Trust") to secure indebtedness to Subordinator evidenced by a promissory note in the amount of \$35,000,000.00. Lender has agreed to the encumbrance of the Subordinate Deed of Trust on the terms and conditions set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of Lender's consent to the Subordinate Deed of Trust, to induce Lender to advance loan funds under the First Deed of Trust, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties represent, warrant and agree as follows:

1. **Recording Information.** The First Deed of Trust was recorded in Skagit County, Washington, on February 16, 2007 under Skagit County Recording No. 200702160088, and the Subordinate Deed of Trust was recorded in Skagit County, Washington, on February 16, 2007, under Skagit County Recording No. 200702160089. It is contemplated that this Agreement will be executed prior to the recording of the First Deed of Trust and the Subordinate Deed of Trust and Subordinator and Owner specifically authorize Lender to insert or cause to be inserted in this Section 1 the recording dates and recording numbers for the First Deed of Trust and the Subordinate Deed of Trust.

2. **Consent to Subordinate Deed of Trust.** Lender hereby consents to the Subordinate Deed of Trust, provided, that the maximum amount which may be, by its terms, secured by the Subordinate Deed of Trust as an encumbrance against the Project shall not exceed \$2,780,000.00. Subordinator agrees that the Subordinate Deed of Trust as an encumbrance against the Project is limited to that amount and no more.

3. **Subordination.** Subordinator, being the holder(s) of all of the beneficial interest in the Subordinate Deed of Trust, hereby unconditionally and irrevocably agrees that the Subordinate Deed of Trust and all indebtedness and obligations secured thereby, and any other estate, lien or interest which Subordinator may at any time now or hereafter have or acquire in any of the property, real and personal, described in the First Deed of Trust, is and shall at all times be and remain unconditionally subject, subordinate and inferior to the lien and security interest now or hereafter created by the First Deed of Trust and to all advances or charges made or accruing under the First Deed of Trust. Without limitation, this agreement of subordination extends to and includes unconditional and irrevocable subordination of the Subordinate Deed of Trust to (i) any extension, modification, amendment, renewal or replacement of the First Deed of Trust, (ii) all leases, rents, cash collateral, accounts, insurance and condemnation proceeds, inventory, equipment, general intangibles and other tangible and intangible property comprising or derived from the Project, (iii) all advances made in connection with the Loan, any advance made by Lender to Owner as a debtor in possession under the U.S. Bankruptcy Code, advances to protect Lender's interest in the Project, and advances made by Lender for taxes, insurance, improvements, or other advances made with respect to the Project, whether or not such advances are expressly authorized by the terms of the First Deed of Trust, and (iv) any interest or other sums which may accrue to Lender on the obligations secured by the First Deed of Trust following the filing of any petition in bankruptcy with respect to Owner, regardless of whether Owner is excused from paying such interest or other sums under the U.S. Bankruptcy Code.

4. **Payments to Subordinator.** Prior to any default on the First Deed of Trust or any default by Owner on any loan or other obligation of Owner to Lender, Owner may make and Subordinator may receive payments on the obligations secured by the Subordinate Deed of Trust in the amounts and at the times due but not otherwise without Lender's prior written consent. After any default under the First Deed of Trust or under any loan or other obligation of Owner to Lender, Owner shall not make and Subordinator, with actual knowledge of such default, shall not take any payments on such obligations and

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following such default of which Subordinator has actual knowledge any payment of such obligations by Owner to Subordinator shall be collected, enforced and received by Subordinator in trust for the benefit of Lender and promptly paid over to Lender on account of the obligations secured by the First Deed of Trust. Failure to remit shall be deemed equivalent to misappropriation while acting in a fiduciary capacity so as to constitute a non-dischargeable debt under the U.S. Bankruptcy Code.

5. **Covenants of Subordinator.**
Lender that:

Subordinator hereby covenants and agrees with

a. Until such time as the indebtedness and obligations secured by the First Deed of Trust have been paid and performed in full, Subordinator waives, relinquishes and releases any and all rights of subrogation which Subordinator may have with respect to the First Deed of Trust, in any other security for payment of the Loan which Lender now has or hereafter acquires, or otherwise to participate in any claim, right or remedy of Lender against Owner.

b. So long as the First Deed of Trust remains in effect, not to declare any obligation secured by the Subordinate Deed of Trust in default, not to exercise any of the rights or remedies available to Subordinator under the Subordinate Deed of Trust, the U.S. Bankruptcy Code, or any other federal, state or local laws including, without limitation, acceleration of any obligation secured by the Subordinate Deed of Trust, the right to the appointment of a receiver, the right to receive any rents, issues or profits from the Project and the right to foreclose the Subordinate Deed of Trust.

c. In the event of a default under the Loan, Subordinator shall, following Subordinator's receipt of written notice from Lender, (i) promptly cure any monetary default and thereafter keep the Loan current, and (ii) promptly make all reasonable efforts to cure any non-monetary default.

d. Lender shall not be bound to exhaust its recourse or take any action against Owner or any guarantor or any other person or entity or proceed against any other collateral or property prior to judicial or nonjudicial (trustee's sale) foreclosure of the First Deed of Trust. Lender may, without notice to or the consent of Subordinator, (i) enter into any extension, modification, amendment, renewal, replacement of the First Deed of Trust or any other document or agreement evidencing or securing the Loan, (ii) release any or all parties liable for any obligations or indebtedness secured by the First Deed of Trust, and (iii) release all or any of the security for the obligations or indebtedness secured by the First Deed of Trust. Subordinator agrees to promptly execute and deliver to Lender from time to time all such documents and agreements as Lender may require to confirm the subordination of the Subordinate Deed of Trust.

e. Subordinator waives (i) the benefit of suretyship claims and defenses generally, (ii) any right to require marshalling of assets or to require Lender to proceed against or exhaust any specific security for the obligations secured by the First Deed of Trust, and (iii) any defense to any exercise of Lender's rights hereunder or under the First Deed of Trust or the other documents and agreements evidencing and securing the Loan arising out of the loss or impairment of any right of subrogation to the First Deed of Trust or to any other document or agreement evidencing or securing the Loan.

f. In the event of any sale or transfer of all or any part of the property comprising the Project and until payment in full of the obligations secured by the First Deed of Trust Subordinator agrees, without receipt of payment or consideration, to cause the Subordinate Deed of Trust to be fully or partially reconveyed, as applicable.

g. In the event of a casualty to the Project or a condemnation or taking under a power of eminent domain of all or any portion of the Project, the buildings or improvements thereon, or a threat of such condemnation or taking, all payments and settlement of insurance claims and condemnation awards shall be paid to Lender to be used or applied as provided in the First Deed of Trust.

h. Subordinator represents to Lender that Subordinator (i) is adequately informed of the financial condition of Owner and of Owner's plans and resources for development and operation of the Project, (ii) has not relied upon any financial or other information about Owner or the Project furnished by Lender, if any, and (iii) does not expect Lender to provide and waives any duty on the part of Lender to provide such information in the future including, without limitation, adverse information about the Owner or the Project, if any, which Lender may possess or acquire and which may not be available to Subordinator.

i. Prior to the execution of this Agreement, Subordinator has had the opportunity to examine the terms of the First Deed of Trust and the other documents, instruments and agreements evidencing and securing the Loan, all of which Subordinator consents to and approves. **Subordinator acknowledges that Lender has no obligation to Subordinator to advance any funds under the First Deed of Trust or to see to the proper use and application of the funds so advanced. Subordinator understands that construction loans can involve substantial risks for junior lien holders and agrees that Lender is not a trustee or fiduciary for Subordinator and undertakes no duty, obligation responsibility or special relationship to Subordinator to see to proper use and application of the Loan or otherwise to protect and not act adversely to Subordinator's interests.**

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Any application or use of the Loan for purposes other than those provided for in the First Deed of Trust and the other documents instruments and agreements evidencing and securing the Loan shall not defeat, limit or impair this subordination in whole or in part.

6. **Cross Default.** Any breach or default by of Subordinator's duties and obligations under this Agreement or any claim or assertion by or on behalf of Subordinator that the Subordinate Deed of Trust is of equal or greater priority to the First Deed of Trust shall, at Lender's option, constitute an event of default under the First Deed of Trust and the other documents and agreements evidencing and securing the Loan. Any breach or default of the duties and obligations secured by the Subordinate Deed of Trust shall, at Lender's option, constitute an event of default under the First Deed of Trust and the other documents and agreements evidencing and securing the Loan.

7. **Miscellaneous.**

(a) This Agreement shall be governed and construed in accordance with the laws of the State of Washington. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(b) In any action or proceeding to construe or enforce this Agreement, the prevailing party shall recover its costs and reasonable attorneys' fees including those incurred in any trial or arbitration proceeding, in any bankruptcy, insolvency or receivership proceeding, and in any appeal therefrom.

(c) This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, replaces all prior and contemporaneous oral agreements and understanding, and may be modified only by a writing signed by all parties hereto.

(d) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors, assigns and participants.

IN WITNESS WHEREOF, the parties have made this Agreement to be effective as of the day and year first set forth above.

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

LENDER:
BANK OF AMERICA, N.A.

By: Douglas B. Sollitt
Douglas B. Sollitt, Senior Vice President

OWNER:
D. B. JOHNSON CONSTRUCTION, INC.

By: David B. Johnson 2/9/07
David B. Johnson, President

SUBORDINATOR:

David B. Johnson 2/9/07
DAVID B. JOHNSON

Erin Johnson 2/9/07
ERIN JOHNSON

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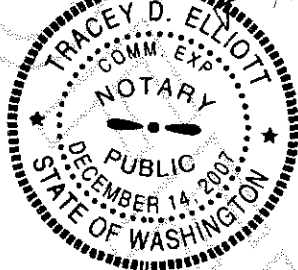
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State of Washington)
) ss
County of King)

I certify that I know or have satisfactory evidence that **Douglas B. Sollitt** 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 Senior Vice of Bank of America, N.A. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: January 8, 2007

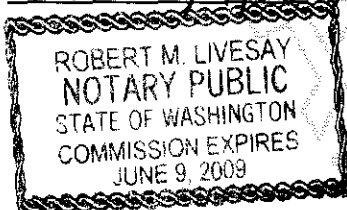


Tracey D. Elliott
Name Printed: Tracey D. Elliott
Notary Public in and for the State of
Washington, residing at Seattle
My appointment expires December 14, 2007

State of Washington)
) ss
County of Snohomish)

I certify that I know or have satisfactory evidence that **David B. Johnson and Erin Johnson** are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: February 7, 2007



Robert M. Livesay
Name Printed: Robert M. Livesay
Notary Public in and for the State of
Washington, residing at Marysville
My appointment expires 6-9-09

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EXHIBIT "A"

This Exhibit "A" is attached to and made a part of that **Consent to Subordinate Financing and Agreement of Subordination** dated February 8, 2007, by and between **Bank of America, N.A.**, as "Lender," **David B. Johnson and Erin Johnson (a married couple)**, as "Subordinator," and **D. B. Johnson Construction, Inc.**, a Washington corporation, as "Owner," and affecting the following described property located in Skagit County, Washington:

Legal Description:

LOTS 36 THROUGH 41 (INCLUSIVE), LOTS 53 THROUGH 63 (INCLUSIVE), LOTS 85 THROUGH 88 (INCLUSIVE), LOTS 106 THROUGH 123 (INCLUSIVE), AND LOT 96, PLAT OF CEDAR HEIGHTS PUD, PHASE 1, ACCORDING TO THE PLAT THEREOF, RECORDED JANUARY 19, 2007, UNDER AUDITOR'S FILE NO. 200701190116, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATED IN SKAGIT COUNTY, WASHINGTON

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