

When Recorded Return to:

Elliott W Johnson Inc PS
711 S. First St
Mount Vernon, WA 98273



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Skagit County Auditor
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Deed of Trust

Grantor(s): James C. Kester and Kathryn M. Kester

Grantee (Trustee): Elliott W. Johnson

Grantee (Beneficiary) A. Elliott Johnson

Legal Description (abbreviated): Ptn Lts 64 & 65 First Addition to Big Lake Water Front Tracts
Lt 3 Less Platted S1 T33N R4EWM

Additional legal description on page 2 of document

Assessor's Tax Parcel Number: 3863-000-065-0000 P 104363
330401-0-003-0003 P16152

Reference (Auditor File Numbers of Documents assigned, released or amended): N/A

THIS DEED OF TRUST, made as of March 22, 2005, among **James C. Kester and Kathryn M. Kester**, husband and wife, as Grantor, whose address is 18478 W. Big Lake Blvd, Mount Vernon, WA 98274; **Elliott W. Johnson**, attorney at law, as Trustee, whose address is 711 S. First Street, Mount Vernon, WA 98273; and **A. Elliott Johnson**, an individual, as Beneficiary, whose address is 1520 Meadowlark Lane, Mount Vernon, WA 98273:

WITNESSETH: Grantor hereby irrevocably grants, bargains, sells, and conveys to Trustee in Trust,

Deed of Trust

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Elliott W. Johnson Inc. P.S.
711 South First Street
Mount Vernon, WA 98273
(360) 336-6502 Fax 336-5616
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with power of sale, the following described real property in the City of Mount Vernon, County of Skagit, State of Washington.

Parcel A. That Portion of Government Lot 3, Section 1, Township 33 North, Range 4 East, W.M., lying Southerly of the Southerly line of First Addition Big Lake Water Front Tracts, according to the plat thereof recorded in Volume 4 of Plats, page 15, records of Skagit County, Washington, and Lying southeasterly of the southeasterly line of Big Lake Water Front Tracts according to the Plat thereof recorded in Volume 4 of Plats, page 12, records of Skagit County, Washington.

See Exhibit "A" for Parcels B, C & D

which property is not used principally for agricultural or farming purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining; the rents, issues, and profits thereof; and any transferable development rights or other development rights (the "Property").

This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained, and payment of the sum of Twelve Thousand Dollars and No Cents (\$12,000.00), with interest, in accordance with the terms of a promissory note of even date herewith payable to Beneficiary or order, and made by Grantor, and all renewals, modifications, and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

To protect the security of this Deed of Trust, Grantor covenants and agrees:

1. To keep the Property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property.
2. To pay before delinquent all lawful taxes and assessments upon the Property and to keep the Property free and clear of all other charges, liens, or encumbrances impairing the security of this Deed of Trust.
3. To keep all buildings now or hereafter erected on the Property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by Beneficiary, and be in such companies as Beneficiary may approve and have loss payable first to Beneficiary as Beneficiary's interests may appear and then to Grantor. The amount collected under any insurance policy may be applied upon

Deed of Trust

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any indebtedness hereby secured in such order as Beneficiary shall determine. Such application by Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorneys' fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. To pay all costs, fees, and expenses in connection with this Deed of Trust, including the expenses of Trustee incurred in enforcing the obligations secured hereby and Trustee's and attorneys' fees actually incurred, as provided by statute.

6. To the extent any portion of the Property is, or is construed to be, personal property, this Deed of Trust shall constitute a security agreement between Grantor-Trustor, as debtor, and Beneficiary, as secured party, under the Uniform Commercial Code of the state in which the Property is located and any other applicable law. The grant of a security interest hereunder shall not be construed to derogate from or impair the lien or provisions of or rights of Beneficiary under this Deed of Trust with respect to any of the Property hereunder which is real property. Grantor-Trustor grants a security interest to Beneficiary in any of all furniture, furnishings, appliances, machinery, equipment, and other personal property, originally included in the sale of the premises from Beneficiary to Grantor, including all additions, accessions, replacements, substitutions, proceeds, and products of the foregoing.

7. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances, or other charges against the Property hereinabove described, Beneficiary may, at Beneficiary's sole option, 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 by this Deed of Trust.

If Beneficiary so requests, Grantor-Trustor shall pay to Beneficiary, in addition to the regular installments of principal and interest due under the terms of the Note, monthly until the Note is paid in full a sum equal to one-twelfth (1/12) of the annual taxes, assessments, and other impositions next due on the Property, as estimated by Beneficiary and sufficient to allow payment at least 30 days before the same become due; and a sum equal to one-twelfth (1/12) of the annual premiums that will next become due and payable on policies of fire, flood, rental value, and other insurance covering the Property and required under the terms hereof or of any other loan documents as estimated by Beneficiary and sufficient to allow payment at least 30 days before the same become due.

All such payments described in this section shall be held by Beneficiary in trust without any



obligation arising for the payment of interest thereon to Grantor-Trustor. In the event Grantor-Trustor is not in default hereunder, Beneficiary shall apply such payment to all taxes, assessments, and other impositions and premiums next due. In the event of default by Grantor-Trustor under this Deed of Trust, Beneficiary may apply any such payments held by Beneficiary to the payment of any indebtedness secured by this Deed of Trust in such manner as Beneficiary may elect.

IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the Property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion thereof as may be necessary to satisfy fully the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

3. Trustee shall reconvey all or any part of the Property covered by this Deed of Trust to the person entitled thereto on written request of Grantor and Beneficiary, or upon satisfaction of the obligations secured and written request for reconveyance made by Beneficiary or the person entitled thereto.

4. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust Property, in accordance with the Deed of Trust Act of the state in which the Property is located, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a reasonable Trustee's fee and attorneys' fee; (2) to the obligations secured by this Deed of Trust; and (3) the surplus, if any, to the parties entitled thereto.

5. Trustee shall deliver its deed, without warranty, to the purchaser at the sale, which deed shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of Grantor's execution of this Deed of Trust, and such as Grantor may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

6. The power of sale conferred by this Deed of Trust and by applicable law is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.



7. If Grantor-Trustor or any successor in interest to the Property should, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, sell, convey, transfer, encumber, or alienate the Property, any part thereof, or any interest therein or be divested of Grantor-Trustor's title or any interest therein in any manner, whether voluntary or involuntary, or if in the case Grantor-Trustor, Grantor-Trustor's successors or assigns is a corporation or partnership and Grantor-Trustor's principal shareholders or partners, or any one of them should, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, sell, convey, transfer, encumber, pledge, or alienate a substantial portion of their shares in the corporation or interest in the partnership, either voluntarily or involuntarily, then in recognition of the reliance by Beneficiary on the ownership and management of the Property by Grantor-Trustor which is a material inducement to Beneficiary to extend credit to Grantor-Trustor and in recognition of the increased risk to Beneficiary upon the conveyance of the Property, shares, or interest, as the case may be, by Grantor-Trustor, Grantor-Trustor's principal shareholders or partners, Beneficiary, at Beneficiary's sole option, shall have the right to declare all sums secured hereby forthwith due and payable, or at Beneficiary's sole option, Beneficiary may increase the interest rate of the Note by an amount then to be determined by Beneficiary to compensate Beneficiary for Beneficiary's increased risk. The following shall not be deemed to constitute a sale, transfer, or encumbrance for purposes hereof: (a) creation of a purchase money security interest in items which may become affixed or attached to the Property; (b) a transfer by devise, descent, or operation of law upon the death of a joint tenant, if any; and (c) the grant of any leasehold interest of not more than five years, including any extension or renewal options, which does not involve or contain any purchase rights, options, or obligations in either the instrument granting the leasehold interest or any other agreement. If the interest rate on the Note is increased pursuant to this Section 13, any amortizing payments required on the Note shall automatically be increased by an amount sufficient to cover the increased interest charges arising as a result hereof. In addition, prior to the passage of title to or control of or an interest in the Property, Grantor-Trustor shall give not less than 30 days' prior written notice to Beneficiary of any such sale, transfer, or encumbrance and deliver such information concerning the financial capability and experience of the party acquiring such title, control, or interest, as Beneficiary may in Beneficiary's discretion require. Waiver of any right granted to Beneficiary herein as to one transaction, event, or occurrence shall not be deemed to be a waiver of right as to any subsequent transaction, event, or occurrence.

8. In the event of the death, incapacity, disability, or resignation of Trustee, Beneficiary may appoint, in writing, a successor Trustee, and upon the recording of such appointment in the mortgage 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. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee, or Beneficiary shall be party unless such action or proceeding is brought by Trustee.

9. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the



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EXHIBIT "A"

PARCEL B:

That portion of Lots 64 and 65, FIRST ADDITION TO BIG LAKE WATER FRONT TRACTS, according to the plat thereof recorded in Volume 4 of Plats, page 15, records of Skagit County, Washington, that lies Southerly of the South margin of the H.C. Peters Road, also known as West Big Lake Boulevard and Westerly of the following described line:

Commencing at the Southeast corner of said Lot 65; thence North $67^{\circ}47'10''$ West, along the Southerly line of said Lot 65, a distance of 63.81 feet to the East line of Government Lot 3 in Section 1, Township 33 North, Range 4 East of the Willamette Meridian, and the true point of beginning of this line description; thence North $05^{\circ}31'33''$ East a distance of 122.30 feet to the intersection of the West line of said Lot 65, and the South margin of said H.C. Peters Road and the terminus of this line description.

PARCEL C:

An easement for ingress, egress and utilities over, under, across and through Lot 65 and Lot 66, First Addition to Big Lake Water front Tracts, according to the plat thereof recorded in Volume 4 of Plats, page 15, records of Skagit County, Washington, and Government Lot 2, Section 1, Township 33 North, Range 4 East of the Willamette Meridian, and lies 10.00 feet on each side of the following described centerline and within a 70.00 feet diameter circle circumscribed on the hereinafter described reference point "X":

Commencing at the Southeast corner of said Lot 65; thence North $22^{\circ}12'50''$ East, along the East line of said Lot 65 a distance of 14.01 feet to reference point "X" and the true point of beginning for this centerline description; thence North $35^{\circ}15'44''$ West a distance of 32.94 feet; thence Northwesterly, along a curve to the right, which center of curve bears North $54^{\circ}44'16''$ East, having a radius of 125.00 feet, an arc distance of 107.43 feet to the South margin of the H.C. Peters Road also known as West Big Lake Boulevard and the terminus of this centerline description.

PARCEL D:

An easement for ingress, egress and utilities over, under, and across and through the West 59.45 feet of the following described tract of land:

That portion of Government Lot 2, Section 1, Township 33 North, Range 4 East of the Willamette Meridian, that adjoins the Southwesterly line of the Plat of the First Addition to Big Lake Water Front Tracts, according to the plat thereof recorded in Volume 4 of Plats, page 15, records of Skagit County, Washington, and is more particularly described as follows:

Beginning at the Southeast corner of Lot 67 of said plat; thence North $67^{\circ}47'10''$ West along the Southwesterly line of said plat, a distance of 261.77 feet to the West line of said Government Lot 2; thence South $00^{\circ}55'13''$ West along the West line of said Government Lot 2, a distance of 62.10 feet to the Southeast corner of Government Lot 3 of said Section 1; thence South $67^{\circ}47'10''$ East, parallel with the Southwesterly line of said plat, a distance of 239.22 feet to the Southerly extension of the East line of said Lot 67; thence North $22^{\circ}12'50''$ East, along said Southerly extension, a distance of 57.86 feet to the point of beginning.

ALL situated in Skagit County, Washington.

- END OF EXHIBIT "A"



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