

After Recording Return To:
Davis Wright Tremaine LLP
Attn: John Parnass
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101



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Skagit County Auditor

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DEED OF TRUST

Grantor: **[John E. Borders]**, a Washington resident

☐ Additional names on page ____ of document

Grantees: 1. Van Rossen Construction, Inc.

2. DWTR&J Corp.

☐ Additional names on page ____ of document

Abbreviated Legal Description (lot, block and plat name, or section-township-range):

[See Attached]

17-33-5

☒ Additional legal description is in Exhibit A to this document

Assessor's Property Tax Parcel Account Number(s): P18098 / Account # 330517-1-001-0129

Reference Numbers of Assigned or Released Documents (if applicable):

N/A

☐ Reference numbers of additional documents on page ____ of document

DEED OF TRUST

THIS DEED OF TRUST is made this 20 day of March, 2007 between John E. Borders, a Washington resident, as Grantor, whose address is 25715 Lake Cavanaugh Road, Mt. Vernon Washington 98274 and DWTR&J Corp. as Trustee, whose address is 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101, and Van Rossen Construction, Inc., a Washington corporation, as Beneficiary, whose address is 2526 Baker Ave. Everett WA 98201.

Grantor irrevocably bargains, sells and conveys to Trustee in trust, with power of sale and right of entry, the following real property in Skagit County, Washington, described on Exhibit A attached hereto and incorporated herein by reference, together with all buildings and improvements thereon, all rents, issues and profits therefrom, all goods that are or are to become fixtures therein, all water rights however evidenced or manifested, and all other rights now or hereafter appurtenant thereto, and all interest and estate therein that the Grantor may hereafter acquire (the "Property").

Grantor covenants the Property is not used principally for agricultural purposes.

THIS DEED IS FOR THE PURPOSE OF SECURING FULL AND TIMELY PAYMENT AND PERFORMANCE of the following indebtedness, liabilities and obligations (collectively, the "Secured Obligations"): (i) all debts, liabilities, obligations, covenants and duties of Grantor arising under that certain Continuing and Unconditional Guaranty between Grantor and Beneficiary of even date herewith (the "Guaranty"); and (ii) all debts, liabilities, obligations, covenants and duties of Grantor arising under this Deed of Trust, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against Grantor of any proceeding under the United States Bankruptcy Code or any debtor relief laws naming such person as borrower in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Grantor acknowledges and agrees that the proceeds obtained in connection with the incurrence of the Secured Obligations described in clause (i) of the preceding sentence have provided a direct or an indirect material economic benefit to Grantor.

Notwithstanding any other provision of this Deed of Trust, the Guaranty or any other document or instrument referenced herein or therein, this Deed of Trust does not secure any obligations of the Grantor to indemnify Beneficiary from and against any Environmental Claims (as defined in the Unsecured Environmental Indemnity and Release Agreement between Grantor and Beneficiary of even date herewith).

The Grantor covenants and agrees as follows:

1. To pay all debts and monies secured hereby, when from any cause the same shall become due. To keep the Property free from statutory and governmental liens of any kind. That the Grantor is seized in fee simple of the Property and owns outright every part thereof, that they have good right to make this Deed of Trust and that they will forever warrant and defend said Property unto Beneficiary, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. The Grantor upon request by mail will furnish a written statement duly acknowledged of the amount due on this Deed of Trust and whether any offsets or defenses exist against the debt secured hereby.

2. To maintain the buildings and other improvements on the Property in a habitable condition and state of repair, to neither commit nor suffer any waste, to promptly comply with all requirements of the Federal, State and Municipal authorities and all other laws, ordinances, regulations, covenants, conditions and restrictions respecting Property or the use thereof, to pay all

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fees or charges of any kind in connection therewith, and to promptly repair or restore any building or other improvement after any damage thereto or destruction thereof. Grantor shall permit Beneficiary or its agents the opportunity to inspect the Property, including the interior of any structures, at reasonable times and after reasonable notice.

3. To maintain unceasingly, property insurance with premiums prepaid, on all of the Property, or hereafter becoming part of Property, against loss by fire and other causes of loss, on such forms and with such endorsements, as may be required from time to time by Beneficiary. Such insurance shall be in such amounts and for such periods of time as Beneficiary designates and shall include a standard mortgagee clause, and/or a loss payee endorsement (without contribution) in favor of and in form satisfactory to Beneficiary. Grantor covenants upon demand by Beneficiary to deliver to Beneficiary such policies and evidences of payment of premiums as Beneficiary requests.

4. To pay in full at least thirty (30) days before delinquent all rents, taxes, assessments and encumbrances, charges or liens with interest, that may now or hereafter be levied, assessed or claimed upon the Property or any part thereof, which at any time appear to be prior or superior hereto for which provision has not been made heretofore, and upon request to exhibit to Beneficiary official receipts therefor. On default under this paragraph, Beneficiary may, at its option, pay any such sums, without waiver of any other right of Beneficiary by reason of such default of Grantor, and Beneficiary shall not be liable to Grantor for a failure to exercise any such option.

5. To repay immediately on demand to Grantor all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the Prime Rate until paid and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of the mailing of such demand will, at Beneficiary's option, constitute an Event of Default hereunder. For the purposes of this Deed of Trust, the "Prime Rate" means the U.S. Prime Rate of Interest as published from time to time in The Wall Street Journal, or if the U.S. Prime Rate of Interest shall cease to be published, such other prime rate as Beneficiary, as agent for the Lenders, shall select in its reasonable discretion.

6. Time is of the essence hereof in connection with all obligations of the Grantor herein. By accepting payment of any amount secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

7. All sums secured hereby shall become immediately due and payable, at the option of Beneficiary without demand or notice, after any of the following occur, each of which shall be an Event of Default: (a) default by Grantor in the payment of any indebtedness secured hereby, (b) default by Grantor or the Borrowers in the performance or observance of any other agreement contained herein or secured hereby and expiration of any applicable cure period provided for herein or in the Guaranty without such default having been cured; or (c) if Grantor shall file or permit to be filed against it any proceedings under any federal or state statutes pertaining to bankruptcy, whether or not an order for relief is entered. In the event of a default, Beneficiary may declare all amounts owed under the Guaranty immediately due and payable without demand or notice and/or exercise its rights and remedies under the Guaranty and applicable law including foreclosure of this Deed of Trust judicially or nonjudicially by the Trustee pursuant to the power of sale. Beneficiary's exercise of any of its rights and remedies shall not constitute a waiver or cure of a default. Beneficiary's failure to enforce any default shall not constitute a waiver of the default or any subsequent default. Grantor agrees to pay all reasonable costs, including reasonable

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attorneys' fees, accountants' fees, appraisal and inspection fees and cost of a title report, incurred by Beneficiary in connection with collection of any Secured Obligations or any foreclosure of this Deed of Trust, which costs shall be included in the indebtedness secured hereby; and in any suit, action or proceeding (including arbitration or bankruptcy proceedings), or any appeal therefrom, to enforce or interpret the Guaranty, or to foreclose this Deed of Trust, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees and costs of litigation. The Property may be sold separately or as a whole, at the option of Beneficiary. In the event of a foreclosure sale, Grantor and the holders of any subordinate liens or security interests waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation.

8. If the Property or any part thereof or any interest therein is sold, conveyed, transferred, encumbered, or full possessory rights therein transferred, without the prior written consent of Beneficiary, then Beneficiary may declare all sums secured by the Deed of Trust immediately due and payable. This provision shall apply to each and every sale, transfer, conveyance or encumbrance regardless of whether or not Beneficiary has consented or waived its rights, whether by action, or nonaction, in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more.

9. Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee.

10. This Deed of Trust shall also serve as a financing statement filed for record in the real estate records as a fixture filing pursuant to the Uniform Commercial Code. To the extent applicable, this is a security agreement under the Uniform Commercial Code in which Grantor is debtor and Beneficiary is secured party.

11. If any payment made or to be made under the Guaranty shall constitute a violation of the applicable usury laws, then the payment made or to be made shall be reduced so that in no event shall any obligor pay or Beneficiary receive an amount in excess of the maximum amount permitted by the applicable usury laws.

12. 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 as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to such obligation.

13. After the occurrence of an Event of Default, Grantor consents to and Beneficiary shall be entitled, without notice, without bond, and without regard to the adequacy of the Property as collateral, to the appointment of a receiver for the Property. The receiver shall have all the rights and powers customarily given to and exercised by a receiver of real property appointed pursuant to an agreement in a deed of trust or mortgage after default in payment or performance of the secured obligations. 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.

14. After the occurrence of an Event of Default, upon written request of Beneficiary, Trustee shall sell the Property, in accordance with the Deed of Trust Act of the State of Washington, 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 the



sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto.

15. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter. The 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* purchaser and encumbrancers for value.

16. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy, and when not being foreclosed nonjudicially, Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

17. Beneficiary may appoint, in writing, a successor trustee, and on 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.

18. Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge after due and diligent inquiry, no hazardous or toxic waste or substances are being stored on the Property or any adjacent property nor have any such waste or substances been stored or used on the Property or any adjacent property prior to Grantor's ownership, possession or control of the Property. Grantor agrees to provide written notice to Beneficiary immediately upon Grantor becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Deed of Trust, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.

Grantor shall promptly comply with all statutes, regulations and ordinances which apply to Grantor or the Property, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction by which Grantor is bound, relating to the use, collection, storage, treatment, transportation, disposal, control, removal or cleanup of hazardous or toxic substances in, on or under the Property or in, on or under any adjacent property that becomes contaminated with hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Property, at Grantor's expense. Beneficiary may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest as Beneficiary; and whether or not Grantor has actual knowledge of the existence of hazardous or toxic substances in, on or under the Property or any adjacent property as of the date hereof.

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.



EXECUTED as of the day and year first above written.

GRANTOR:

[John E. Borders]

By:

Name:

Its:

JOHN E. BORDERS

85 CEO

Property Address: 25715 Lake Cavanaugh Road

Mt. Vernon, Washington 98274

EXHIBIT:

Exhibit A - Legal Description

STATE OF WASHINGTON

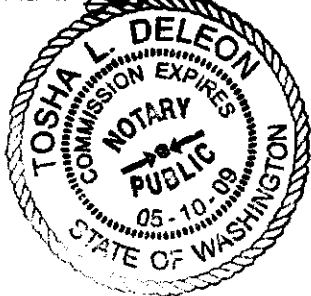
COUNTY OF

Skagit

ss.

I certify that I know or have satisfactory evidence that John Borders is the person who appeared before me, and that said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) is authorized to execute the instrument, and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 21 2007



Notary Public for Washington

(Printed or Stamped Name of Notary)

Residing at

My appointment expires:

5-10-09



EXHIBIT A
LEGAL DESCRIPTION

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Schedule "A-1"

125001-PS

DESCRIPTION:

That portion of the Northeast $\frac{1}{4}$ of Section 17, Township 33 North, Range 5 East W.M., described as follows:

Beginning at the Northeast corner of said Section 17;
thence South $0^{\circ}37'29''$ West, along the East line thereof, 841.89 feet;
thence North $89^{\circ}22'15''$ West, 730.93 feet to the true point of beginning;
thence South $89^{\circ}22'15''$ East, 730.93 feet to the East line of said Section 17;
thence South $0^{\circ}37'29''$ West, along the East line thereof, 556 feet;
thence North $89^{\circ}22'31''$ West, 623.19 feet;
thence South $47^{\circ}00'42''$ West, 897.66 feet to the Northeasterly right-of-way line of Lake Cavanaugh Road;
thence Northwesterly along said line, 691.51 feet to a point which lies South $57^{\circ}02'07''$ West from the true point of beginning;
thence North $57^{\circ}02'07''$ East, 971.16 feet to the true point of beginning.

EXCEPT road and/or rights-of-way.

(Also known as Lot "C" of that un-recorded boundary line adjustment map.)

Situate in the County of Skagit, State of Washington.

John's



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