

NO. 46802-6-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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COURT OF APPEALS  
DIVISION II  
2016 FEB 25 PM 3:54  
STATE OF WASHINGTON  
BY ~~REBECCA~~

CHRISTOPHER GUEST and SUZANNE GUEST,  
Appellants,  
v.  
DAVID LANGE and KAREN LANGE,  
Respondents.

THE COE FAMILY TRUST and TRUSTEE MICHAEL COE,  
Interveners/Respondents,  
v.  
CHRISTOPHER GUEST and SUZANNE GUEST,  
Respondents/Appellants

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CHRISTOPHER GUEST and SUZANNE GUEST,  
Appellants,  
v.  
MICHAEL COE and CAROL CO, and CAROL ANN WHITE and  
JOHN L. WHITE,  
Respondents.

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APPELLANTS' SUPPLEMENTAL REPLY BRIEF APPENDIX

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EXHIBIT	GUEST REPLY APPENDIX No. 46802-6-II TITLE/DESCRIPTION	CLERK'S PAPERS
A	<p>Guest CR 59 Motion for Reconsideration, Amendment and/or to Vacate the Final Judgment, The Jury Verdict, for a New Guest Trial, Vacate the Summary Judgments in the Langes' Favor and Any Other Lange Order, And For The Issuance Of A Mandatory Permanent Guest Removal and Ejection Injunction</p> <p>September 29, 2014</p> <p>E-filed and served on September 29, 2014, but docketed in Pierce County Clerk Court files on September 30, 2014</p>	4912 -4939
B	Declaration of Suzanne Guest In Support of Guest CR59 Lange Motion	4905-4909
C	<p>Plaintiffs' Response, Without Waiver, to Defendants' Motion for Summary Judgment Dismissal of Complaint -</p> <p>Excerpt , Pages 1 - 3, Lange lack of standing , Section D Lange defense, indemnity, hold harmless and release contract</p> <p>Implied Duty of Good Faith and Fair Dealing, With Heightened Duty In any Insurance Contract</p> <p>Errata - Missing Opposition Pages Lange Section D defense, indemnity, hold harmless duties; Langes admit that Section D is a contract that binds them</p>	<p>556 -558</p> <p>603 -609</p> <p>807 - 810</p>

D	<p>CR 56(f) Declaration of Suzanne Guest Postponement of Entry of Summary Judgment Orders Until Discovery Concluded, Denial of Defendants' Motion for Summary Judgment...</p> <p>May 6, 2013 Excerpts only</p> <p>Notice and exemplars of "John E. Tynes" Signatures that the 1987 Recorded Document was a forgery, Nu Dawns Homes, Inc. did not own Lot 5, discovery not concluded, mandatory removal and ejection need to be filed, request to permit supplemental briefing</p> <p>Declaration Ex. 9 and 10</p>	<p>870</p> <p>880 -886</p> <p>924 - 935</p>
E	<p>Guest Lot 5 Title and Deed</p> <p>A copy of the Guests' Lot 5 Title was admitted as Trial Exhibit 28</p> <p>The Langes stipulated prior to trial as an ER 904 stipulation and also at trial that the Lot 5 title that the Guests signed and initialed in November 2004 was the Guests' authentic Lot 5 title</p>	4902
F	<p>Guest Opposition and Objection to Defendants' Presentment of a "Final Judgment" and/or "Judgment for Defendants" and/or Entry of Any Judgment in the Defendants' Favor;</p>	4816 -4836

	Declaration of Suzanne Guest in Support of Guest Opposition	4837-4840
	Errata Missing Exhibit B Declaration of Suzanne Guest In Support of Guest Opposition	4840 -4846
G	Guest Proposed Jury Instructions	4609-4610 (cover)
	<u>Consideration</u> WPI 301.04	4619
	<u>Implied Duty of Good Faith and Fair Dealing</u> - WPI 302.11	4621
	Accepted by Trial Court, But Not Given	
H	Court's Instructions to the Jury	4736 (cover)
	<u>Instruction No. 9</u> Consideration	4747
	<u>Instruction No. 17</u> Court Instruction As A Matter of Law 1987 Recorded Document	4755
I	City of Gig Harbor Ordinance 91 Subdivision Ordinance in effect from 1966 - 1996 Email from City of Gig Harbor confirming that Ordinance 91 was in effect, unchanged, from 1966 - 1996	4609 -4882  4883

J	Spinnaker Ridge Association CC&Rs Excerpt - recorded August 1986 Article 16, Section 16.4	423-424
K	Spinnaker Ridge Association CC&Rs Excerpt - 2007 purported Amended and Restated CC&Rs Article 15, Section 15.4	426-428
L	RCW 64.04.010 Conveyances and encumbrances to be by deed	
M	RCW 4.24.630 Liability for damage to land and property-Damages -Costs- Attorneys' fees - Exceptions	
N	RCW 4.84.184 Prevailing party to receive expenses for opposing frivolous action or defense	

**EXHIBIT A**

September 30 2014 8:30 AM

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NO: 11-2-16364-0

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The Honorable Stanley J. Rumbaugh

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,

Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof,

Defendants.

NO. 11-2-16364-0

**GUEST CR 59 MOTION  
FOR RECONSIDERATION,  
AMENDMENT AND/OR TO VACATE  
THE FINAL JUDGMENT, THE JURY  
VERDICT, FOR A NEW GUEST  
TRIAL, VACATE THE SUMMARY  
JUDGMENTS IN THE LANGES'  
FAVOR AND ANY OTHER LANGE  
ORDER, AND FOR THE ISSUANCE  
OF A MANDATORY PERMANENT  
GUEST REMOVAL AND  
EJECTION INJUNCTION**

THE COE FAMILY TRUST and Trustee  
Michael Coe,

Interveners,

v.

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,

Respondents.

GUEST CR 59 MOTION FOR RECONSIDERATION - 1



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2  
3 CHRISTOPHER GUEST and SUZANNE  
4 GUEST, husband and wife,

5 Third-Party Plaintiffs,

6 v.

7 MICHAEL COE and CAROL COE,  
8 individually and as husband and wife and the  
9 marital community thereof, and CAROL ANN  
WHITE and JOHN L. WHITE, individually  
and as wife and husband and the marital  
community thereof,

10 Third-Party Defendants.

11 **I. RELIEF REQUESTED**

12  
13 Christopher Guest and Suzanne Guest (the "Guests") are CR 59 "Final Judgment"  
14 aggrieved parties.

15 The Guests previously challenged and briefed and preserved the Langes' lack of  
16 standing in this action renewed here by incorporation including, but not limited to, in the Guests'  
17 December 2012 Lange Counterclaim Answer, affirmative defenses and prayer for relief, in the  
18 Guests' proposed Second Amended Complaint, in the Guests' March/April/May 2013 motion for  
19 summary judgment filings and motion hearing arguments which the Guests also renew here by  
20 incorporation, and also in the Guests' September 17, 2014 Opposition and Objection to the entry  
21 of any "Final Judgment" in the Langes' favor.  
22

23 Here, the Guests move pursuant to CR 59 and also pursuant to the full indemnity contract  
24 that the Langes adopted and assumed at trial for reconsideration, amendment, alteration,  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 2



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1 modification and to vacate any and all prior orders, decisions, verdicts and/or judgments in this  
2 action in the Langes' favor.

3 The Guests are filing a separate 'Trust' CR 59 Motion. Both motions will be noted for  
4 hearing on the same day.

5 The Guests' Lot 5 title is not subject to any Lange or Lot 4 owner deck or patio easement  
6 on any part of Lot 5, that no Lange or Lot 4 owner deck easement was conveyed to the Langes  
7 by deed at any time as required by law if any Lange deck easement on Lot 5 could exist, and that  
8 the governing Association and Spinnaker Ridge Development documents including the 1985  
9 Association Articles of Incorporation and the January 31, 1986 recorded Spinnaker Ridge  
10 Development final plat prohibited the grant of any SR Lot deck or other easement on, over,  
11 under and/or "upon" any other SR Lot including prohibiting any Lot 4 deck or other easement on  
12 Lot 5 as admitted by the Langes at trial and as evidenced by the admitted *Guest v. Lange* trial  
13 exhibits.  
14

15 Also, the 1987 ESM recorded purported Lange and/or Lot 4 owner 'patio or deck  
16 easement' did not comply with Washington conveyance of real property or an interest in real  
17 property, deed, final plat, and/or acknowledgment laws and statutes, or the Gig Harbor  
18 Municipal Code in effect in 1985 - 1987, Ordinance 91.  
19

20 In addition, the Guests' Lot 5 RCW 7.28.070 title proved at trial cannot be altered or  
21 modified by the Court, by the Langes or by any other person, entity or individual.  
22

23 Further, the Guests have an absolute right and entitlement under Washington's well-  
24 established traditional "property rule" favoring a titled landowner over any encroacher to a  
25 mandatory Guest permanent removal and ejection injunction permanently removing the Lange  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 3



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1 deck and all Lange personal property from Lot 5 and ejecting the Langes from Lot 5 under the  
2 Washington Supreme Court's 1968-1969 *Arnold* and 2010 *Proctor v. Huntington* opinions as  
3 more fully outlined and addressed below.

4 Moreover, the Court erroneously instructed the jury that the Langes had a right to rebuild  
5 a Lange deck on Lot 5 and to use said deck "as a matter of law" under the 1987 ESM recorded  
6 alleged 'patio or deck easement' materially affecting, interfering with, destroying and damaging  
7 the Guests' substantial property, contract, statutory and constitutional rights including the  
8 Guests' constitutional contract rights.

9  
10 At trial, the Langes abandoned any SR Declaration and/or CC&Rs as any basis for any  
11 Lange deck on Lot 5 and any Lange reliance of any SR Declaration or CC&R, which including  
12 the Langes' abandonment of any reliance on any SR CC&R "deck encroachment easement."  
13 The Langes admitted at trial and notified the jury, the court and the Guests by doing so that any  
14 SR 'deck encroachment easements' CC&Rs had 'nothing to do' with the Lange deck on Lot 5.  
15 Instead, the Langes fatally stipulated, admitted and notified the jury, the court and the Guests at  
16 trial that the Langes were relying entirely, completely and solely on the 1987 ESM recorded  
17 'patio or deck easement' for any Lange deck to be on any part of Lot 5 or for the Langes to be on  
18 any part of Lot 5.

19  
20 Further, the Langes adopted, admitted and assumed the 1987 recorded ESM indemnity  
21 contract, duties and obligations to the Guests as defined by the document itself which prohibited  
22 the Langes from making any claims of filing against actions or suits against the Guests and  
23 required that the Langes provide the Guests with full indemnity, payment, reimbursement and/or  
24 compensation for and/or against any claims, suits, damages, losses, harm, costs, fees and/or  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 4

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17377-1/LCS/635958.1

1 expenses with limit or limitation, without any limiting time period, and without exemption or  
2 exclusion arising out of and/or related to the use and/or utilization of the 1987 ESM recorded  
3 'patio or deck easement' document or any Lot 4 owner or Lange deck or patio on Lot 5 or use of  
4 any such deck or patio.

5 To the extent necessary, the Guests also request a new trial pursuant to CR 59 due to  
6 material prejudicial errors at the July 2014 *Guest v. Lange* trial including, but not limited to, the  
7 court's failure to give the Guests' WPI proposed "breach of the duty of good faith and fair  
8 dealing instruction" to the jury and the court's objected to Jury Instruction that the Langes had a  
9 "right" to rebuild a Lange deck on Lot 5 and to use said deck under the 1987 recorded ESM  
10 'patio or deck easement' "as a matter of law".

11 The Guests request that the Court vacate all orders and/or judgments in the Langes'  
12 favor. Further, the Guests request that the Court issue a mandatory Guest and Lot 5 permanent  
13 removal and ejectment injunction against the Langes and/or any Lot 4 owner permanently  
14 removing any Lange deck and personal property from Lot 5 and permanently ejecting the Langes  
15 from Lot 5.

16 The Guests also request an order from this Court directing the Langes to fully indemnify  
17 the Guests for all past, present and/or future damage, loss, harm, cost, expense and/or fees  
18 incurred and/or sustained - or to be incurred or sustained - by the Guests as the result of, related  
19 to and/or arising out of any claims, lawsuits, actions, damages, losses, harm, costs, expenses  
20 and/or fees related in any way to the use and/or utilization by any person, entity or individual of  
21 the 1987 ESM recorded 'patio or deck easement' document, any Lot 4 owner or Lange deck or  
22  
23  
24  
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26

GUEST CR 59 MOTION FOR RECONSIDERATION - 5



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1 patio on any part of Lot 5 or any use of any Lange or Lot 4 owner deck or patio on Lot 5 at any  
2 time.

## 3 II. SUMMARY OF ARGUMENT

4 Washington's well-established "property rule" favoring titled landowners against  
5 encroachers requires that an encroacher on the land of another – here the Langes - prove by clear  
6 and convincing evidence that they have met and satisfied five (5) test factors *before* a  
7 Washington court may substitute a "liability rule" permitting a court to balance equities for the  
8 traditional Washington absolute "property rule" that ejects an encroacher and removes an  
9 encroaching structure on the titled owner's request by mandatory injunction.  
10

11 In Washington, a titled landowner has an absolute right and entitlement to remove an  
12 encroacher and an encroaching structure from that landowner's property if an encroacher cannot  
13 meet and satisfy *each* of the five factors by clear and convincing evidence. *Proctor v.*  
14 *Washington*, 169 Wash. 2d 491, 238 P.3d 1117 (2010) and *Arnold v. Melani*, 75 Wash. 2d 143,  
15 437 P.2d 908, 449 P.2d 800, 450 P.2d 815 (1968-69)<sup>1</sup>.

17 If an encroacher, here the Langes, does not and/or cannot meet and satisfy all five test  
18 factors, the court's equitable jurisdiction cannot be reached and the court has no discretion to  
19 refuse to issue a requested mandatory removal and ejectment injunction.

20 As recently as September 19, 2014, the Court excused the Langes' admitted  
21 encroachment on the Guests' Lot 5 property at the Lange "Final Judgment" presentment hearing  
22 stating that the jury heard at trial that the SR CC&Rs – that the Langes abandoned and  
23 disavowed at trial and the Guests challenged as invalid permitted the Lange encroachment.  
24 Although the CC&Rs did not permit the encroachment and the Langes abandoned the CC&R  
25

26 <sup>1</sup> These opinions are *stare decisis* for this Court and for the Langes.

1 alleged 'encroachment easement' which would not apply in this instance in any event, the fact  
2 remains that the Langes admitted at trial that there was an encroachment.

3 Under *Proctor* and *Arnold*, the Langes have the burden of proof – if they are even  
4 permitted to challenge the Guests' claims which the Guests deny that they are – to prove all five  
5 (5) identified Supreme Court test factors *before* any court can use any equity or substitute a  
6 "liability rule" for the traditional Washington "property rule" that favors the Guests as the titled  
7 owners of SR Lot 5.  
8

9 The mandatory five (5) test factors that the *Langes* must meet and satisfy by clear and  
10 convincing proof under *Arnold* and *Proctor* post-verdict and post-judgment to avoid the  
11 immediate issuance of a mandatory removal and ejection permanent injunction in the Guests'  
12 favor are:

- 13 1. The Langes as encroacher must prove that the Langes did not  
14 simply take a calculated risk, act in bad faith, *or* negligently,  
15 willfully *or* indifferently locate the encroaching Lange deck  
16 structure on Lot 5 by clear and convincing evidence; *and also*
- 17 2. The Langes must prove by clear and convincing evidence  
18 that the damage to the landowner – here the Guests - was slight  
19 and that the benefit of the removal of their deck from Lot  
20 5 - and themselves - from Lot 5 would be equally small; *and also*
- 21 3. The Langes must also prove that there was ample room for a  
22 Guest structure suitable for the area notwithstanding that there  
23 is a Lange deck on Lot 5, and also prove that there is no real limitation  
24 on the Guests' or any Lot 5 owner future use of Lot 5 property by clear  
25 and convincing evidence; *and also*
- 26 4. The Langes must prove that it is impractical to move the  
Lange deck on Lot 5 as built and Lange personal property  
by clear and convincing evidence as well; *and further*
5. The Langes must prove that there is an enormous disparity  
in the resulting hardships between the Guests and the Langes –

GUEST CR 59 MOTION FOR RECONSIDERATION - 7



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1 by clear and convincing evidence if even reached as the Langes  
2 must prove all four (4) prior test factors first before reaching  
3 Lange test factor 5.

4 In the absence of “clear and convincing” evidence proving *each* of the five mandatory  
5 factors, a court cannot substitute a “liability rule” for Washington’s traditional “property rule” to  
6 provide an encroacher – even a good faith encroacher – the “exceptional relief” of refusing to  
7 enforce the Guests’ private citizen property (and contract) rights for “the benefit of another”  
8 private citizen, here the Langes. See *Arnold* at 152, 449 P.2d 800, 450 P.2d 815, cited by the 5 to  
9 4 *Proctor* dissent, *Proctor* at 1124.

10 The Court’s “equitable jurisdiction” cannot even be reached in this instance or in this  
11 action with regard to the Langes and the Lange deck, including any equitable jurisdiction with  
12 regard to the Lange quiet title counterclaim which it is undisputed the jury did not reach and was  
13 not part of the jury’s verdict. It is undisputed that the Langes’ trespass counterclaim against the  
14 Guest was dismissed with prejudice.

15 In order to reach any court quiet title equity jurisdiction, the Langes would have had to  
16 overcome their lack of clean hands, overcome their adoption and assumption of full indemnity to  
17 the Guests at trial and the submission and admission of the 1987 ESM ‘patio or deck easement’  
18 indemnity document at trial, *and* meet and satisfy all five (5) mandatory *Arnold* and *Proctor* test  
19 factors by clear and convincing evidence which the Langes cannot do.

### 22 III. STATEMENT OF RELEVANT FACTS AND PROCEDURE

23 As titled landowners, the most the Guests had to show at trial or otherwise by the  
24 preponderance of the evidence is only one or more of the following, which the Guests have done:

25 (1) the Guests owned SR Lot 5;

26 GUEST CR 59 MOTION FOR RECONSIDERATION - 8



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1 (2) the Guests had title to Lot 5;

2 (3) the Langes did not own or have any title to Lot 5; and

3 (4) the Langes were encroaching on Lot 5 and the Guests objected to the encroachment.

4 See Trial Exhibit 28 (the Guests' Lot 5 title), and Trial Exhibit 20 (the January 31, 1986  
5 recorded Spinnaker Ridge Development final plat).

6 The Guests preserved their right to seek a permanent mandatory injunction from this  
7 Court in all versions of every Guest Complaint and also in the Guests' 2012 Answer, Affirmative  
8 Defenses and Prayers for Relief in response to the Lange Counterclaims – an answer, defenses  
9 and prayers for relief that this court has never reached.

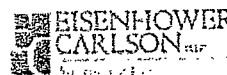
10 The Guests seek that permanent mandatory injunction from this Court today preserving  
11 all Guest rights. The Lange trial admissions, the admitted trial evidence and exhibits and the  
12 Lange trial stipulations as well as the court's post-trial rulings support the Guests' right and  
13 entitlement to the requested mandatory Guest permanent removal and ejection injunctions.

14 As outlined above, the Guests do not have any mandatory injunction burden of proof.  
15 Only the Langes have a mandatory injunction burden of proof, and that burden is a high one.  
16 The injunction is a mandatory injunction because the court does not have the discretion under  
17 any circumstance to refuse to issue the injunction on request if the Langes in this instance cannot  
18 meet and satisfy all five *Arnold* and *Proctor* test factors and even then refusal and denial is not  
19 certain. The Guests will address each factor below.

20  
21  
22  
23 **1. THE FIRST TEST FACTOR:  
LANGES FAIL:**

24 **The Langes took a "calculated risk", acted in bad faith  
25 or negligently, willfully or indifferently located the encroaching  
26 Lange structure on Lot 5.**

GUEST CR 59 MOTION FOR RECONSIDERATION - 9



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1 The Langes cannot meet or satisfy the first *Proctor* and *Arnold* test factor by clear and  
2 convincing evidence to even reach the second test factor or the equity jurisdiction of the court.

3  
4 The Langes did take a “calculated risk” that the Guests would not sue to remove the  
5 Lange deck on Lot 5. The Langes used their position as SR Trustees, Board members and SR  
6 Officers and corralled other SR Board buddies to support them – and defeat the Guests - for their  
7 own personal benefit and advantage as part of a plan to steal part of the Guests’ Lot 5 land.

8 The Langes did act in bad faith to and towards the Guests as established by Lange  
9 documents that the court would not admit at trial including Karen Lange’s April 2011 email to  
10 her adult son Mark Zoske that the Langes did not “give a damn” about the Guests or the Guests’  
11 loss of part of their Lot 5 land, the Guests’ rights or what the Langes had done to the Guests, the  
12 Langes just loved their new deck so much. Clear evidence of bad Lange animus and Lange bad  
13 faith, as well as willful, indifferent and at a minimum negligent behavior and conduct locating  
14 the encroaching – objected to - Lange deck on Lot 5. See September 29, 2014 *Declaration of*  
15 *Suzanne Guest* in support of this Motion.  
16

17  
18 The Langes admitted at trial that the Langes knew in 1993 when the Langes purchased  
19 SR Lot 4 that there was no Lot 4 deck or any other easement on any part of Lot 5. The Langes  
20 also admitted at trial that no deck or any other easement on Lot 5 was conveyed to the Langes by  
21 deed. At trial, David Lange admitted that the Langes’ deck on Lot 5 had ‘nothing’ to do with  
22 any easement on any part of Lot 5.

23 At trial, the Langes also admitted at trial that any SR CC&R ‘deck encroachment  
24 easement’ had ‘nothing to do with this case’ instructing and directing the jury, the court and the  
25 Guests to disregard the SR CC&Rs and any SR governing documents, including the SR  
26



1 Association Articles of Incorporation and the January 31, 1986 recorded SR Development final  
2 plat, that the only thing that mattered was the 1987 ESM recorded alleged 'patio or deck  
3 easement' and nothing else.

4 The evidence at trial demonstrated that the Langes knew before the Langes built their  
5 new deck on Lot 5 in April 2011 that the Guests objected to any deviation from the Guest and  
6 ACC March 14, 2011 approved Lange deck plans, clearly taking a calculated if not a knowing  
7 risk that the Langes were wrong and that the Guests would not sue. The undisputed evidence at  
8 trial was that the Guests hired an attorney to serve a "cease and desist" notice on the Langes on  
9 April 8, 2011 to stop all Lange deck construction on any part of Lot 5 but the Langes ignored  
10 that cease and desist notice and continued to build their new deck on Lot 5 in the Guests'  
11 absence.  
12

13 When the Guests sued the Langes in September 2011 by serving a *Guest v. Lange*  
14 complaint on the Langes through Lange counsel David Gordon, the Langes responded through  
15 David Lange that they were "disappointed" that the Guests had sued them. The Langes inquired  
16 through Lange counsel on September 23, 2011 after David Gordon had been in contact with the  
17 Langes could Lange counsel "assume that a settlement acceptable to the Guests would have us  
18 go back to their version of the **settlement**" they Guests alleged they had with the Langes in the  
19 Complaint (emphasis in bold added). See May 6, 2013 Guest Declaration, ¶¶ 30 -34, and  
20 attached Dec. exhibit 5; and September 29, 2014 *Guest Declaration*.  
21

22 Further, the Langes admitted at trial that the Langes knew before they built the Lange  
23 2011 new deck on Lot 5 that they had to obtain a Lot 4 survey before construction but did not do  
24 so. Also, the Langes admitted at trial that Karen Lange had raised the issue of Lot 5 "privacy"  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 11



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1 with the Guests and that there were Guest "privacy" discussions between the parties before the  
2 Langes obtained the Guests' approval of the Langes new deck plans in March 2011.

3 The Guests testified at trial and below that the Langes notified the Guests in September  
4 2011 within a week of the Guests moving into 6833 Main Sail Lane, Lot 5 that the Langes and  
5 the Lange deck was "encroaching" on the Guests' Lot 5 land and property approximately 5 feet  
6 wide and 30 feet long down the length the Guests' home on the west side of Lot 5 but not to  
7 worry, the Langes would remove the deck in Spring 2011 when they tore down their deck to  
8 build a new one and would not put it back on Lot 5.

9  
10 The Langes admitted at trial that Nu Dawn Homes Limited Partnership and SeaFirst  
11 Mortgage Corporation were the joint fee simple titled owners of the Spinnaker Ridge  
12 Development real property and Lot 4 and Lot 5. "Nu Dawn Homes Incorporated" was not the  
13 owner of Lot 5. The Langes admitted at trial that there was no Lot 4 deck or any other easement  
14 on any part of Lot 5. The Langes did not challenge or dispute that the Guests' title to Lot 5 was  
15 not subject to any Lot 4 owner patio or deck easements on Lot 5 at trial.

16  
17 In addition, the Langes admitted at trial that David Lange knew what the word "vacated"  
18 meant when he wrote the words "vacated" easement on the graph paper new deck drawing that  
19 David Lange had prepared, but that he 'regretted' he had used that word. The Langes admitted  
20 at trial that the Langes had presented the same Lange deck drawings and plans to the ACC on  
21 March 12, 2011 and March 14, 2011 that the Guests had seen and had approved, and that the  
22 Langes had asked the ACC to approve the same plans which the ACC did. David Lange also  
23 admitted at trial that the ACC was composed of multiple members and not one member yet he  
24  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 12



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1 only spoke to one member, the ACC Chair, and that the Langes did not return to the ACC as  
2 required to notify the ACC – and the Guests – that the Langes’ deck plans had changed.

3 The Guests have no burden to show that the Langes took a calculated risk in 2011 and at  
4 all times thereafter with regard to their deck, or that the Langes were negligent (not reached at  
5 trial as the Court would not allow the Langes’ negligence to reach the jury for decision), willful  
6 or indifferent. Again, it is the *Langes’* burden to prove the negative by clear and convincing  
7 evidence – that they did not take a calculated risk, that they did not act in bad faith, or that they  
8 were not negligent, indifferent or willful a burden they cannot meet or satisfy under the  
9 undisputed facts and Lange trial and other admissions.  
10

11 Having failed to meet and satisfy test factor one, the second test factor is not reached and  
12 the Guest requested mandatory injunction must issue.

13  
14 **2. SECOND LANGE TEST FACTOR:  
THE LANGES FAIL**

15 **The Langes must prove by clear and convincing evidence that**  
16 **the damage to the Guests was and is ‘slight’, and that the benefit**  
17 **to the Guests of removal and ejection would be ‘equally slight’.**

18 If reached, the Langes cannot prove by clear and convincing evidence that the Lange  
19 deck, personal property and presence on Lot 5 damage to the Guests was and is slight, or that  
20 removal of the deck and personal property and ejection of the Langes from Lot 5 would be  
21 equally slight. Again, it is the Langes’ burden under *Arnold* and *Proctor* to prove by clear and  
22 convincing evidence this test factor which the Langes cannot do not only under the trial evidence  
23 but also the underlying facts and circumstances. In March 2011, David Lange told the ACC that  
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GUEST CR 59 MOTION FOR RECONSIDERATION - 13



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1 he would personally stop the Guests from building the Lot 5 deck that the Guests' intended to  
2 build on their own land, and the Guests that he would stop them.

3 It is undisputed that the Guests have paid over \$40,000.00 in out of pocket in attorneys'  
4 fees, litigation and Lange deck related costs and expenses still increasing, that it was painful to  
5 the Guests, that the Guests had altered their daily living because of the Lange deck on Lot 5 and  
6 the Langes' use of that deck and presence on Lot 5 and that Suzanne Guest felt like a prisoner as  
7 a result. Real property expert appraiser Edward Greer testified at that the "loss of value", "loss  
8 of privacy" and "loss of use" resulting from the Lange dock on Lot 5 and encroachment was over  
9 \$25,000.00. The Guests had intangible damages. Dennis Moore testified that the Guests spent  
10 over \$3,700.00 because of water damage to the Guests' Lot 5 home on the west side where the  
11 Lange deck was which was probably caused by the Langes bubbler and watering system under  
12 the Langes' deck and on the Guests' Lot 5 land.

13  
14  
15 Guests had a duty and obligation to "give" real property and land to the Langes that the  
16 Guests had purchased under Washington real property law. The Langes cannot do that.

17 The Langes cannot meet the second *Arnold* and *Proctor* test factor.

18 Having failed to meet – and being unable to meet - the second *Arnold* and *Proctor* test  
19 factor, the Langes have failed and cannot proceed to the third *Arnold* and *Proctor* test factor.

20 The damage continues. The Langes to date have stopped the Guests from completing  
21 their Lot 5 deck and have prevented the Guest from full use and enjoyment of their Lot 5 land,  
22 preventing the Guests from enjoying the Lot 5 Puget Sound, Commencement Bay and Calvos  
23 Passage water view that the Guests purchased in 2004 appropriating it for themselves. See April  
24  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 14



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1 8, 2013 Kaye Bickford Declaration with attached exhibits previously filed herein and prior Guest  
2 Declarations.

3 The Langes did not provide any evidence at trial or otherwise that removal of the Langes'  
4 deck from Lot 5 would not benefit the Guests. It was evident from the Guests' trial testimony  
5 that removal of the Langes and the Langes' deck from Lot 5 would result in great benefit to the  
6 Guests.  
7

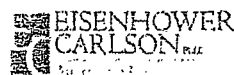
8 The Langes only have themselves to blame for the situation that the Langes face today.

9 At trial, the Langes admitted that they are the Guests' deck and 'easement' indemnitors  
10 adopting and assuming the 1987 ESM recorded indemnity contract and indemnity duties and  
11 obligations to the Guests defined by the plain, clear and unambiguous words in that indemnity  
12 document. That indemnity contract, by its own words, requires that the Langes refrain from  
13 making any claims against the Guests for filing any action or lawsuit against the Guests or seek  
14 any money, relief, remedy, judgment and/or recovery against the Guests. That indemnity  
15 contract, and those Lange indemnity duties and obligations are:  
16

- 17 (1) perpetual;
- 18 (2) without limit or limitation,  
19 not limited or restricted in any way by dollar amount,  
20 scope, nature, type of indemnity (i.e. removal of the Lange deck is included)  
21 or time period;
- 22 (3) without exclusion;
- 23 (4) without exemption;
- 24 (5) without condition or parameter other than as related to and/or arising out  
25 of the construction and/or use of a patio or deck on part of Lot 5  
26 and/or the use and/or utilization of the patio or deck 'easement';

and

GUEST CR 59 MOTION FOR RECONSIDERATION - 15



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1  
2 (6) with no reservation of any Lange or Lot 4 owner right, ability, power or  
3 opportunity to challenge, dispute, litigate, appeal and/or deny any Guest  
4 Lange indemnity claim and/or cause of action or to fail to pay, reimburse,  
indemnify or compensate the Guests for any Guest indemnity claims, damages  
fees, costs, expenses and/or loss.

5 The Langes cannot meet test factor two under the evidence and facts and therefore cannot  
6 proceed to test factor three.

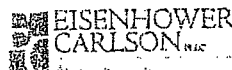
7 **3. THIRD TEST FACTOR:**  
8 **LANGES FAIL**

9 **The Langes must prove by clear and convincing evidence**  
10 **that there is room for a Guest structure suitable for the area**  
11 **where the Lange deck sits on Lot 5, and that the Lange deck**  
12 **and the Langes' presence on Lot 5 does not limit the Guests'**  
13 **use of Lot 5 in any way or any future use of Lot 5.**

14 As above, the Langes cannot meet or satisfy test factor three under the facts and  
15 evidence. It is the Langes' sole burden to prove by clear and convincing evidence that the  
16 Langes' deck on Lot 5 and/or the Langes' presence on Lot 5 does not impede or impair the  
17 Guests ability to locate a suitable structure on that area of Lot 5 or that the Lange deck on Lot 5  
18 does not limit the Guests' use, enjoyment and possession of their Lot 5 land or limit the future  
19 use of Lot 5 in the future to avoid the issuance of a mandatory removal and ejection injunction.

20 The undisputed evidence is that the Langes have impaired and impeded the Guests' use  
21 of the entirety of Lot 5, have interfered with the Guests' ability to enjoy the Lot 5 water view that  
22 the Guests' purchased in 2004 and that the Langes have prevented the Guests from completing  
23 the Guests' Lot 5 deck on Lot 5, with identifiable limit on the Guests' and any other future use of  
24 the entirety of Lot 5.

25  
26  
GUEST CR 59 MOTION FOR RECONSIDERATION - 16



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1 Having failed to meet test factor three, the Langes cannot proceed to test factor four or  
2 avoid issuance of a mandatory permanent removal and ejection injunction.

3 **4. FOURTH TEST FACTOR:**  
4 **LANGES FAIL**

5 **The Langes would have to prove by clear and convincing admissible evidence**  
6 **that it was not practical to remove the Lange deck and personal property**  
7 **from Lot 5 or for the Langes not to be on Lot 5.**

8 The Langes cannot meet or satisfy test factor four and therefore cannot proceed to the last  
9 factor or avoid the issuance of a mandatory permanent injunction removing the Lange deck and  
10 personal property from Lot 5 and ejecting the Langes from Lot 5.

11 The Langes' deck installer, Jerry Bannister, testified by telephone at trial.

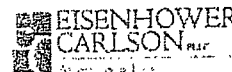
12 Jerry Bannister testified consistently with his 2013 *Guest v. Lange* deposition which was  
13 published at trial and is of record in this case, along with the original David Lange deposition  
14 transcript and the two volumes of Karen Lange's deposition transcript also of record.

15 Jerry Bannister testified in 2013 and at trial that he is a licensed Washington contractor  
16 specializing in deck construction. He testified that it would take no more than 1 to 2 days and  
17 approximately \$1,200 to completely remove the Lange deck from Lot 5 in a safe and complete  
18 manner and reconfigure the Lange deck to be entirely and solely on Lot 4 in a completely safe  
19 manner. It was not a big deal. Mr. Bannister testified at trial that he had reconfigured decks  
20 before.  
21

22 Removing the Lange deck and Lange personal property from Lot 5 is quick, easy,  
23 practical and inexpensive.

24 The Langes cannot meet or satisfy test factor four.  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 17



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1           5.       **FIFTH TEST FACTOR:**  
2                   **LANGES FAIL**

3                   **The Langes would have to prove by clear and convincing**  
4                   **and admissible evidence that the only hardship is Lange**  
5                   **hardship, if any – no Guest hardship if the deck remained**  
6                   **on Lot 5.**

7           The Langes cannot reach test factor five and even if arguendo they did, the Lange could  
8           not meet their high burden of proof that the Langes would suffer hardship if the Lange deck, the  
9           Lange bubbler and watering system and Lange personal property was removed from Lot 5 and  
10          the Langes were ejected from Lot 5. After all, the Langes notified and promised the Guests in  
11          September 2010 that they were going to remove the Lange deck and personal property, and  
12          themselves, from Lot 5 in Spring 2011 and would not build a new Lange deck on Lot 5 again.

13                                   **IV.     ISSUES PRESENTED**

14                   1.       Whether the Langes have any standing in this case as a threshold matter under the  
15          Lange adopted indemnity agreement and contract to any relief, remedy or judgment in this action  
16          of any kind or any right or standing to challenge, dispute, or deny any Guest claim or cause of  
17          action and/or fail to pay and indemnify the Guests for any and/or all Guest loss, damages, claims,  
18          fees, costs and/or expenses?  
19

20                   2.       Whether the Langes can meet and satisfy all five (5) *Arnold* and *Proctor v.*  
21          *Huntington* mandatory injunction factors by clear and convincing evidence as a threshold matter  
22          to permit the court to substitute a “liability rule” for the traditional Washington absolute  
23          “property rule” mandating the issuance of a permanent court injunction removing and ejecting  
24          the Langes and any Lange deck from Lot 5?  
25  
26



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V. EVIDENCE RELIED UPON

The filings and records herein, the *Guest v. Lange* admitted trial exhibits, the *Guest v. Lange* trial evidence, Lange trial and other admissions, Lange trial and other stipulations, any and all declarations on file herein, Suzanne Guest's September 29, 2014 Declarations with any attached exhibits and all motion arguments in the case as well as the published deposition transcripts in the record herein.

VI. AUTHORITIES

An indemnity contract or agreement by Washington law and statute is by definition an insurance contract. *See* RCW 48.01.040 (insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies).

The Langes knew that an indemnity contract and agreement was an insurance contract under Washington law when the Langes made the decision in 2013 to adopt and assume the 1987 ESM indemnity contract not only in 2013 at the summary judgment stage of these proceedings but also in July 2014 at the *Guest v. Lange* trial. In May 2014, before trial, the Guests provided the Langes with a copy of a December 2012 nationally published New York Times Opinion article entitled "Those Crazy Indemnity Forms We All Sign" annotated by Guest as Guest JSE Exhibit 91. The Langes did not challenge or dispute the authenticity of that published article. That article put the Langes on notice and made it clear prior to trial - before the Langes adopted and assumed the risk of the 1987 ESM full indemnity contract to the Guests as titled Lot 5 owners again at trial - that the 1987 ESM indemnity contract was insurance, and that the Langes would be a "regular Lloyd's of London" if assumed. By admission and voluntary adoption and assumption of the 1987 ESM indemnity contract at trial, the Langes made the indemnity

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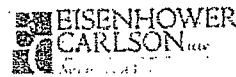
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1 agreement and contract enforceable against themselves. The Langes have no one but themselves  
2 to blame for the indemnity situation that the Langes face today. The terms of that Lange  
3 assumed indemnity are outlined and governed by the plain, clear and unambiguous words in the  
4 1987 recorded ESM document, indemnity terms, duties and obligations that the Guests cautioned  
5 the Langes about in January 2011 as evidenced by Guest's trial testimony.  
6

7 The Langes knew that an indemnity contract was an insurance contract when the Langes  
8 invited error at the *Guest v. Lange* trial and persisted in the position that the 1987 ESM recorded  
9 'patio or deck easement' document with its indemnity contract was a valid document. The  
10 Langes knew that the 1987 ESM recorded document was not valid before trial. The Langes and  
11 Lange counsel knew before trial – and at trial – that “Nu Dawn Homes Incorporated” did not  
12 own SR Lot 5 and that Nu Dawn Homes Incorporation was not the Spinnaker Ridge developer.  
13 In fact, the Langes repeatedly admitted at trial that Nu Dawn Homes Inc. did not own Lot 5, Nu  
14 Dawn Homes Limited Partnership and SeaFirst Mortgage Corporation did. The Langes also  
15 admitted at trial that the Langes knew in 1993 before they purchased Lot 4 that no Lot 4 deck or  
16 any other easement existed on any part of Lot 5 existed, and that no Lot 4, Lot 4 owner or any  
17 Lange deck easement on any part of Lot 5 was ever conveyed to the Langes by deed. *See* David  
18 Lange April 5, 2013 published deposition transcript in the record herein, and Lange admissions  
19 at trial.  
20

21 Yet the Langes nonetheless voluntarily adopted and assumed the 1987 ESM indemnity  
22 contract at trial and admitted at trial that they had the duty and the obligation to indemnify the  
23 Guests for any use and/or utilization of any Lange deck, any Lange deck alleged easement or the  
24 1987 ESM recorded document according to its terms, words and provisions.  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 20



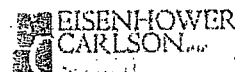
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1 In April/May 2013, Judge Culpepper ruled that any and all of his orders and/or judgments  
2 were subject to revision, modification and vacation at any time, not only prior to trial, during  
3 trial but also after trial and of course after judgment by discovery of additional facts or law. In  
4 May 2013, Judge Culpepper ruled that if the easement was not an easement, it was not an  
5 easement notwithstanding that the 1987 ESM document had the word easement on it and  
6 notwithstanding his own rulings. See September 29, 20-14 Declaration of Suzanne Guest and  
7 prior Guest filings in this action including the Guests Notice of Lange April 2013 partial  
8 summary judgment admissions.  
9

10 David Lange admitted at trial that the word "exclusive" did not exist in the 1987 ESM  
11 recorded alleged Lot 5 'deck easement' purportedly granted to Lot 4 owners. There were no  
12 words in that 'easement' document that any alleged Lot 5 easement 'ran with the land'. There  
13 were no words in that 1987 document that bound any future Lot 5 owners, successors or assigns.  
14 An easement "in gross" to a person and not on the land itself does not run with the land and is  
15 revocable by a subsequent owner as here. The Guests revoked any permission that the Langes  
16 had to build any deck on any part of Lot 5, to be on any part of Lot 5 or to use any deck on any  
17 part of Lot 5. The Langes are encroachers.  
18

19 The Langes invited error at trial, are bound by that invited error and must accept the  
20 consequences of that error – the jury's verdict was based on false facts and false law and must be  
21 undone and vacated leaving only the Langes' admissions and assumption of full indemnity to the  
22 Guests.  
23  
24  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 21



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1 The jury's verdict was not supported by the evidence. At trial, David Lange correctly  
2 admitted to the jury, to the court and to the Guests in open court – as he had in April 2013 - that  
3 the Lange deck on Lot 5 had 'nothing to do' with any easement.

4 The Langes repeatedly admitted at trial that there was no Lot 4 easement on any part of  
5 Lot 5, repeatedly admitting that the January 31, 1986 recorded Spinnaker Ridge Development  
6 final plat disclosed and revealed that there was no Lot 4 easement of any kind on any part of Lot  
7 5, and that the Spinnaker Ridge Developer and the two fee simple title owners of the Spinnaker  
8 Ridge Development real property and all SR Lots were (1) Nu Dawn Homes Limited Partnership  
9 and SeaFirst Mortgage Corporation, and no other, i.e. not Nu Dawn Homes Incorporated or Inc.  
10 See also RCW 58.17.165 and *Halverson v. City of Bellevue*, 41 Wn. App. 457, 704 P.2d 1232.  
11

12 By Washington law, every subdivision final plat filed of record must contain a certificate  
13 giving the full and correct description of the lands divided identifying all the owners of the real  
14 property who have given free consent to the division with any dedication, as here, signed and  
15 acknowledged before a notary as a deed "by all parties having any ownership interest in the lands  
16 subdivided and recorded as part of the final plat". RCW 58.17.165 and Gig Harbor Municipal  
17 Code (GHMC) in effect from 1966 through 1996, 5.0 through 15.0 attached to *Declaration of*  
18 *Suzanne Guest* in support of the Guest CR 59 Trust Motion.  
19

20 As evidenced by Trial Exhibit 20 admitted at trial, Nu Dawn Homes Inc. identified as the  
21 owner of Lot 5 in the incomplete and invalid 1987 ESM 'deck easement' did not own SR Lot 5,  
22 Nu Dawn Homes Limited Partnership owned SR Lot 5 a separate legal entity. The platting  
23 statute requires the consent of and the identification of *all* owners of the divided real property on  
24 the final plat, with all easements and all property lines of all residential lots, along with the  
25  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 22



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1 location, dimension and purpose of any easement, to prevent future title disputes. *Halverson* at  
2 460.


3 The legislative bodies have the sole authority to approve final plats and to adopt or  
4 amend any platting ordinances, not the courts. Any decision approving a final plat is reviewable  
5 by a superior court by a "writ of review" but only if an application to review the approval of a  
6 final plat and the identity of the real property owners on the plat is made to the court within 30  
7 days of a city's decision to approve the final plat which did not occur here. Any "writ to  
8 review" the Spinnaker Ridge final plat would have had to have been filed by February 1986  
9 more than two decades ago.

10  
11 Respectfully, this Court had and has no authority to alter the identity of the owners of SR  
12 Lot 5 and the Spinnaker Ridge Development real property by instructing the jury in 2014 twenty  
13 eight (28) years after approval and recording of the SR final plat that the 1987 ESM recorded but  
14 defective Lot 5 'deck easement' gave the Langes any "right" to build a deck on any part of Lot 5  
15 or to use any deck on any part of Lot 5 under Washington law. *See Halverson* at 461.

16  
17 The Langes' indemnity duties and obligations to the Guests are not limited to the  
18 payment of money. Indemnity, as in this case and instance, also requires whatever it takes to  
19 compensate for and/or remediate the damage and loss. In this instance, remediation and  
20 compensation not only paying the Guests money it also take the form of immediate and  
21 permanent removal of the Lange deck and any Lange personal property from Lot 5 and the  
22 permanent ejection of the Langes from Lot 5.

23  
24 The Langes indemnity duties and obligations to the Guests are permanent and perpetual.  
25 They cannot be changed. The Court cannot add or insert any words into the 1987 indemnity  
26

GUEST CR 59 MOTION FOR RECONSIDERATION - 23

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1 contract that the Langes voluntarily adopted at trial. There is no ambiguity in the 1987  
2 indemnity words and language. Without ambiguity, no extrinsic evidence if any can be  
3 considered.

4 With full Guest indemnity, the Langes cannot obtain any relief, remedy, money or  
5 judgment against or from the Guests. With fully indemnity, the Langes cannot sue the Guests or  
6 file any claims against the Guests. With full indemnity, the Langes must indemnify and pay the  
7 Guests for any claims, suits, causes of action, orders, decisions, acts, omissions, verdicts and/or  
8 judgments brought against, entered, and/or obtained regarding the Guests by any person, entity  
9 or individual.

10  
11 Without waiver of the Langes' lack of standing and therefore the court's lack of  
12 jurisdiction over any Lange challenge, dispute, denial or request for any relief, remedy, order or  
13 judgment in this case, even if the Langes had the threshold right, ability, power or opportunity to  
14 defense or assert any claims in this case the Langes could still not meet and satisfy the threshold  
15 required five *Arnold* and *Proctor v. Huntington* factors by clear and convincing evidence to  
16 permit the court to even substitute a "liability rule" for the Washington traditional absolute  
17 "property rule" that entitles the Guests to a permanent mandatory injunction from this court  
18 compelling the immediate removal of the Lange deck from Lot 5 and all Lange personal property  
19 and permanently ejecting the Langes from Lot 5 at the Langes' cost and expense.

20  
21 Given that the Langes cannot meet the *Arnold* and *Proctor* factors, the court's equity  
22 jurisdiction is not reached and the court has no discretion: the mandatory injunctions requested  
23 by the Guests must issue as a matter of law and a matter of right.  
24  
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GUEST CR 59 MOTION FOR RECONSIDERATION - 24

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1 A trial court cannot grant the “exceptional relief” in an “exceptional case” which this is  
2 not by refusing to enforce a private citizen’s property right for the benefit of another private  
3 citizen without “clear and convincing” evidence that all five *Arnold* and *Proctor* requirements  
4 are met. The protection of private property rights – as here - is a “sacred right” that exists in a  
5 free society and in Washington State. *Arnold* at 152, *Proctor*, dissent at ¶25, 1124.

6 The ability to use a “liability rule” in the place of the traditional absolute “property rule”  
7 is a narrow exception to the rule that property rights are enforced in Washington State. An  
8 encroacher, here the Langes, must prove each of the five *Arnold* requirements by clear and  
9 convincing evidence. A few inches is a “slight” loss. The loss not only of a 5 foot wide x 30  
10 foot long strip of Lot 5 land with a Puget Sound water view – and the Langes blocking the  
11 Guests from finishing the Guests’ Lot 5 deck - is not a “slight loss”. *Proctor* ¶29. Webster’s  
12 Third New International Dictionary 2142 (2002) defines “slight” as “small of its kind or in  
13 amount: scanty, meager” and “something (as an amount, quantity, or matter) that is slight or  
14 insignificant”.

## 17 VII. CONCLUSION

18 The Guests respectfully request that the Court reconsider its orders and judgments in the  
19 Langes’ favor, vacate those orders and the jury’s verdict and/or order a new Guest damages trial,  
20 and issue an immediate mandatory injunction permanently removing the Lange deck and any  
21 Lange personal property from Lot 5, enjoining and prohibiting any other Lot 4 owner from  
22 constructing any deck or any patio on any part of Lot 5 and permanently ejecting the Langes  
23  
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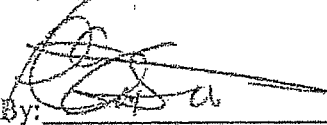
GUEST CR 59 MOTION FOR RECONSIDERATION - 25

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1 from Lot 5 and enjoining and/or prohibiting any other Lot 4 owner from being on Lot 5 or using  
2 any deck or patio on Lot 5.

3 DATED this 27 day of September, 2014.

4 EISENHOWER CARLSON, PLLC  
5   
6 By: \_\_\_\_\_  
7 L. Clay Selby, WSBA # 26049  
8 Stuart C. Morgan, WSBA # 26368  
9 Attorneys for Christopher and Suzanne Guest  
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VERIFICATION

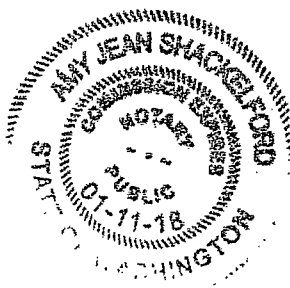
STATE OF WASHINGTON )  
County of PIERCE ) ss.

The undersigned, being first duly sworn, on oath depose and say that (a) they are the Plaintiffs in the above-entitled matter; (b) they have read the foregoing Verified CR 59 Motion to Vacate; and (c) know the contents thereof and believes the same to be true.

Christopher Guest  
CHRISTOPHER GUEST

Suzanne Guest  
SUZANNE GUEST

SIGNED AND SWORN to before me on this 29<sup>th</sup> day of September 2013, by Christopher Guest and Suzanne Guest.



Amy Jean Shackelford  
Signature of Notary Public  
AMY JEAN SHACKELFORD  
Name of Notary Public  
NOTARY PUBLIC  
1-11-18  
My Appointment Expires

GUEST CR 59 MOTION FOR RECONSIDERATION - 27



1200 Wells Fargo Plaza  
1201 Pacific Avenue  
Tacoma, WA 98402  
T 253.472.1500  
F 253.474.5712  
www.eisenhowercarlson.com

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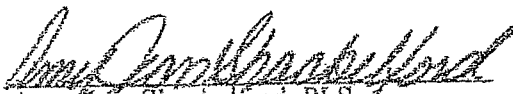
**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

John Burleigh Burleigh Law, PLLC 3202 Harborview Dr. Gig Harbor, WA 98335-2125	<input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email <input type="checkbox"/> Facsimile
---	--

DATED this 17th day of September 2014 at Tacoma, Washington.

  
Amy Jean Shackelford, PLS  
Legal Assistant to Stuart C. Morgan

**EXHIBIT B**

September 29 2014 4:30 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 11-2-16364-0

The Honorable Stanley J. Rumbaugh

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,  
Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof,  
Defendants.

NO. 11-2-16364-0  
DECLARATON OF SUZANNE GUEST  
IN SUPPORT OF GUEST CR59  
LANGE MOTION

THE COE FAMILY TRUST and Trustee  
Michael Coe,  
Interveners,

v.

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,  
Respondents

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,  
Third-Party Plaintiffs,

v.

MICHAEL COE and CAROL COE et al.  
Third-Party Defendants.

DECLARATION OF SUZANNE GUEST  
IN SUPPORT OF GUEST CR59 TRUST MOTION - 1

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DECLARATION

I, Suzanne Guest, declare, certify and testify upon my oath under the laws of perjury of the State of Washington as follows:

1. I am a party to the *Guest v Lange et al* action.


2. I am over the age of eighteen, competent to testify, declare and certify and have personal knowledge of the following statement and facts which are true and correct.

3. All facts asserted in the Guest CR59 Lange Motion are true and correct.

4. Attached hereto as Exhibit 1 is a true and correct copy of David Gordon's September 23, 2011 email to the Nold law firm referred to in the Guest CR 59 Lange Motion.

5. Attached hereto as Exhibit 2 is a true and correct copy of the December 2012 New York Times nationally published Opinion article entitled "Those Crazy Indemnity Forms We All Sign" that I produced and provided to the Langes and to Lange counsel in May 2014 prior to trial and that the Langes and Lange counsel stipulated was authentic.

EXECUTED on this 29<sup>th</sup> day of September, 2014 at Gig Harbor, Washington.

  
Suzanne Guest  
6833 Main Sail Lane  
Gig Harbor, Washington 98835  
(253) 495-1244

DECLARATION OF SUZANNE GUEST  
IN SUPPORT OF GUEST CR59 TRUST MOTION - 2

Jodi Graham

From: Dave Gordon [dave@davegordonlaw.com]  
Sent: Friday, September 23, 2011 3:32 PM  
To: 'Jodi Graham'  
Subject: RE: David and Karen Lange

Jodi:

Please let Brian Muchinsky know that I have forwarded your email, along with his letter and his summons and complaint to the Langes (who will be very disappointed that your clients have taken this step). Please advise him that I have asked Langes to authorize me to accept service and I will let you/him know promptly what they will allow me. May I assume that a settlement acceptable to the Guests would have us go back to their version of the settlement they allege with the Langes?

David Gordon  
7525 Pioneer Way, Suite 101  
Gig Harbor, WA 98335  
(253) 858-6100  
(253) 858-9747  
dave@davegordonlaw.com

Note: This e-mail transmission and any documents accompanying it may contain confidential information which is protected by the attorney-client privilege or other grounds for confidentiality or nondisclosure. If you are not the intended recipient of the transmitted information, you are hereby notified that disclosing, copying, distributing, or taking action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender and then delete the information.

From: Jodi Graham [mailto:jgraham@noldmuchlaw.com]  
Sent: Thursday, September 22, 2011 4:29 PM  
To: dave@davegordonlaw.com  
Cc: 'Brian Muchinsky'  
Subject: David and Karen Lange

See attached letter from Brian Muchinsky

**NOLD ♦ MUCHINSKY**

JODI GRAHAM  
Paralegal  
10500 NE 8th Street, Suite 930  
Bellevue, WA 98004  
Phone: 425-289-5555  
Fax: 425-289-6666  
[www.noldmuchlaw.com](http://www.noldmuchlaw.com)

\* Note email and website address change

2/26/2013

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504.1

# Those Crazy Indemnity Forms We All Sign

**I**n order for one of my boys to play indoor soccer this winter, I was asked to sign a release indemnifying the sports dome and a long list of its business associates, volunteers, advertisers and (presumably) their family pets against any possible claim filed on behalf of my son.

**OPINION BY MARIE LAKSY**  
*is author of "We Have Met the Enemy: Self-Contract in an Age of Excess."*

One-sided legal releases are part of modern life, but these ubiquitous documents often contain little-noticed indemnification clauses — legal provisions requiring someone to protect a business or some other party from damage claims and legal fees, sometimes even those arising from their own negligence.

Basically, they make every one of us an insurer. Indemnification clauses have been a pernicious feature of franchise written contracts for years. As a result, franchisees routinely agree to protect their publishers, publishers not only against judgments, but against the ruinous cost of defending even the most far-fetched legal claims.

Contracts like this often are tucked into the fine print nobody reads when clicking around the Internet or other vital daily business.

Try a little Googling on this score. If you need a money-back guarantee available for a while on items not food in Germany, yes, agreed to indemnify Procter & Gamble (fiscal 2012 sales: \$67.7 billion). The official terms of use for Skype, the popular phone and messaging service, also include an indemnification clause. So does the eBay user agreement. "If anyone brings a claim against us related to your actions, content or information on Facebook," says that site's Statement of Rights and Responsibilities, "you will indemnify and hold us harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim."

Demands for indemnification don't just come from businesses. One parent (who asked not to be named) had to sign a form indemnifying the Girl Scouts of Northern California so that her daughter could take part in a ropes course high off the ground. The mother

most able to make sure things are done right. Leaving aside the adequacy of my fees reserves, are these indemnifications legally enforceable? It depends how far they go and which state you're in.

Margaret Jane Radin, a law professor at the University of Michigan, says they're intimidating at the least, and overreaching such a provision could itself require litigation. In Indiana, for exam-

**Without thinking, consumers relieve businesses of their responsibilities.**

ple, a trial court held that a gas station operator and his helper had to pay to defend an oil company for its own negligence in ignoring lines with gas leaks, a ruling based in part on an indemnification clause. The state Supreme Court found that provision unconscionable, but the plaintiff had to go pretty far just to get this day in court.

At least that was a business agreement; the balance of power is even more asymmetric when consumers are involved. In a new book titled "Booker and the Rule of Law," Ms. Radin argues that an onslaught of one-sided fine print is stealing people's legal rights and making a mockery of the freedom of contract. In an interview, she observed that some other countries bar such contractual rights transfers, and said the Federal Trade Commission could do the same.

It should. Meanwhile, people have to start objecting to these unfair agreements, which often relieve businesses and institutions of their most basic responsibilities, pressing individuals to act as their insurers. For years I've frowned out indemnity provisions in freelance contracts, and I did likewise for lacrosse. But often that's not an option, and Ms. Radin warned that while objecting and initiating right help, the other side could contend that it never agreed to the changes. If things came to blows in court, I might still get stuck with the legal bill for both sides.



IMAGE: JIM SCHNEIDER

purpose insurer is scandalously low. I haven't heard a word from my state's insurance regulator for instance; evidently this claim is blindly untested. In just how much capital I've set aside — hang on while I go through the vast potential liabilities lurking on our family's balance sheet.

It's bad enough that everywhere I go, someone wants me to provide a release as a houseguest in a private home! And to some extent, I'm sympathetic; it's stressful and expensive to live in such a litigious society. But it's ridiculous to demand that every Tom, Dick and Mary assume a liability that can only properly rest with those who bear responsibility. And it's a perversion of the tort system, which is supposed to put the blame on the parties

might not want to bother seeking help from the California Department of Consumer Affairs, since its Web site requires users to indemnify the agency (and the usual list of expenses, including attorneys' fees).

Of course, the parent didn't have to sign, but she also didn't want her daughter left out.

I've faced the same choice — give up my rights or keep my kids home. In order for my son to attend a summer program at the Simon's Rock campus of Bard College, for example, I agreed to release the institution, its trustees and (as far as I can tell) all their Facebook friends from any liability and to "fully and forever agree to indemnify" them in case of any claims arising from my son's stay.

So I'm a regular Lloyds of London. Yet regulation of my role as an ad-

EXH. 2

09291792

# The New York Times

"All the News That's Fit to Print"

National Edition

Arizona: Mostly cloudy northern, partly sunny elsewhere. Highs in the 80s northeast to the 70s southwest. Mostly clear tonight. Colder. Details, Sports/Sunday, Page 17.

Printed in Arizona \$6.00

SUNDAY, DECEMBER 9, 2012

© 2012 The New York Times

L. CLXII ... No. 55,980

## Morsi Extends A Compromise To Opposition

## Rescinds Some Control Ahead of Vote

By DAVID D. KIRKPATRICK  
CAIRO — Struggling to quell protests and violence that have threatened to derail a vote on an Islamist-backed draft constitution, President Mohamed Morsi moved Saturday to appease his opponents with a package of concessions just hours after state media reported that he was moving toward imposing a form of martial law to secure the streets and allow the vote.

Mr. Morsi did not budge on a critical demand of the opposition: that he postpone a referendum set for Saturday to approve the new constitution. His Islamist supporters say the charter will lay the foundation for a new democracy and a return to stability. But liberal groups have faulted it for inadequate protection of individual rights and loopholes that could enable Muslim religious au-

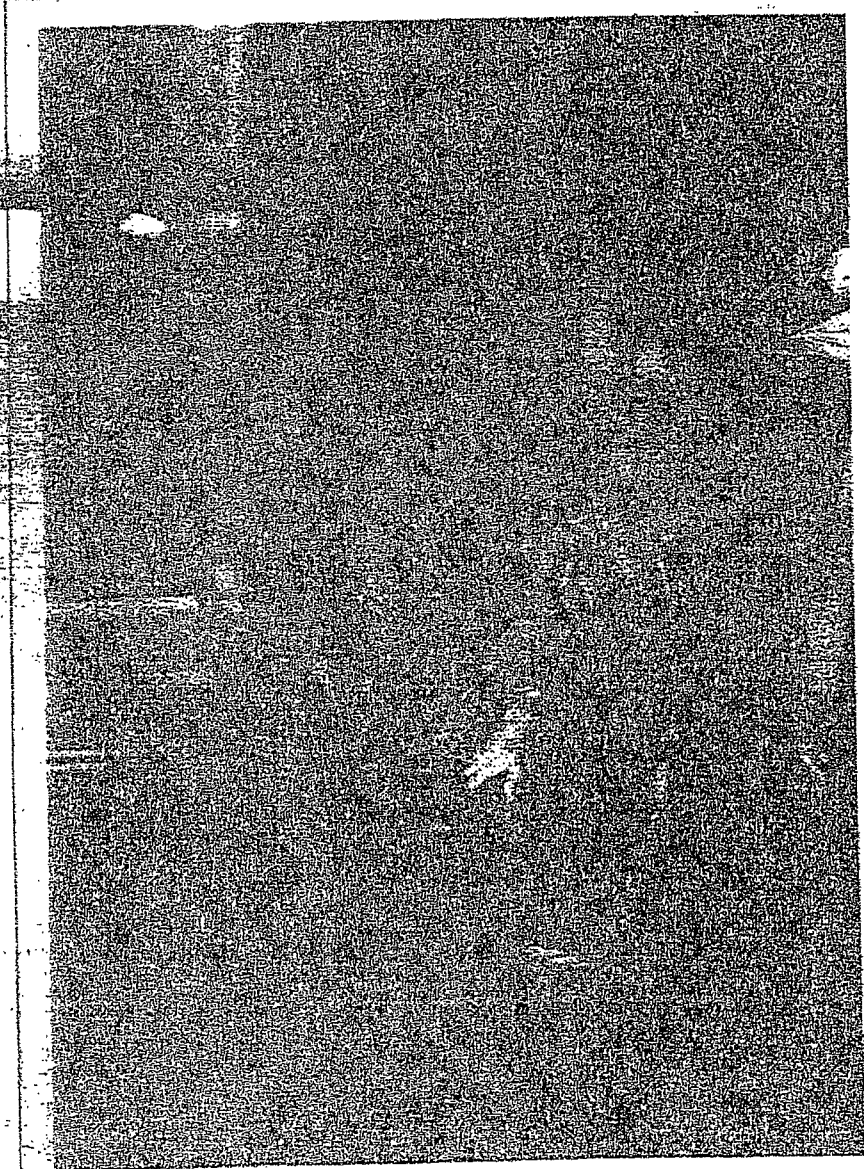
## SYRIA REBELS TIED TO AL QAEDA PLAY KEY ROLE IN WAR

## A CHALLENGE FOR U.S.

## Jihadis Bring Weapons and Support in Drive to Unseat Assad

This article is by Jim Arango, Anna Barnard and Havelda Sand.  
BAGHDAD — The lone Syrian rebel group with an explicit stamp of approval from Al Qaeda has become one of the uprising's most effective fighting forces, posing a stark challenge to the United States and other countries that want to support the rebels but not Islamic extremists.

Money flows to the group, the Nusra Front, from like-minded donors abroad. Its fighters, a small minority of the rebels, have the brawn and skill to storm fortified positions and lead other battalions to capture military





**EXHIBIT C**

April 09 2013 8:30 AM

The Honorable Vicki L. Hogan

KEVIN STOCK  
COUNTY CLERK  
NO: 11-2-16364-0

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SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,

Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof,

Defendants.

NO. 11-2-16364-0

PLAINTIFFS' RESPONSE,  
WITHOUT WAIVER, TO  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT  
DISMISSAL OF COMPLAINT

I. INTRODUCTION AND RELIEF REQUESTED

Defendants did not and do not have standing to file a motion for summary judgment in this matter and action, or any standing to challenge, dispute, deny or respond to Plaintiffs' indemnity, hold harmless and defense requests and demand other than honoring the Lot 4 defense, payment, hold harmless and full indemnity insurance contract. Under the 1987 Lot 4 defense, hold harmless, payment and full indemnification contract that Defendants admit on Lange Motion for Summary Judgment ("Lange MSJ") pages 18-20, Section E, binds Defendants, Defendants must compensate Plaintiffs for all the losses monetary and otherwise, damages,

Suzanne Guest  
Christopher Guest  
Plaintiffs Pro Se  
6833 Main Sail Lane  
Gig Harbor WA 98335  
(253) 495-1244

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT -

1 costs, expenses, harm and fees that Plaintiffs have incurred and sustained to date as a result of  
2 the Langes' wrongful acts, conduct and aggressive attempt to 'steal' Plaintiffs land and Lot 5  
3 water view and to improperly and wrongfully exclude Plaintiffs from Plaintiffs' own land. This  
4 Lot 4 contract also requires that Defendants pay, hold Plaintiffs' harmless and fully indemnify  
5 Plaintiffs for any future and/or further loss, damage, cost, expense, harm or fees that Plaintiffs  
6 will incur, sustain and/or pay.  
7

8 Plaintiffs are filing a separate Motion to strike Defendants' summary judgment motion on  
9 lack of standing and lack of jurisdiction grounds and request the similar relief here. Whether a  
10 party has standing is a question of law. *Sloan v. Horizon Credit Union*, 167 Wn.App. 514 518,  
11 274 P.3d 386 (2012), review denied, 174 Wn.2d 1019 (Aug. 7, 2012). A claim or a defense is  
12 not justiciable, meaning that the court does not have jurisdiction to consider that party's claims  
13 or here alleged 'defenses', challenges, disputes or attempted response or denials unless the party  
14 has standing which Defendants do not have in this matter or action. *T-Ro Trade Shows v.*  
15 *Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001).  
16

17 To demonstrate standing, which Plaintiffs challenged in Plaintiffs' Motion for Summary  
18 Judgment Dismissal of Counterclaims, a party must demonstrate that (1) that party had a legally  
19 protected right that was invaded or injured and (2) that the party actually suffered an injury in  
20 fact which Defendants cannot do in this case. *Five Corners Family Farmers v. State*, 173 Wn.2d  
21 296, 302-03, 268 P.3d 892 (2011); *To-Ro*, 144 Wn.2d at 411. If a party lacks standing, as here, a  
22 court cannot consider or entertain that party's claims or that party's alleged 'defenses',  
23 challenges, attempted disputes, requests for relief or denials. Defendants do not have standing in  
24 this matter or action and they cannot and should not be heard. Defendants' Motion for summary  
25 judgment should be stricken as a matter of law as a threshold matter.  
26

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT -

1 Plaintiffs' respond to Defendants' motion for summary judgment without waiver.  
2 Plaintiffs' response is subject to Plaintiffs' separately filed Motion to Strike Defendants' Motion  
3 for Summary Judgment and Plaintiffs' separate Motion for Mandatory Injunction Ejection and  
4 Removal. Defendants' Motion for Summary Judgment is without any basis in law or in fact and  
5 the alleged relief requested by Defendants must be denied in its entirety.  
6

## 7 **II. BACKGROUND FACTS AND PROCEDURAL BACKGROUND**

8 In September 2010, the Langes notified Plaintiffs that the Langes deck was  
9 "encroaching" on the Guests' Spinnaker Ridge Lot 5, 6833 Main Sail Lane, property by  
10 "approximately five feet" within one week of the Guests moving into 6833 Main Sail Lane.;  
11 Declaration of Kaye Bickford 4/8/13 in support of this Motion (Bickford Dec.) ¶24. The Guests  
12 own Spinnaker Ridge Lot 5. The Langes own adjacent Spinnaker Ridge Lot 4.  
13

14 In September 2010 at the same time, David Lange notified Plaintiffs that Plaintiffs'  
15 predecessor Lot 5 owners did not mind the encroachment, that the prior owners said that it was  
16 "OK", that the prior owners were avid gardeners and that the prior owners were not interested in  
17 a deck on the back, south and west part of 6833 Main Sail Lane. (Bickford Dec. 4/8/13, ¶51).

18 In September 2010, also at the same time, David Lange also notified Plaintiffs that the  
19 Langes were going to demolish their deck in spring 2011 and that they were going to build a new  
20 deck in spring 2011. Plaintiffs, in turn, notified David Lange that Plaintiffs were going to build a  
21 new 6833 Main Sail Lane Lot 5 deck on the east, back, south and west side of Lot 5 and that  
22 Plaintiffs were going to be talking to a deck contractor. David Lange did not object or notify  
23 Plaintiffs in September 2010 that the Langes allegedly (1) owned any part of Lot 5; (2) had a  
24 right to be on or install, maintain or use and/or enjoy any deck constructed on Lot 5; or (3) had  
25 an alleged "exclusive" right to use, possess and enjoy any part of Lot 5, had allegedly 'adversely  
26

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT -

1 4 indemnity insurance contract was effective notice to the Langes as Lot 4 successor owners not  
2 only that there was a limited, restricted, defined and permissive Lot 4 license on Lot 5 and not an  
3 'easement', but also that Lot 4 was contractually required to defend, pay, hold Lot 5 harmless  
4 and fully indemnify the owners of Lot 5 from any and all loss, damage, harm, cost, expense and  
5 fees arising out of and/or related to the utilization of the alleged Lot 4 'easement', i.e. license, by  
6 any person, individual or entity including Defendants into perpetuity as long as the license  
7 existed and/or damages and losses arose out of its utilization as here.

9 **2. There is an implied duty of good faith and fair dealing in**  
10 **every contract, including the special and heightened duty**  
11 **of utmost good faith and fair dealing in any insurance contract.**

12 Defendants are correct on MSJ page 13 that there is an implied duty of good faith and fair  
13 dealing in every contract which obligates the parties to cooperate with each other. Plaintiffs  
14 made every attempt to cooperate with Defendants. Defendants made every attempt to deceive  
15 Plaintiffs and to steal Plaintiffs' Lot 5 land and Lot 5 water view from Plaintiffs including  
16 Defendants' continued threat as recently as April 5, 2013 to use police force against Plaintiffs if  
17 Plaintiffs set one foot on Plaintiffs' Lot 5 land where Defendants had constructed an illegal, un-  
18 permitted, encroaching, non-compliant, objected to and trespassing deck on Plaintiffs' property.

19 The 1987 Lot 4 recorded hold harmless and full indemnity contract is an insurance  
20 contract as a matter of law imposing even greater duties and obligations on Defendants to act in  
21 good faith towards Plaintiffs in all matters at all time and to deal with Plaintiffs fairly. Because  
22 the Lot 5 hold harmless and full indemnity contract is an insurance contract, Defendants are  
23 Plaintiffs' insurers under the contract and are Plaintiffs' fiduciaries. As fiduciaries, Defendants  
24 owe Plaintiffs utmost good faith and must put Plaintiffs' interests above their interests as a  
25 matter of law. Black's Law Dictionary Ninth Edition defines "fiduciary" as a "person who is  
26 PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT -

1 required to act for the benefit of another person on all matters within the scope of the  
2 relationship; one who owes to another the duties of good faith, trust, confidence, and candor”,  
3 and one who “must exercise a high standard of care in managing another’s money or property”.

4 Indemnity is the “duty to make good any loss, damage, or liability incurred by another.”.  
5 Black’s Law Dictionary Ninth Ed. Indemnity is a “right” under an indemnity contract.  
6 Indemnity is also reimbursement or compensation for loss, damage or liability in tort. *Id.* To  
7 indemnify is to “reimburse (another) for a loss suffered because of a third party’s or one’s own  
8 act or default; **HOLD HARMLESS.** *Id.*, emphasis added. Indemnity, unless explicitly  
9 restricted, is not conditioned, limited to or restricted to liability or third party claims only. The  
10 Washington courts will enforce broad and expansive indemnity contracts including indemnity  
11 contracts as here that require the indemnitor (Defendants and/or their successors) to indemnify  
12 Plaintiffs for not only Plaintiffs’ claims, causes of action and acts but also Defendants’ claims,  
13 causes of action, acts, conduct and/or omissions. In essence, and in reality, everything.

14  
15  
16 In *Guest v. Allstate*, the New Mexico Supreme Court recently addressed a similarly broad  
17 and expansive defense and indemnity contract and similar arguments that Allstate made to defeat  
18 Plaintiffs’ recovery and indemnity benefits and coverage that Defendants apparently are  
19 attempting here. Allstate was not successful. The New Mexico Supreme Court enforced the  
20 Allstate defense and indemnity contract as written, rejecting all of Allstate’s ‘reasonable’ and  
21 other arguments. *Guest v. Allstate*, 2010-NMSC- 047, ¶¶31-35.

22  
23 The terms of the Allstate – Guest defense and indemnity contract were and are similar to  
24 the Lot 4 Lange open-ended, unconditional, expansive, unrestricted, limitless defense, hold  
25 harmless, payment and full indemnity insurance contract. The Allstate and the Lange Lot 4  
26

PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT -

1 defense, hold harmless and full indemnity insurance contract requires that the Langes and their  
2 successors or assigns and that Allstate pay Plaintiffs for all damages, all fees and all costs.

3 The duty of good faith and fair dealing here also involves the Langes' duty of good faith  
4 and fair dealing as Spinnaker Ridge Trustees and Officers. On April 5, 2013, David Lange  
5 testified that his understanding of his duties and his obligation as a Spinnaker Ridge Trustee,  
6 which would also apply to Karen Lange who was a Trustee and Officer from 2003 to 2009  
7 included the duties and obligations that both Langes have repeatedly breached and violated in  
8 their dealings with Plaintiffs to Plaintiffs continuing damage, loss, harm, cost, expense and fees.

9  
10 Defendants are correct on MSJ page 13 that a court will not inject any substantive term  
11 into the parties' contract as here. There is no 'reasonable' term or any limit in the Lot 4 defense,  
12 hold harmless, payment and full indemnity insurance contract. Plaintiffs have repeatedly and  
13 have consistently "stood" on their right to require the Langes' good faith, fair dealing and  
14 cooperation as well as the Langes' performance of their multiple contracts with Plaintiffs  
15 according to the terms including, but not limited to, Defendants' 1987 Lot 4 defense, indemnity,  
16 hold harmless and payment contract, Defendants' CC&R contract with Plaintiffs not to willfully  
17 encroach on Plaintiffs' land among other duties, and Defendants' Trustee and Officer contract  
18 not to use their office to disadvantage Plaintiffs, to steal Plaintiffs' land and Lot 5 water view,  
19 harass Plaintiffs or hold Plaintiffs hostage to Defendants' threats, intimidation, bullying and  
20 interference with Plaintiffs' rights, property and land.

21  
22 The heightened insurance duties and the obligations of good faith that an insurer owes to  
23 its insureds, here the Guests, is not restricted or limited only to persons engaged in the business  
24 of insurance as Defendants argue at MSJ page 14. Although Nu-Dawn was in 'the business' of  
25 entering into and issuing indemnity and hold harmless contracts which Washington defines by  
26

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT -

1 statute is an insurance contract and therefore was an “insurer” under the Washington Insurance  
2 Code which is the material fact here as the Lot 4 defense, hold harmless and indemnity contract  
3 arose out of a Nu-Dawn created defense, payment, hold harmless and indemnity contract,  
4 Washington law has also recognized that even a construction company or a contractor can be an  
5 “insurer” under a commercial hold harmless and indemnity contract under the words of the  
6 contract. Here, the words in the Lot 4 defense, hold harmless and full indemnity contract are  
7 plain, clear and unambiguous: Lot 5 “shall not be liable” to Lot 4 for any claims, actions and/or  
8 suits or any alleged damages, injury, loss, cost or expense. Lot 4 shall defend, pay, hold Lot 5  
9 harmless and fully indemnify the owners of Lot 5 without limit, without restriction, without  
10 exception, without exclusion and without limitation for any utilization of the 1987 Lot 4 alleged  
11 ‘easement’ i.e. license with no time limits or deadlines.  
12

13  
14 **D. The Langes Have No Legal Right Of Any Kind**  
15 **To Be On Lot 5 Or To Install, Maintain Or**  
16 **Use Any Lot 4 Deck on Lot 5.**

17 An encroachment is a trespass. *Proctor*. It is undisputed that Defendants and their deck  
18 have and are encroaching on Plaintiffs’ Lot 5 land subjecting Defendants to mandatory  
19 injunction ejection and removal of the offending, encroaching Lot 4 deck in its entirety.  
20 (Plaintiffs will file a separate Motion for Mandatory Injunction).

21 At best, Defendants did not have an exclusive easement. Defendants did not and never  
22 could create any alleged “right” to possess or use Plaintiffs’ Lot 5 land ‘exclusively’ as  
23 Defendants defiantly and erroneously assert on MSJ page 15. The authorities that Defendants  
24 cite support Plaintiffs, not Defendants. The 1987 Lot 4 recorded alleged ‘easement’ is non-  
25 exclusive and for “mutual benefit” on its face. Very few decks at Spinnaker Ridge extend past  
26 the inside Lot chimney and even fewer extend or extended past the corner of the adjoining Lot.

PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT -



1 There is no 'easement' term or words that permit any Lot 4 watering source or watering or  
2 bubbler system on Lot 5. Even if an 'easement' did exist, which Plaintiffs deny, Defendants had  
3 and have no right to enlarge the easement terms, conditions or grant under state law and cannot  
4 do so here.

5 Under the Lot 4 license, no expansion of any kind is possible or allowed. Any attempted  
6 expansion results, at Plaintiffs' sole option, with immediate revocation as here.

7  
8 The fact that Defendants put a guard rail on the three to four foot deck is not exclusive  
9 use. A guard rail is required by City ordinance for any deck over 30". The fact that Plaintiffs'  
10 Lot 5 elderly predecessors the Coes did not want to use a deck on the back, south and west side  
11 of their 6833 Main Sail Lane home, never asked to use the Langes' Lot 4 deck on Lot 5 and gave  
12 permission to their friends the Langes to have a deck on Lot 4 and use it does not create  
13 "exclusive use" or a right to "exclusive use" as Defendants erroneously assert on MSJ page 16.

14  
15 Even if an alleged 'course of dealing' or 'past conduct' could be relevant, which it is not  
16 here, any 'course of dealing' or 'past conduct' alleged evidence would only be reached if the Lot  
17 4 alleged 'easement' i.e. license contract was ambiguous which it is not. Again, the authorities  
18 that Defendants cite in alleged support of MSJ Section D(1) support Plaintiffs not Defendants.

19  
20 Defendants also erroneous assert in MSJ Section D(2) on pages 16 to 18 that the  
21 Spinnaker Ridge CC&Rs allegedly gave the Langes the alleged "right" to continue to use any  
22 "de minimis" encroachment past the 'bounds' of the 1987 Lot 4 alleged patio or deck 'easement'  
23 which as above is not an easement as a matter of law.

24 The "blanket encroachment" provision that Defendants rely on in the original CC&Rs at  
25 ¶16.4 on its face does not provide Defendants with any right to any encroachment or any  
26 encroachment easement on Plaintiffs' Lot 5 property. Paragraph 16.4 only permits an

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT -

1 encroachment easement for a deck or patio that the Developer (Nu-Dawn) constructed and  
2 assigned to the use of Lot, not a deck that a Lot Owner constructed as here.

3 Defendants did not construct their 2011 Lot 4 deck on the “original footprint” of the Lot  
4 4 deck. The “original footprint” was a Lot 4 patio entirely on Lot 4 that did not extend onto Lot  
5 5). Nu-Dawn did not construct a deck on Lot 4. On April 5, 2013, David Lange testified at his  
6 *Guest v. Lange* deposition that the ‘original’ Lot 4 deck was two and a half to three years old  
7 when the Langes purchased Lot 4 in August 1993. The original Lot 4 deck (versus the original  
8 footprint of the Lot 4 patio which was the original design of Lot 4) according to David Lange  
9 was constructed in 1990 or 1991.

10  
11 In any and all events, the Langes finalized the 2011 deck plans that they wanted with  
12 their family who were “deeply involved” in the Lange Lot 4 deck plans, the Langes submitted  
13 new Lange deck plans to Plaintiffs to review and approve in early spring 2011, and Plaintiffs did,  
14 that significantly ‘backed away’ from Plaintiffs’ 6833 Main Sail Lane home with a 16.49’ x 5’  
15 “vacated easement” section and the removal of the undisputed 3’ x5’ “overhang” deck  
16 encroachment, submitted the same plans to the ACC in March 2011 and asked the ACC to  
17 approve those same deck plans which the ACC did, and then ultimately submitted the same  
18 Lange new deck plans to the City of Gig Harbor planning department to approve and issue an  
19 ‘after-the -fact’ permit for that the City conditionally did. Just as in *Guest v. Allstate*,  
20 Defendants only have themselves to blame for the situation that Defendants are facing now,  
21 entry of judgment in Plaintiffs’ favor as a matter of law, with an award of damages statutory,  
22 common law and contract to follow. *Guest v. Allstate*, 2010-NMSC-047, ¶35.

23  
24  
25 **E. Defendants Are In Full Breach and Violation Of Their**  
26 **Duty to Indemnify Plaintiffs.**

As above, Defendants’ duty to indemnify Plaintiffs’ is absolute, with no restrictions,  
PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT -

1 no exemptions, no exclusions, no limits, no parameters, and no conditions on its face. The only  
2 'condition' and the only trigger is that the claims, action, suit, damage, loss, harm, cost, expense  
3 and/or fees "arise out of" and/or are 'related to' the utilization of the 1987 Lot 4 alleged  
4 'easement' , i.e. license on Lot 3 by *any* individual, entity and/or person including, but not  
5 limited to, David and/or Karen Lange, Plaintiffs and/or any Lange invitee, successor, assign or  
6 third party. As in *Guest v Allstate*, there is no indemnity, payment, hold harmless or defense  
7 duty or obligation exclusion or exemption for any claims made by Plaintiffs or any requirement  
8 in the Lot 4 indemnity contract that a third party has to sue Plaintiffs (although the issue is now  
9 raised if Mark Zoske is such a third party in this case) before Defendants indemnity, defense,  
10 hold harmless and payment requirements, duties and obligations are triggered. Again, the  
11 authorities that Defendants cite to support their position in reality support entry of judgment in  
12 Plaintiffs' favor. For example, in the *Jones v. Strom Constr.* decision cited by Defendants on  
13 MSJ page 19, the Washington Supreme Court recognized in 1974 under different facts and  
14 circumstances that if the right words were in a commercial indemnity contract the indemnitor  
15 essentially becomes the indemnitee's (the Guests') insurer and the contract is and/or would be  
16 insurance (as defined by the Legislature in the Washington Insurance Code).

17  
18  
19 As in *Guest v. Allstate*, with no restrictions, no limits, no exclusions, no exemptions and  
20 no parameters or limitations, courts will not limit an indemnitor's obligations to an indemnitee  
21 such as the Guests when the indemnitor, here the owners of Lot 4 and their successors and/or  
22 assigns (the Langes) failed to limit or restrict the indemnity at initiation. *Guest v. Allstate*, ¶35  
23 (we will not limit Allstate's obligations to Guest when Allstate failed to limit its obligations  
24 itself, and we will not add any terms or words into the indemnity contract that Allstate did not  
25  
26

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT -

April 22 2013 12:43 PM

The Honorable Ronald E. Culpepper

KEVIN STOCK  
COUNTY CLERK  
NO: 11-2-16364-0

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SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,

Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof,

Defendants.

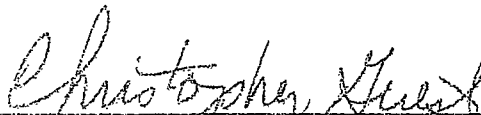
NO. 11-2-16364-0

ERRATA

Attached as Exhibit A, please find pages 55-57 of Plaintiffs' Response, Without Waiver, to Defendants' Motion for Summary Judgment Dismissal of Complaint, which, per Judge Culpepper's comments at the April 19, 2013 hearing were missing from his working copy. After checking the document via LINX, these pages were also missing from the LINX filing of this document.

DATED this 22<sup>nd</sup> day of April, 2013.

  
Suzanne Guest, Pro Se Plaintiff

  
Christopher Guest, Pro Se Plaintiff

ERRATA - 1

Suzanne Guest  
Christopher Guest  
Plaintiffs Pro Se  
6833 Main Sail Lane  
Gig Harbor, WA 9 8335  
(253) 495-1244

# EXHIBIT A

1 add for itself at initiation 'after the fact'). It is the public policy of Washington State to enforce  
2 indemnity contracts according to the contract terms and the words that are used in the contract.

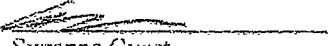
3 Defendants' duty and obligation to indemnify, defend, pay and hold Plaintiffs harmless is  
4 triggered by the fact that Plaintiffs incurred any loss, damage, harm, cost, expense or fees as a  
5 result of and/or arising out the utilization of the 1987 Lot 4 alleged 'easement', i.e. license, by  
6 any person, individual or entity and/or as a result of and/or arising out of any claims, actions or  
7 suits related to the utilization of said Lot 4 alleged 'easement' and/or license as here.

8  
9 **CONCLUSION**

10 Defendants not only do not have the right under the 1987 Lot 4 alleged 'easement' and  
11 Lot 4 defense, payment, hold harmless and/or full indemnity contract to challenge, dispute,  
12 defend or deny Plaintiffs' claims, causes of action, requests for relief and/or remedies in this  
13 matter and action, they are required to defend, pay, fully indemnify and hold Plaintiffs harmless  
14 as a matter of law from any damage, loss, harm, cost, expense and/or fees that Plaintiffs have  
15 incurred in this matter and action and/or will incur under the 1987 Lot 4 indemnity contract that  
16 Defendants admitted in MSJ Section E, pages 18 to 20, binds them.

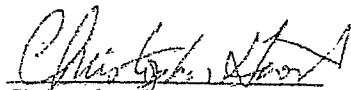
17  
18 Without waiver, Defendants did not make even a prima facie showing for summary  
19 judgment. Defendants' Motion for Summary Judgment must be denied as a matter of law and  
20 judgment entered in Plaintiffs' favor.

21 Respectfully requested this 8<sup>th</sup> day of April, 2013.

22  
23   
24 Suzanne Guest  
25 Plaintiff Pro Se  
26 6833 Main Sail Lane  
Gig Harbor, WA 98335  
(253) 495-1244

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT -

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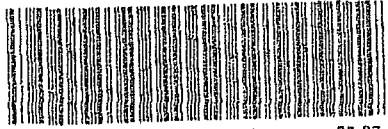


Christopher Guest  
Plaintiff Pro Se  
6833 Main Sail Lane  
Gig Harbor, WA 98335  
(253) 495-1244

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT -

**EXHIBIT D**





11-2-16364-0 40477500 DCLR 05-07-13

The Honorable Ronald E. Culpepper  
IN COUNTY CLERK'S OFFICE

A.M. MAY 06 2013 P.M.  
PIERCE COUNTY WASHINGTON  
BY KEVIN STOCK, COUNTY CLERK  
DEPUTY

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,

Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof,

Defendants.

NO. 11-2-16364-0

CR 56(f) DECLARATION OF  
SUZANNE GUEST POSTPONEMENT  
OF ENTRY OF SUMMARY JUDGMENT  
ORDERS UNTIL DISCOVERY  
CONCLUDED, DENIAL OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT,  
ONE JUDGE TO HEAR  
ALL GUEST v. LANGE  
ISSUES AND MATTERS,  
AND NOT UNTIL ALL  
RELATED MOTIONS  
ARE FILED AND HEARD

Presentment Hearing Summary  
Judgment Orders  
May 6, 2013 @ 9:20 am

CR 56(f) DECLARATION SUZANNE GUEST

Suzanne Guest  
Christopher Guest  
Plaintiffs Pro Se  
6833 Main Sail Lane  
Gig Harbor, WA 98335  
(253) 495-1244

CR 56(f) DECLARATION OF SUZANNE GUEST  
POSTPONEMENT OF ENTRY OF SUMMARY JUDGMENT  
ORDERS UNTIL DISCOVERY IS CONCLUDED - 1

1 signature and that the signature on the ESM Inc. piece of paper was *not* John E. Tynes' signature  
2 as the ESM, Inc. 'easement' document purported that it was.

3 37. Attached as Exhibit 9 are true and correct copies of John E. Tynes acknowledged  
4 and notarized signature on an official Pierce County Auditor's copy of Nu-Dawn Homes  
5 Limited Partnership Statutory Warranty Deed conveying title to Spinnaker Ridge Lot 4 to the  
6 Langes' Lot 4 predecessors Delmar and Lillian Urbauer, and true and correct copies of John E.  
7 Tynes acknowledged and notarized signature on an official Pierce County Auditor's copy of a  
8 1985 Easement document that John E. Tynes signed both with enlarged signature excerpts.

9  
10 38. Attached as Exhibit 10 is a true and correct copy of John E. Tynes purported  
11 signature on the 1987 ESM, Inc. land surveyor Lot 4 recorded 'easement' document with an  
12 enlarged copy of an excerpt of that signature on the ESM, Inc. document.

13  
14 39. The signature on the ESM, Inc. 1987 Lot 4 recorded document is not the same as  
15 John E. Tynes acknowledged and notarized signature on other Pierce County Auditor recorded  
16 documents.

17 40. I also discovered and realized on Saturday May 5, 2013 that ESM, Inc. identified  
18 Nu-Dawn Homes Incorporated as the owner of Spinnaker Ridge Lot 4 and Lot 5 in the ESM  
19 1987 Lot 4 recorded 'easement' document.

20  
21 41. Nu-Dawn Homes Incorporated did not own Spinnaker Ridge Lot 4 or Lot 5 in  
22 April 1987.

23 42. Nu-Dawn Homes Limited Partnership, a separate entity from Nu-Dawn Homes  
24 Incorporated, owned and developed the Spinnaker Ridge development. Nu-Dawn Homes  
25 Limited Partnership owned Spinnaker Ridge Lot 4 and Lot 5 in April 1987.

26  
CR 56(f) DECLARATION OF SUZANNE GUEST  
POSTPONEMENT OF ENTRY OF SUMMARY JUDGMENT  
ORDERS UNTIL DISCOVERY IS CONCLUDED - 11

1           43.     Plaintiffs should be allowed to brief these dispositive issues and other dispositive  
2 matters before any summary judgment or any other dispositive orders are entered in this action.  
3 Plaintiffs will be prejudiced if these matters are not brought before the court and fully considered  
4 before any summary judgment orders are entered in the absence of an order denying Defendants  
5 Motion for Summary Judgment.  
6

7           44.     In addition, currently there are two concurrent Judges in this case handling,  
8 hearing, considering and ruling on different but interrelated dispositive issues, matters and  
9 aspects of this action neither Judge apparently aware of what the other Judge is doing as reflected  
10 by the Court's April 19, 2013 instruction that any motions to reconsider any of the Court's  
11 summary judgment orders should be filed with the Honorable Ronald E. Culpepper and not with  
12 the presiding trial judge in this action, Judge Vicki Hogan  
13

14           45.     On April 1, 2013, Judge Culpepper instructed counsel at the end of the April 19,  
15 2013 summary judgment hearing to file any motions for reconsideration with Judge Culpepper as  
16 Judge Hogan did not know and would not know what Judge Culpepper was doing in this case.

17           45.     Plaintiffs request that only one judge be assigned to this action and that only one  
18 judge makes any dispositive rulings or enters any orders in this action as any other situation will  
19 prejudice Plaintiffs and, at a minimum, that this issue should be briefed.  
20

21           46.     Further, discovery in this case has not concluded yet and continues by party  
22 agreement and stipulation supporting postponement of any summary judgment orders at this  
23 time.  
24  
25  
26

CR 56(f) DECLARATION OF SUZANNE GUEST  
POSTPONEMENT OF ENTRY OF SUMMARY JUDGMENT  
ORDERS UNTIL DISCOVERY IS CONCLUDED - 12

1           56. Other depositions of material defense and other witnesses need to be taken before  
2 discovery concludes in this case which may and/or will reveal other false defense  
3 representations.

4           57. Other dispositive motions need to be filed including, but not limited to, Plaintiffs'  
5 motion for a mandatory injunction for ejectment of the Langes from Lot 5, a motion for a  
6 mandatory injunction for removal of the Lot 4 deck from Lot 5 and associated and related  
7 motions including a motion to amend the complaint and a motion to amend and correct various  
8 Lot 5 and/or Lot 4 real property documents and records on file as well as lack of standing  
9 motions unrelated to the 1987 Lot 4 recorded defense, hold harmless, payment and full  
10 indemnity contract, and a motion (at a minimum) to enforce the Lange – Guest with the new  
11 information available to Plaintiffs.  
12

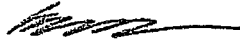
13           58. As the titled owners of Lot 5, Defendants would have to come forward with  
14 clear, convincing and admissible evidence under Washington mandatory injunction law to meet  
15 Defendants' burden (not Plaintiffs' burden) to prove that Defendants had a "right" to be on Lot 5  
16 and a "right" to build, maintain and/or use a deck on Lot 5 to avoid mandatory ejectment and  
17 removal of the Lot 4 deck from Lot 5.  
18

19           59. All the facts that I identified in Plaintiffs' April 2013 Response to Defendants'  
20 Motion for Summary Judgment and at the April 19, 2013 summary judgment hearing were and  
21 are true and correct and/or I had a good faith belief that they were true and correct at the time,  
22 but I have learned new information since then as identified, in part, above.<sup>1</sup>  
23  
24

25  
26 <sup>1</sup> My husband and I did not file a report with the Gig Harbor police on the date the Response was filed, however, the  
Gig Harbor police department does not have forms to file such reports.

1 59. Plaintiffs respectfully request that the Court either deny Defendants' motion for  
2 summary judgment in its entirety with this CR 56(f) Declaration or, at a minimum, postpone  
3 entry of any summary judgment orders in this matter until further, supplemental summary  
4 judgment briefing and/or motions are filed and also request that the Court order that only one  
5 judge will hear any *Guest v. Lange* matters, motions and/or issues not only for substantial justice  
6 but also for judicial economy and to avoid potentially unnecessary motions for reconsideration  
7 and/or appeals.  
8

9 EXECUTED on this 6<sup>th</sup> day of May, 2013 in Gig Harbor, Washington.

10  
11   
12 Suzanne Guest  
13 Plaintiff Pro Se  
14 6833 Main Sail Lane  
15 Gig Harbor, WA 98335  
16 (253) 495-1244  
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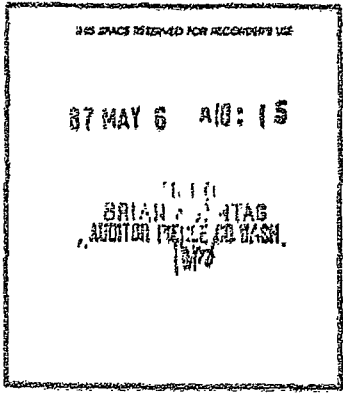
CR 56(f) DECLARATION OF SUZANNE GUEST  
POSTPONEMENT OF ENTRY OF SUMMARY JUDGMENT  
ORDERS UNTIL DISCOVERY IS CONCLUDED - 16

**EXHIBIT 9**

3705060150

VOL 011A PAGE 2004

REVENUE STAMPS



Filed for Record at Request of Rainier Title Company Title order #87-22372

R.T.C.

AFTER RECORDING MAIL TO: Delmar W. Urbauer Lillian A. Urbauer 6801 Main Sail Lane Gig Harbor, Washington 98335

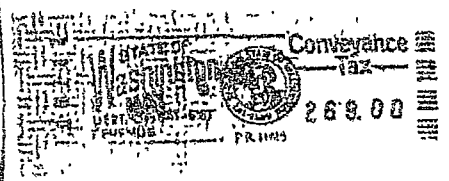
Handwritten: \$269.00

Record No 86-4021 Loan number 10-50500477

Statutory Warranty Deed

THE GRANTOR Nu Dawn Homes Limited Partnership, A Washington Limited Partnership for and in consideration of Ten Dollars and other good and valuable consideration, in hand paid, conveys and warrants to Delmar W. Urbauer & Lillian A. Urbauer, husband and wife the following described real estate, situated in the County of Pierce, State of Washington: Lot 4, Spinnaker Ridge, according to the plat thereof, recorded on January 31, 1985 under recording number 860110176, records of Pierce County. Situate in the County of Pierce, State of Washington.

Exhibit A is hereby attached and by this reference made a part hereof.



EXCISE TAX PAID \$ 1775.40 Re. No. 108390 Date 5/2/87 Pierce County

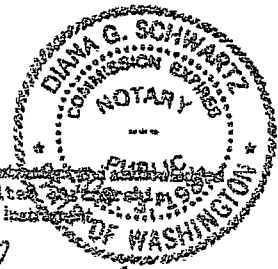
Dated May 1, 1987

Auth. Sig. [Signature]

Nu Dawn Homes Limited Partnership [Signature]

STATE OF WASHINGTON, } az. County of Pierce

I certify that I know or have satisfactory evidence that John E. Tynes signed this instrument, an oath stated that he is authorized to execute the instrument as the General Partner of Nu Dawn Homes Limited Partnership to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.



Dated: May 4, 1987

[Signature] Notary Public in and for the State of Washington, residing at Tacoma

My appointment expires 6/3/87

A 208 REPRESENTATIVE

VOL 0414 PAGE 2005

## EXHIBIT "A"

## SUBJECT TO THE FOLLOWING EXCEPTIONS:

Liability for assessments levied by Spinnaker Ridge Home Owners Association.

## UNRECORDED WATER AGREEMENT:

Dated: June 27, 1968  
 With: Town of Gig Harbor  
 Discussed By: Instrument recorded under Recording No. 289829X

## EASEMENT AND THE TERMS AND CONDITIONS THEREOF.

Granted: Tribune Publishing Company, D.S.A. Cable TV Puget Sound, a Washington corporation; its successors and assigns  
 Purpose: Erecting, installing, repairing, replacing, maintaining and using coaxial cable or cables and any related facilities or equipment necessary for the operation of a community antenna television system and the furnishing of community antenna television service to any structure, building, living unit of any kind located upon said real property, together with the right of ingress to and from said easement  
 Affects: The description contained therein is not sufficient to determine its exact location within the property herein described  
 Recorded: September 21, 1977  
 Recording No.: 2944615

## RESTRICTIONS contained on the plat, as follows:

Set rebar and cap 'E.S.M. INC. L.S. NO. 10610' at all lot corners unless otherwise noted.

An easement is hereby granted to the Spinnaker Ridge Community Association for roadway purposes across any lot which may have been encroached upon by private driveway paving in the original paving of the driveways.

This easement is restricted to that area currently under existing pavement.

Subject to an easement for community antenna television system purposes as recorded under Pierce County Recording No. 2944605.

All tracts shall remain in private ownership and are hereby conveyed to the Spinnaker Ridge Community Association.

## COVENANTS, CONDITIONS, RESTRICTIONS AND OTHER MATTERS imposed by instrument.

Recorded: August 8, 1966  
 Recording No.: 860806072

Among other things said Covenants, Conditions and Restrictions state that they completely amend, supersede and replace Covenants, Conditions and Restrictions recorded January 31, 1966 under Auditor's File No. 8601310432.

EASEMENT provisions contained on the face of the plat.  
 Purpose: Slopes, cuts and fills  
 Affects: Portion of the premises adjoining the street or road

END OF EXHIBIT "A"



Dated May 1, 1987

P1

*HP* Auth. Sig

IN DEFT HOMES

THIRD PARTERSHIP

*[Handwritten Signature]*

STATE OF WASHINGTON,

County of Pierce } ss.

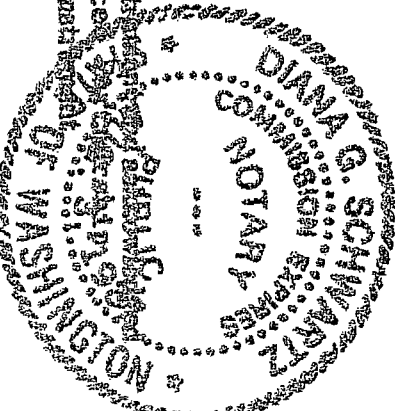
I certify that I know or have satisfactory evidence that John E. Tynes is authorized to execute the instrument, on oath stated that he is it as the General Partner of In Dawn Homes Ltd re: [unclear] of [unclear] of In Dawn Homes Ltd re: [unclear] to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: May 4, 1987

*[Handwritten Signature]*  
Notary Public in and for the State of Washington,  
residing at Tacoma

My appointment expires 8/3/87

A-7089 REPRESENTATIVE



8507250151

CHICAGO TITLE JUL 25 1985  
A-31062-2

EASEMENT

EXCISE TAX EXEMPT: DATE JUL 24 1985  
Pierce County

By [Signature] Auth. Sig.

For and in consideration of mutual benefit and other valuable consideration, the receipt of which is hereby acknowledged, Nu-Dawn Homes Limited Partnership, hereinafter called "Grantor", hereby grants, conveys, and warrants to [Signature] husband and wife, hereinafter called "Grantee" a perpetual easement for ingress, egress, and utilities over, under, through, and across the following described property in Pierce County, Washington, to wit:

COMMENCING at the Southeast corner of the Southeast Quarter of the Northeast Quarter of the Southwest Quarter of Section 8, Township 21 North, Range 2 East, W.M., Pierce County, Washington;

THENCE N 88°40'15" = along the South line of said subdivision, a distance of 360.41 feet to the TRUE POINT OF BEGINNING;

THENCE continuing N 88°40'15" W along said South line, a distance of 65.13 feet;

THENCE N 24°13'13" E, 27.74 feet to a point of curvature;

THENCE Northeasterly and Northwesterly along said curve to the left having a radius of 25.00 feet, through a central angle of 79°30'31", an arc length of 34.69 feet to a point of cusp;

THENCE Southeasterly along a curve to the left the center of which bears N 34°42'42" E, a distance of 277.05 feet, through a central angle of 20°58'59", an arc length of 101.46 feet to a point of cusp;

THENCE Southwesterly along a curve to the left the center of which bears S 13°43'44" W, a distance of 25.00 feet, through a central angle of 79°30'31", an arc length of 34.69 feet to a point of tangency;

THENCE S 24°13'13" W, 2.41 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH the South 8.00 feet of the West 910.00 feet of the South half of the Northeast Quarter of the Southwest Quarter of said Section 8.

In exchange for the easement hereinabove described, the Grantee hereby agrees to relinquish any and all rights and interests in those easements, as described below and filed under Auditor's File Nos. 2558862 and 2678247, records of Pierce County, Washington, or any additional documents containing said easements.

The West 30 feet of the Southeast Quarter of the Northeast Quarter of the Southwest Quarter and the East 30 feet and the South 15 feet of the Southwest Quarter of the Northeast Quarter of the

Recor  
85 JUL 25 A 8:40

RICHARD A. GREGG AUDITOR  
PIERCE COUNTY WASH  
DEPUTY

6

Southwest Quarter, all in Section 8, Township 21 North, Range 2 East, W.M., Pierce County, Washington.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals at the day and year below written.

Nu-Dawn Homes Ltd. Partnership

*[Signature]*

Nu-Dawn Homes Ltd. Partnership

Date 7/17/85

*[Signature]*

*[Signature]*

*[Signature]*

Date 7/14/85

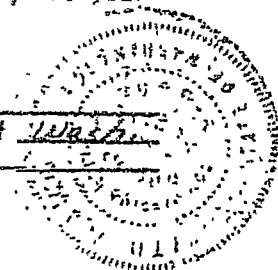
S2:SR  
6/24/85

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KING )

On this 17<sup>th</sup> day of July, 1985, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared JOHN E. TYNES to me known to be the PARTNER of 111-DAWN HOMES LTD. PMS. the corporation that executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Edith Weaver  
Notary Public in and for the State of Wash.  
residing at AUBURN.

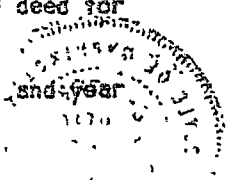


STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KING )

On this 16<sup>th</sup> day of July, 1985, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared John A. Baker and Frank A. Baker, as joint and several to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Olivia Baker  
Notary Public in and for the State of Washington  
residing at Freemont



SF:ACK.1

---

Nu-Dawn Homes Ltd. Partnership

A large, stylized handwritten signature in black ink, appearing to read "Paul E. Jones", written over a horizontal line.

---

Nu-Dawn Homes Ltd. Partnership

032559 0102V1/S 484E2 5/7/2013 639288

EXHIBIT 10

5704250203

PL 641272 2008

ES&M Inc.

A CIVIL ENGINEERING, LAND SURVEY AND PROJECT MANAGEMENT CORPORATION

De-Deed Easement  
PL 641272-041  
April 29, 2013

WARRANTY DEED

Use and in consideration of mutual benefit and other valuable considerations, receipt of which is hereby acknowledged, De-Deed Easement, Incorporated, owner of Lot 3, hereinafter called "Grantor," hereby agrees to the owner of Lot 4 and their successors and assigns, hereinafter called "Grantee," a perpetual easement for the installation, enjoyment, and maintenance of a pipe or duct upon the following described property in Pierce County, Washington, to wit:

COMMENCING at the east westerly corner of Lot 4, part of Epirocater Ridge as recorded in volume 182, pages 1447 through 1451 Records, records of Pierce County, Washington;

THENCE S 25°30'00" E 21.00 feet along a line common to Lot 4 and Lot 3 of said plat to the TRUE POINT OF BEGINNING;

THENCE S 61°30'00" E, 3.0 feet;

THENCE S 25°30'00" E, 31.00 feet;

THENCE S 31°30'00" W, 5.0 feet to a point on said common line;

THENCE S 25°30'00" W, 31.00 feet along said common line to the TRUE POINT OF BEGINNING.

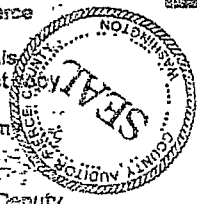
In exchange for the easement herein above described, the Grantee hereby does assent and agree as follows:

- A. Grantee shall be solely responsible for the care, repair, and maintenance of the property contained in this easement and for any and all improvements placed thereon.
- B. It is hereby agreed that the materials, design, and general construction type as first installed by the developer, shall be maintained at a level of enduring quality construction or higher unless a change in construction standards is approved by the then owner of the lot granting the easement.
- C. Grantee shall be responsible for the removal and/or restoration of any improvements placed upon this easement if same is discontinued in the future for the purpose of a utility improvement, the removal and/or restoration of any existing improvement, and/or the removal and restoration of an improvement having been damaged by fire, windstorm, natural deterioration, and/or acts of God.

541 Fourth Avenue 1st Floor Seattle, Washington, 98101 (206) 465-1234

REGISTERED INSTRUMENT  
PL 641272-041  
Pierce County  
Washington  
4th. St.

STATE OF WASHINGTON, County of Pierce  
ss: I, Julie Anderson, of the above  
entitled county, do hereby certify that this  
forgoing instrument is a true and correct copy  
of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of Said County.



By: \_\_\_\_\_ Deputy  
Date: APR 18 2013

DEFS 000001

W. 04188 2000

Sub No. 123-45-641  
April 28, 1937  
Page Two

- 3. Grantee promises, covenants and agrees that the Grantee shall not be liable for any injuries caused by the Grantee, the Grantee's agents and/or third parties arising from the utilization of said premises and further Grantee agrees to hold Grantee harmless and defend and fully indemnify Grantee against any and all claims, demands, and suits arising from the utilization of said premises and to satisfy and all judgments that may result from said claims, actions and/or suits.
- 4. These special provisions shall be not binding upon the Grantee inasmuch as the Grantee's assignment, assigns and/or proposed representation.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal on the day and year before written.

*[Signature]*  
Grantee Name, Inc.

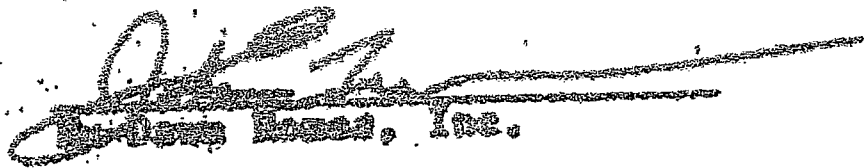
4-19-37  
Date

\_\_\_\_\_ Date

and/agent

FILED  
MAY 10 1937  
U.S. DEPARTMENT OF JUSTICE



  
\_\_\_\_\_

4-19-87  
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Date

04/19/87

**EXHIBIT E**

After Recording Return to:  
JOHN CHRISTOPHER GUEST  
4545 N 42ND ST #6  
PHOENIX, AZ 85018

READ AND APPROVED

Filed for Record at Request of:  
Fidelity National Title Company  
2727 Hohyera St. #400  
Gig Harbor, WA 98335

READ AND APPROVED

Escrow No 7038929

Assessor's Tax Parcel No.: 783700-005-0

STATUTORY WARRANTY DEED

THE GRANTOR MARILYN JEAN LABARBARA, MICHAEL ALLEN COE AND CAROL ANNE WHITE, CO SUCCESSOR Trustees of The Coe Family Trust for and in consideration of TEN DOLLARS AND OTHER VALUABLE CONSIDERATION in hand paid, conveys and warrants to JOHN CHRISTOPHER GUEST AND SUZANNE GUEST, husband and wife; the following described real estate situated in the County of Pierce, State of Washington:

Lot 5 of SPINNAKER RIDGE, according to the plat thereof, recorded on January 31, 1986 under Recording Number 860131D17B, in Pierce County, Washington.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

Dated: October 28 2004

MARILYN JEAN LABARBARA, CO-SUCCESSOR TRUSTEE

MICHAEL ALLEN COE, CO-SUCCESSOR TRUSTEE

CAROL ANNE WHITE, CO-SUCCESSOR TRUSTEE

Ext. A

NOV 10 2004 11:38 AM

GUEST 629

**EXHIBIT F**

September 17 2014 11:36 AM

KEVIN STOCK  
COUNTY CLERK  
NO: 11-2-16364-0

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The Honorable Stanley J. Rumbaugh

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,

Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof,

Defendants.

NO. 11-2-16364-0

GUEST OPPOSITION AND  
OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL  
JUDGMENT" AND/OR "JUDGMENT  
FOR DEFENDANTS" AND/OR ENTRY  
OF ANY JUDGMENT IN THE  
DEFENDANTS' FAVOR

THE COE FAMILY TRUST and Trustee  
Michael Coe,

Interveners,

v.

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,

Respondents.

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife.

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS' FAVOR- 1

Suzanna Guest  
Christopher Guest  
Pro Se  
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Gig Harbor, Washington 98335  
(253) 495-1244

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Third-Party Plaintiffs,

v.

MICHAEL COE and CAROL COE,  
individually and as husband and wife and the  
marital community thereof, and CAROL ANN  
WHITE and JOHN L. WHITE, individually  
and as wife and husband and the marital  
community thereof,

Third-Party Defendants.

Christopher Guest and Suzanne Guest (the "Guests") oppose and object to Defendants' David Lange and Karen Lange ("Lange" or "Langes") untimely, prohibited, precluded, abandoned and barred September 3, 2014 proposed presentation of a "Final Judgment" for Defendants' in Defendants Langes' favor purportedly dismissing all claims and all causes of action made by the Guests in the above-captioned and numbered matter with prejudice. A copy of the proposed Lange "Judgment for Defendants" served on the Guests on September 3, 2014 is attached hereto as Exhibit A. The proposed Judgment was not filed of record.

By reference, the Guests hereby incorporate all the Guest objections and all Guest opposition set forth in the Guests' September 11, 2014 filed opposition and objection to the Langes' Cost Bill as if repeated here including all CR 54 (b) objections.

First, at a minimum, it is *not* "consistent" with the jury's verdict that all of the Guests' claims in this action are and/or could be – or should be – dismissed with prejudice. Exh. A, proposed "Judgment for Defendants", ¶1.

Instead as more fully outlined at least in part below, the Lange trial admissions and stipulations, the *Guest v Lange* trial evidence, the admitted trial exhibits, the JSE ER 904 filed

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS' PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN DEFENDANTS' FAVOR-2

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1 Lange document stipulations all in conjunction with the Guests' trial testimony support and  
2 evidence the fact that the Langes are perpetually bound to the Guests as the Guest deck and/or  
3 deck 'easement' indemnitors under the Lange adopted, admitted and stipulated Lange-Guest  
4 deck indemnity contract in the Guests' favor as "the law of this case". The express and explicit  
5 terms of that indemnity contract – which the Langes admitted at trial bound the Langes to the  
6 Guests as the Guests' indemnitors - precludes, prohibits and bars any Lange claim, suit, relief,  
7 remedy, judgment or recovery against the Guests.  
8

9 In addition, admitted trial exhibits, Lange admissions and stipulations at trial through  
10 counsel and otherwise and the Guests' testimony at trial also evidence the fact and "the law of  
11 this case" that the Guests' SR Lot 5 title was and is the Lot 5 statutory warranty deed title that  
12 Fidelity National Title and the Trust and the Coe related parties faxed to the Guests on  
13 November 1, 2004 to review, examine, approve, accept and "sign off on" in exchange for the  
14 Guests Lot 5 purchase money, which the Guests did. See Guest/Court admitted Trial Exhibit 28;  
15 and RCW 7.28.070. At a minimum, that Lot 5 title as "the law of this case" alters and/or  
16 negates the Trust's CR 54(b) non-final declaratory judgments in this action.  
17

18 Also, admissions by the Spinnaker Ridge ("SR") Association, the SR Board and John  
19 Burleigh as counsel for the Association in this action in May 2013 that the Association is liable  
20 and responsible to the Guests for Lange deck related matters, issues and claims and/or potentially  
21 or probably is liable and 'at risk', in conjunction with the more recent Association, Board and  
22 Association counsel admissions to the Guests in and/or related to the *Association v. Guest* Pierce  
23 County Superior Court lawsuit against the Guests and this lawsuit raise the propriety again of the  
24 Guests' proposed Second Amended Complaint against the Association, the SR Board, individual  
25  
26

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS' FAVOR- 3

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1 Board members and the Langes as SR Trustees and/or as SR Officers in this action subject to  
2 revival.

3 The recent July 2014 post-verdict Association, SR Board and Association counsel  
4 admissions include, but are not limited to, the admission that:  
5

6 (1) the *Guest v. Lange* and the *Association v. Guest* cases and actions are “related”;

7 (2) the *Association v. Guest* lawsuit would not have been filed against the Guests “but  
8 for” the *Guest v. Lange* action;

9 (3) the *Association* lawsuit against the Guests “arose out of” the *Guest v. Lange* lawsuit;

10 and

11 (4) the Association, the SR Board and Association attorney John Burleigh wanted to  
12 resolve the *Association v Guest* lawsuit and the *Guest v. Lange* lawsuit together with the Guests.  
13

14 See Declaration of Suzanne Guest filed contemporaneously with this Opposition in  
15 support thereof.

16 Not all the claims made by the Plaintiffs in this action are or could be dismissed with  
17 prejudice. For example, the Guests’ Lange indemnity damages, losses, costs, expenses, and fees  
18 have not been tallied or determined yet and are not yet complete. The more the Guests “lose”,  
19 the more the Langes must pay. There is no final judgment in this case yet. Even judgment on  
20 the jury’s verdict in this action is premature.  
21

22 Also, the Langes’ quiet title counterclaim was not reached at the July 2014 trial. The  
23 Lange quiet title counterclaim or the Guests’ Answer, Affirmative Defenses and Prayer for  
24 Relief, damages and any available injunctive relief has not been adjudicated yet.  
25  
26

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS’  
PRESENTMENT OF A “FINAL JUDGMENT” AND/OR “JUDGMENT FOR  
DEFENDANTS” AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS’ FAVOR- 4

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1 As directed by the Court and agreed upon by Lange and Guest counsel after closing  
2 argument and the evidence closed, a Lange quiet title counterclaim motion should be noted up  
3 for hearing in this court, not yet done. See 9/17/2014 Guest Declaration.

4 The Langes' admissions and stipulations at trial as further outlined in part below as part  
5 of "the law of this case" also impact other non-final orders and/or judgments.

6  
7 **TRIAL ADMISSIONS AND STIPULATIONS**

8 The Guests assert the following specific non-exclusive objections and opposition to the  
9 presentation of any Lange judgment, any Lange purported "final judgment" and/or the entry of  
10 any Lange judgment against the Guests in this action based on the Langes' fatal trial admissions  
11 and stipulations, the Guests' trial testimony and the admitted trial exhibits.

12  
13 1. **As above, the Langes' adopted, admitted and stipulated**  
**at trial that the Langes were the Guests' contract Indemnitors**

14 The Langes – of their own accord - adopted the 1987 ESM recorded Lot 4 owner  
15 indemnity contract that perpetually bound and binds the Langes to the Guests as the Guests'  
16 Lange and Lot 4 Indemnitors. The Langes admitted and stipulated at trial that the Langes'  
17 indemnity duties and obligations to the Guests are defined and determined by the 1987 ESM  
18 indemnity contract terms, language and words as evidenced by admitted Trial Exhibit 15. A  
19 true and correct copy of the 1987 ESM recorded indemnity contract is attached hereto as Exhibit  
20 B.

21 B. The indemnity contract speaks for itself and supports judgment in the Guests' favor as a  
22 matter of law including Lange indemnity for the July 2014 trial and any Guest loss, expense, fees  
23 or costs.  
24  
25  
26

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS' FAVOR- 5

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2. **The SR CC&Rs admitted as trial exhibits also require that the Langes indemnify the Guests for any damage or injury to the Guests' Lot 5 property.**

David Lange admitted at trial that the SR CC&Rs "absolutely" bound him and the Langes, as well as the SR Architectural Control Committee ("ACC") rules and regulations.

The 2007 SR CC&Rs admitted by Defendants as Trial Exhibit 27 require that the Langes - who did not challenge the CC&Rs - indemnify the Guests and pay and compensate the Guests for any damage and/or injury to the Guests' Lot 5 caused by the Langes.

The Guests challenged the 2007 SR CC&Rs at trial. Suzanne Guest testified at trial that the 2007 SR CC&Rs did not apply to the Guests.

3. **The Langes admitted at trial that the Guests and that Lot 5 were damaged by the Langes' actions and/or omissions.**

The Langes admitted at trial that the Guests and that Lot 5 were damaged and injured by the Langes and their actions and/or omissions. Specifically, the Langes did not challenge and therefore admitted and stipulated that the Guests had paid and/or had incurred or would incur over \$40,000.00 in Lange deck related and/or *Guest v. Lange* attorney fees and related costs and expenses, and that the Langes' construction of a Lange Lot 4 deck beyond the 1987 ESM recorded 'easement' boundaries resulted, at a minimum, in a Guest and a Lot 5 related "loss of value", "loss of privacy" and "loss of use". The Langes also did not dispute at trial that the Guests had paid approximately \$3,700 in Guest and Lot 5 "crawl space clean out" fees and charges to *Guest v. Lange* trial witness Dennis Moore related to Lot 5 water damage on the west side of the Guests' Lot 5 property that was adjacent to the Langes' Lot 4 deck on Lot 5.

1           4.     The Guests – in reality -were the prevailing parties at trial.

2           The Guests established at trial through admitted trial exhibits, the Guests' testimony,  
3 and the Langes' trial admissions and stipulations as "the law of this case" and as a matter of law  
4 among other facts, matters and issues that:

- 5
- 6           • No Lange or Lot 4 'deck easement' was conveyed to the Langes by deed;
  - 7           • The Langes knew when they bought Lot 4 in 1993 that there was no Lot 4  
8 Deck easement or any other Lot 4 easement on Lot 5;
  - 9           • The Spinnaker Ridge ("SR") Development "original design",  
10 the SR Development "original footprint" and the SR and SR Lot 4  
11 "original plan" was no Lot 4 deck or any other easement on Lot 5;
  - 12           • The Guests' Lot 5 title did not have any Lot 4 or Lange 'deck easement';
  - 13           • Nu Dawn Homes Incorporation or Inc. did not own Lot 5;
  - 14           • Nu Dawn Homes Inc. was not the Spinnaker Ridge Developer;
  - 15           • Nu Dawn Homes Limited Partnership was the Spinnaker Ridge Developer;
  - 16           • Nu Dawn Homes Limited Partnership owned Lot 5 along with joint fee  
17 simple Lot 5 title owner SeaFirst Mortgage Corporation;
  - 18           • Nu Dawn Homes Limited, the SR Developer, and SeaFirst Mortgage  
19 Corp. as the two (2) fee simple owners of SR Lot 5 did not grant any Lot 4  
20 owner any deck easement on any part of SR Lot 5;
  - 21           • The Langes stipulated and admitted at trial that the Langes had a 1987 ESM  
22 recorded valid and enforceable indemnity contract that bound them and that  
23 required that the Langes indemnify the Guests for any Lange use and/or  
24 utilization of the 1987 ESM recorded document and/or the use and/or utilization  
25 of any Lange or Lot 4 deck on any part of Lot 5 or any alleged Lange "deck  
26 easement' on Lot 5 according to the terms, the language and the words in the  
1987 ESM indemnity contract;
  - The 1987 ESM Lange indemnity contract barred, precluded and prohibited the  
Langes from making any Lange or any Lot 4 deck or deck usage claims against  
the Guests, from filing any Lange or Lot 4 deck related suit against the Guests and  
from seeking or obtaining any Lange recovery of any judgment, money, relief  
and/or remedy from and/or against the Guests as the Guests' indemnitors;

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS' FAVOR- 7

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- Under the 1987 ESM Lange indemnity contract, the Langes also stipulated and admitted at trial and through counsel that the Langes had and have the duty and the obligation - and are required by contract - to indemnify, pay, reimburse and/or compensate the Guests for any Guest damage, loss, harm, cost, expense, fees and/or judgment related to and/or arising out of any Lange and/or Lot 4 deck on any part of Lot 5 and/or any use and/or utilization of the 1987 ESM 'easement' document and/or any alleged Lange or Lot 4 owner 'deck easement' on Lot 5;
  - The Langes knew before the Langes built the Langes' new deck on part of Lot 5 in April 2011 without the Guests' permission, consent or approval - and over the Guests' objections - that the 1987 ESM recorded 'easement' document included a Lange and/or a Lot 4 owner indemnity contract;
  - The Langes abandoned any Lot 4 SR CC&R 'deck encroachment easement' claim at trial;
  - The Langes relied entirely, completely and solely on the 1987 ESM recorded Lot 4 owner and Lange purported 'deck easement' on Lot 5 at trial as "the law of this case" as the sole basis and the sole ground for the Langes' purported "right" to have a Lange deck on part of Lot 5;
  - The Langes admitted at trial that David Lange knew before trial that SR had a lot of easement problems and also that the SR Development real property also had a lot of problems, and also that David Lange as SR President had notified numerous SR Association owners at various SR committee meetings before trial that there were a lot of SR easement problems and a lot of SR real property problems;
  - The Langes admitted at trial that they built their new Lot 4 deck in April 2011 on the Guests' Lot 5 land over the Guests' objections;
  - The Langes admitted at trial that the Langes built their new Lot 4 deck on the Guests' Lot 5 land over the Lot 5 'easement boundary' identified in the 1987 ESM recorded 'easement' document;
  - The Langes admitted at trial that there was a Guest and a Lot 5 privacy issue that existed as a result of the Lange Lot 4 deck on the Guests Lot 5 property and that was also created by the Langes' April 2011 construction of a Lange Lot 4 deck on part of Lot 5;
  - The Langes admitted at trial that the word "exclusive" was not in the 1987 ESM 'deck easement' recorded document.

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS' PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN DEFENDANTS' FAVOR- 8

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1           5.   The Guests established their RCW 7.28.070 Lot 5 title at trial  
2                   with no Lot 4 deck or other easement on Lot 5.

3           The Guests established at trial through the court admitted trial exhibits, the Langes' pre-  
4           trial JSE and trial admissions and stipulations and Suzanne Guest's trial testimony that the  
5           Guests' title to Lot 5 was the Lot 5 October 28, 2004 statutory warranty deed title that Fidelity  
6           National Title and the 'Trust' faxed to the Guests on November 1, 2004 to review, examine,  
7           approve, accept and 'sign off on' in exchange for the Guests' Lot 5 purchase price money, a  
8           RCW 7.28.070 Guest Lot 5 title without any Lot 4 deck or any other Lot 4 or Lange easement on  
9           Lot 5.

- 10                   • P Trial Exh. 28;
- 11                   • The Langes JSE admission and pre-trial stipulation that the Guests' October 28,  
12                   2004 Lot 5 title was authentic and admissible at trial is on file herein;
- 13                   • The Langes also admitted at trial that the Guests' October 28, 2004 title to Lot 5  
14                   was relevant when the Langes did not object to the admission of P Trial Exh. 28;
- 15                   • Suzanne Guest trial testimony identifying the Guests' Lot 5 title and the Lot 5  
16                   real property that the Guests purchased in 2004;
- 17                   • RCW 7.28.070.

18  
19  
20           6.   The Guests' Lot 5 title defeats any Lange recovery, remedy, relief  
21                   or any judgment in the Langes' favor.

22           The Lange admission and stipulation related to the Guests' Lot 5 title - with no Lot 4  
23           owner deck or any Lot 4 owner easement on Lot 5 as depicted on the January 31, 1986 recorded  
24           Spinnaker Ridge Development "final plat" - in addition to the Lange admitted 1987 Lange-  
25           

26  
GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS' FAVOR- 9

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Gig Harbor, Washington 98335  
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1 Guest indemnity contract and the Lange SR CC&R indemnity and payment contract applicable  
2 to the Langes defeats any Lange judgment, remedy and/or relief against the Guests in this action.

- 3 • P Trial Exh. 28;
- 4
- 5 • P Trial Exh. 20 (SR recorded 1986 final plat, no SR Lot 4 easement on SR Lot 5);
- 6 • P Trial Exh. 11 (Lange Lot 4 title documents, SR Plat diagram, no Lot 4 easement  
7 on Lot 5);
- 8 • P Trial Exh. 23 (SR Articles of Incorporation, no SR Assoc. Lot easements);
- 9 • P Trial Exh. 14 (Jan. 1986 SR Declaration and CC&R, no Assoc. Lot easements);
- 10 • Suzanne Guest trial testimony; and

11

12

13 7. **The Guests' Lot 5 title established by the admitted evidence**  
14 **at trial as "the law of this case" also defeats the Trust's**  
15 **claims and the Trust's non-final CR 54(b) declaratory judgment.**

16 As above, the Guests' Lot 5 title established by the evidence admitted at trial, the  
17 admitted trial exhibits and the Langes' admissions and stipulations at trial is the "law of this  
18 case" and as "the law of this case" the Guests' Lot 5 title defeats the Trust's claims in this case  
19 and the Trust's CR 54(b) non-final declaratory judgment in this case as a matter of law.

20 *See above; CR 54(b).*

21

22 **THE LANGES' QUIET TITLE**  
23 **COUNTERCLAIM AND THE GUESTS' DEFENSES,**  
24 **AFFIRMATIVE DEFENSES AND PRAYERS FOR RELIEF,**  
25 **DAMAGES AND ANY INJUNCTIVE RELIEF**  
26 **HAVE NOT BEEN REACHED**

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS' FAVOR- 10

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Gig Harbor, Washington 98335  
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1           8.       There was no evidence at trial that the Langes had filed a quiet title  
2                           counterclaim against the Guests.

3           The Langes did not request affirmative relief in their favor at trial on any Lange  
4 counterclaim or any evidence at trial that the Langes had filed a counterclaim against the Guests.

5           The existence of any Lange quiet title claim resided in the Langes' quiet title  
6 counterclaim. That quiet title counterclaim asserting "exclusive" Lange use of the Lange Lot 4  
7 deck on Lot 5 relied entirely on the SR CC&Rs and the Lange CC&R purported "deck  
8 encroachment easement", with no affirmative reference to or affirmative reliance on the 1987  
9 recorded 'easement' document evidencing the Langes' knowledge prior to construction of the  
10 Langes Lot 4 deck on Lot 5 in April 2011 and prior to trial that the 1987 document did not create  
11 a Lange Lot 4 'deck easement'.  
12

13           The Langes – for their part - explicitly and expressly abandoned the SR CC&Rs and SR  
14 governing documents at the July 2014 *Guest v. Lange* trial.

15           The Guests are the prevailing parties on the two Lange counterclaims. The Guests'  
16 December 2012 Answer to the Langes' counterclaims preserved and asserted that some SR decks  
17 and patios are or may be subject to defined easements, not admitting in December 2012 that the  
18 Langes had a deck easement on Lot 5, and expressly denying that any such easements, if any,  
19 were or are for the sole and "exclusive" use of the owners of the lots they may serve.  
20

21           Plaintiffs Counterclaim Answer also denied that the Langes' current deck on Lot 5 and  
22 otherwise had been in place since the SR original development, denied all Lange prayers for  
23 relief, and asserted numerous Guest affirmative defenses which entitle the Guests to monetary  
24 and other recovery barring the Langes' claims under the doctrine of "unclean hands", breach of  
25 the Langes' fiduciary duties and obligations to the Guests, contract bar, estoppel, waiver, that  
26

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS' FAVOR- 11

Suzanne Guest  
Christopher Guest  
Pro Se  
6833 Main Sail Lane  
Gig Harbor, Washington 98335  
(253) 495-1244

1 fact that the Langes had not incurred or paid any attorneys fees or costs for the Langes to recover  
2 and the Langes failure to mitigate their damages.

3 In Answer to the Langes' quiet title counterclaim, the Guests also asserted the Langes'  
4 idemnity contract as a complete bar to any Lange recovery or judgment against the Guests as  
5 well as the Langes' contract duty and obligation – admitted by the Langes at trial - to indemnity  
6 and insure the Guests from and against any and all harm, loss, damages, costs and expenses  
7 including any attorneys fees and litigation expenses that Plaintiffs incur as a result of the  
8 easement and “contract dispute and claims between Lot 4 and Lot 5”.

9  
10 Based upon the Guests' Counterclaim Answer and Counterclaim Affirmative Defenses,  
11 the Guests explicitly and expressly requested:

12  
13 “...payment, reimbursement and compensation for all fees and all costs and  
14 full [Lange] indemnity to the fullest extent permitted by statute, contract,  
insurance law, common law and/or equity for Defendants' conduct”

15 and

16 “...whatever further legal and equitable relief, including injunctive relief, as this  
17 Court finds appropriate under the facts of this case”.

18 The Guests are entitled to submit, present and adjudicate their indemnity damages and  
19 losses as part of a post-verdict Lange quiet title counterclaim Motion and obtain a monetary  
20 judgment in their favor as well as any available injunctive relief in the Guests' favor.

21  
22 **THE LANGES' REQUESTED**  
23 **STATUTORY COST AND FEE AWARD**

24 The Langes requested a statutory award of costs and fees in the amount of \$565.00 in the  
25 Langes' proposed “Judgment for Defendants”.

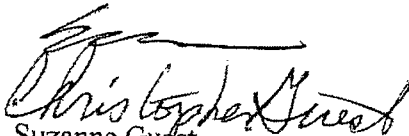
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GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A “FINAL JUDGMENT” AND/OR “JUDGMENT FOR  
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DEFENDANTS' FAVOR- 12

Suzanna Guest  
Christopher Guest  
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6833 Main Sail Lane  
Gig Harbor, Washington 98335  
(253) 495-1244



1 Plaintiffs' addressed the requested costs and fees in the Guests' September 11, 2014 filed  
2 Opposition and Objection to the Langes' Cost Bill. In reality not only are the Langes not  
3 entitled to recover any costs or fees from the Guests, it is the Guests who are entitled to recover  
4 fees and costs from the Langes as previously indicated and as above.  
5

6 DATED this 17th day of September, 2014.  
7

8   
9 Suzanne Guest  
10 Christopher Guest  
11 Pro Se  
12 6833 Main Sail Lane  
13 Gig Harbor, Washington 98335  
14 (253) 495-1244  
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GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
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DEFENDANTS' FAVOR- 13

Suzanne Guest  
Christopher Guest  
Pro Se  
6833 Main Sail Lane  
Gig Harbor, Washington 98335  
(253) 495-1244

**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now, and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, and competent to be a witness herein.

On the date set forth below, I caused to be served in the manner indicated below a copy of the above Guest Opposition and Objection to the Defendants' Presentment of a "Final Judgment" and "Judgment for the Defendants", the September 17, 2014 Declaration of Suzanne Guest in support of the Guest Opposition and this Certificate of Service to the parties and to the attorneys identified below in the manner identified below,

<p><b><u>Former Attorneys for Defendants Lange on the Lange 'Counterclaim' against the Guests (courtesy)</u></b>          Mr. William T. Lynn          Ms. Shelly M. Andrew          Gordon Thomas Honeywell, LLP          1201 Pacific Ave., Ste. 2100          P. O. Box 1157          Tacoma, WA 98401-1157          wlynn@gth-law.com; sandrew@gth-law.com;          fostruske@gth-law.com; lhoover@gth-law.com</p>	<p>( xx )</p>	<p>E-Mail</p>
<p><b><u>Associated Attorney for Defendants Lange on the defense and/or Lange 'counterclaim'</u></b>           Timothy J. Farley, WSBA #19737          Farley &amp; Dimmock, L.L.C.          2012 34th Street          P. O. Box 28          Everett, WA 98206-0028          tifarley@farleydimmock.com</p>	<p>(xx )</p>	<p>E-Mail/E-Service</p>
<p><b><u>Attorney for Christopher and Suzanne Guest on Lange Counterclaim Associated with Christopher and Suzanne Guest</u></b>          David S. Cottnair          Merrick, Hofstedt &amp; Lindsey P.S          3101 Western Ave, Suite 200          Seattle, WA 98121          dcottnair@mh1seattle.com</p>	<p>( xx )</p>	<p>E-Mail/E-Service</p>

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS' PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN DEFENDANTS' FAVOR- 14

Suzanne Guest  
 Christopher Guest  
 Pro Se  
 6833 Main Sail Lane  
 Gig Harbor, Washington 98335  
 (253) 495-1244

1  
2 Attorney for The Coe Family Trust, Trustee Michael Coe,  
3 Counterclaimants, Third-Party Defendants, Cross-Claimants  
4 and Thirdparty Trust, Michael Coe, Carol Coe, Carol Ann White  
5 and John L. White, Michael Cox, Marilyn LaBarbara et al

6 Patrick McKenna  
7 Betsy A. Gillaspy  
8 Salmi & Rhode, PLLC  
9 821 Kirkland Avenue Suite 200  
10 Kirkland, WA 98033  
11 pmckenna@gillaspvrhode.com; bgillaspy@gillaspvrhode.com

(xx )

E-Mail/E-Service

12 Appellate and Association Trial Court Attorney for David Lange  
13 and Karen Lange

14 Irene Hecht  
15 Keller Rohrback  
16 1201 Third Avenue, Suite 3200  
17 Seattle, WA 98101-3052  
18 [ihecht@kellerrohrback.com](mailto:ihecht@kellerrohrback.com)

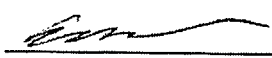
19 Barbara Creely (assistant to Ms. Hecht)  
20 [bcreely@kellerrohrback.com](mailto:bcreely@kellerrohrback.com)

( xx )

E-Mail/E-Service

21  
22 I declare under penalty of perjury under the laws of the State of Washington that  
23 the foregoing is true and correct.

24 EXECUTED this 17th day of September, 2014, at Gig Harbor, Washington.

25  
26  
  
Suzanne Guest

GUEST OPPOSITION AND OBJECTION TO DEFENDANTS'  
PRESENTMENT OF A "FINAL JUDGMENT" AND/OR "JUDGMENT FOR  
DEFENDANTS" AND/OR ENTRY OF ANY JUDGMENT IN  
DEFENDANTS' FAVOR- 15

Suzanne Guest  
Christopher Guest  
Pro Se  
8833 Main Sail Lane  
Gig Harbor, Washington 98335  
(253) 495-1244

**EXHIBIT A**

The Honorable Stanley J. Rumbaugh

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,

Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital  
community comprised thereof,

Defendants.

NO. 11-2-16364-0

**JUDGMENT FOR DEFENDANTS**

This matter was tried by a jury of twelve from July 8, 2014 to July 16, 2014, the Honorable Stanley J. Rumbaugh presiding. Plaintiffs Christopher Guest and Suzanne Guest appeared pro se and through their attorney of record, David S. Cottnair. Defendants appeared through their attorney of record, Timothy J. Farley.

The parties presented evidence and testimony to the jury and on July 16, 2014, the jury returned a verdict in favor of defendants on all of the claims asserted by plaintiffs against defendants. A copy of the jury's verdict is attached as Exhibit A.

Consistent with the jury's verdict, the Court enters judgment as follows:

1. All claims made by plaintiffs Guest in this action are dismissed with prejudice.

**JUDGMENT FOR DEFENDANTS - 1**

*Farley & Dimmock, LLC*  
2012 34<sup>th</sup> Street  
P.O. Box 28  
Everett, WA 98206-0028  
Tel: (425) 339-1323  
Fax: (425) 339-1327

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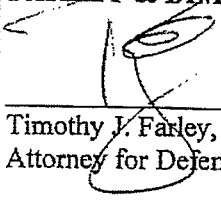
- 2. Defendants are awarded judgment on their claim for quieting title to exclusively use, maintain, repair, and replace the deck serving their property as it now exists against any claim of the plaintiffs.
- 3. Defendants are awarded statutory costs and attorney's fees of \$565.00.

Dated this \_\_\_\_ day of September, 2014.

\_\_\_\_\_  
The Honorable Stanley J. Rumbaugh

PRESENTED BY:

**FARLEY & DIMMOCK, LLC**

  
 \_\_\_\_\_  
 Timothy J. Farley, WSBA # 18737  
 Attorney for Defendants Lange

**COPY RECEIVED:**

**MERRICK, HOFSTEDT & LINDSEY, P.S.**

\_\_\_\_\_  
 David S. Cottnair, WSBA #28206  
 Attorneys for Plaintiffs on Counterclaim

\_\_\_\_\_  
Suzanne Guest, Pro Se Plaintiff

\_\_\_\_\_  
 Christopher Guest, Pro Se Plaintiff

**JUDGMENT FOR DEFENDANTS - 2**

*Farley & Dimmock, LLC*  
 2012 34<sup>th</sup> Street  
 P.O. Box 28  
 Everett, WA 98206-0028  
 Tel: (425) 339-1323  
 Fax: (425) 339-1327

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**CERTIFICATE OF SERVICE**

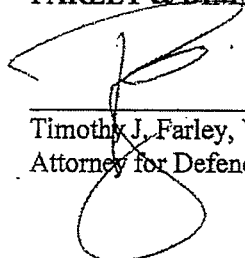
I certify under penalty of perjury under the laws of the State of Washington that I caused a copy of the foregoing Judgment for Defendants to be served on the following person(s) identified below on September 3, 2014 via E-mail and U.S. Mail:

Suzanne and Christopher Guest  
6833 Main Sail Lane  
Gig Harbor, WA 98335  
E-mail: [emmalg@aol.com](mailto:emmalg@aol.com)  
Pro Se Plaintiffs

David S. Cottnair  
Merrick, Hofstedt & Lindsey, P.S.  
3101 Western Avenue Ste. 200  
Seattle, WA 98121  
E-mail: [dcottnair@mhlseattle.com](mailto:dcottnair@mhlseattle.com)  
Attorney for Plaintiffs on Counterclaim

Dated this 3<sup>rd</sup> day of September, 2014.

**FARLEY & DIMMOCK, LLC**



Timothy J. Farley, WSBA # 18737  
Attorney for Defendants Lange

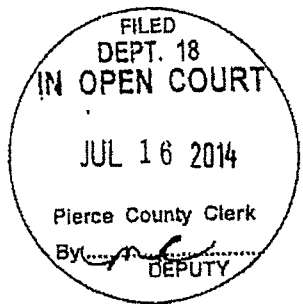
**JUDGMENT FOR DEFENDANTS - 3**

*Farley & Dimmock, LLC*  
2012 34<sup>th</sup> Street  
P.O. Box 28  
Everett, WA 98206-0028  
Tel: (425) 339-1323  
Fax: (425) 339-1327

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11-2-16364-0 42966469 VRD 07-23-14



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7/23/2014

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE GUEST, husband and wife,

Plaintiffs,

NO. 11-2-16364-0

v.

SPECIAL VERDICT FORM

DAVID LANGE and KAREN LANGE, husband and wife, and the marital community comprised thereof,

Defendants.

We, the jury, answer the questions submitted by the court as follows:

QUESTION 1: Did defendants breach a contract with the plaintiffs not to build their deck in an area where it had previously existed?

ANSWER: no (Write "yes" or "no")

(INSTRUCTION: If you answered "no" to Question 1 still answer Question 2. If you answered "yes" to Question 1, answer Question 2 and 3.)

QUESTION 2: Did defendants Lange breach their covenant of good faith and fair dealing with the Guests?

ANSWER: no (Write "yes" or "no")

(INSTRUCTION: If you answered "yes" to Question 2, answer Question 3)

QUESTION NO. 3: What is the total amount of the plaintiffs' damages as to plaintiffs' breach of contract and/or covenant of good faith and fair dealing claim?

ANSWER: \$ ~~\_\_\_\_\_~~

EXHIBIT   A



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7/23/2014

QUESTION NO. 4: Is the deck as presently constructed trespassing on the Guests' Lot 5 property?

ANSWER: NO (Write "yes" or "no")

(INSTRUCTION: If you answered "no" to Question 4, sign this verdict form. If you answered "yes" to Question 5, answer Question 5.

QUESTION 5: What is the total amount of the plaintiffs' damages as to plaintiffs' trespass claim?

ANSWER: \$ 0

Dated this \_\_\_ day of July, 2014.

Debra Gunder  
Presiding Juror

September 17 2014 11:51 AM

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The Honorable Stanley J. Rumbaugh

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,  
  
Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof,  
  
Defendants.

NO. 11-2-16364-0  
  
DECLARATION OF SUZANNE  
GUEST  
  
IN SUPPORT OF GUEST OPPOSITION  
TO LANGE PRESENTMENT OF  
JUDGMENT AND ANY ENTRY OF  
JUDGMENT IN DEFENDANTS'  
FAVOR

THE COE FAMILY TRUST and Trustee  
Michael Coe,  
  
Interveners,

v.

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,  
  
Respondents.

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife.

DECLARATION OF SUZANNE GUEST IN SUPPORT OF GUEST  
OPPOSITION TO LANGE PRESENTMENT OF JUDGMENT AND/OR  
ENTRY OF ANY JUDGMENT IN DEFENDANTS' FAVOR L - 1

Suzanna Guest  
Christopher Guest  
Pro Se  
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Gig Harbor, Washington 98335  
(253) 495-1244

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Third-Party Plaintiffs, )

v. )

MICHAEL COE and CAROL COE,  
individually and as husband and wife and the  
marital community thereof, and CAROL ANN  
WHITE and JOHN L. WHITE, individually  
and as wife and husband and the marital  
community thereof, )

Third-Party Defendants.

I, Suzanne Guest, declare, certify and testify that the following facts and statements are true and correct and are based on my personal knowledge under the perjury laws of the State of Washington.

1. I am a party in the above-captioned action.

2. I am over the age of 18, am competent to declare, certify and testify, and do so herein based on my personal knowledge.

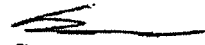
3. I certify that all facts and any and all statements regarding party admissions contained in the Guest Opposition and Objection to the Langes' Presentation of Judgment and/or any entry of judgment in the Langes favor are true and correct including but not limited to the July 2014 post-verdict Association, Spinnaker Ridge Board and Attorney John Burleigh admissions identified on Guest Opposition page 4.

4. At the close of the evidence after closing argument, David Cottnair notified the Court in my presence in open court that the Langes' quiet title counterclaim had not been reached at the July 2014 *Guest v. Lange* trial. The Court indicated that the parties and attorneys should note the counterclaim up for a motion and hearing. Lange counsel agreed to this procedure.

DECLARATION OF SUZANNE GUEST IN SUPPORT OF GUEST  
OPPOSITION TO LANGE PRESENTMENT OF JUDGMENT AND/OR  
ENTRY OF ANY JUDGMENT IN DEFENDANTS' FAVOR L - 2

Suzanne Guest  
Christopher Guest  
Pro Se  
6833 Main Sail Lane  
Gig Harbor, Washington 98335  
(253) 495-1244

1 DATED and EXECUTED this 11<sup>th</sup> day of September, 2014 at Gig Harbor, Washington.

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3 Suzanne Guest

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DECLARATION OF SUZANNE GUEST IN SUPPORT OF GUEST  
OPPOSITION TO LANGE PRESENTMENT OF JUDGMENT AND/OR  
ENTRY OF ANY JUDGMENT IN DEFENDANTS' FAVOR L - 3

Suzanne Guest  
Christopher Guest  
Pro Se  
6833 Main Sail Lane  
Gig Harbor, Washington 98335  
(253) 495-1244

September 18 2014 8:50 AM

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COUNTY CLERK  
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The Honorable Stanley J. Rumbaugh

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife, )

Plaintiffs, )

v. )

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof, )

Defendants. )

NO. 11-2-16364-0

**ERRATA**

MISSING EXHIBIT B

GUEST SEPTEMBER 17, 2014  
OPPOSITION AND OBJECTION  
TO LANGE PRESENTMENT OF  
JUDGMENT AND/OR ENTRY OF  
JUDGMENT IN LANGES' FAVOR

THE COE FAMILY TRUST and Trustee  
Michael Coe, )

Interveners, )

v. )

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife, )

Respondents. )

ERRATA – MISSING EXHIBIT B TO GUEST SEPTEMBER 17, 2014  
OPPOSITION AND OBJECTION TO LANGE PRESENTATION OF  
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FAVOR - 1

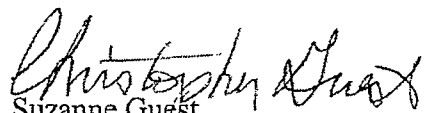
Suzanne Guest  
Christopher Guest  
Pro Se  
6833 Main Salt Lane  
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(253) 495-1244

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CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife,  
  
Third-Party Plaintiffs,  
  
v.  
  
MICHAEL COE and CAROL COE,  
individually and as husband and wife and the  
marital community thereof, and CAROL ANN  
WHITE and JOHN L. WHITE, individually  
and as wife and husband and the marital  
community thereof,  
  
Third-Party Defendants.

Attached hereto is the inadvertently missing Exhibit B, admitted *Guest v. Lange* Trial Exhibit 15, referred to on page 5, lines 20-21, of the Guests' September 17, 2014 Opposition to the Langes' presentation of a "Final Judgment" and a "Judgment for Defendants". By and through this Errata, reference, attachment and incorporation, the Guests hereby incorporate the attached Exhibit B as if it had been attached to the original September 17, 2014 filing.

DATED this 18th day of September, 2014.

  
Suzanne Guest  
Christopher Guest  
Pro Se  
6833 Main Sail Lane  
Gig Harbor, Washington 98335  
(253) 495-1244

ERRATA - MISSING EXHIBIT B TO GUEST SEPTEMBER 17, 2014  
OPPOSITION AND OBJECTION TO LANGE PRESENTATION OF  
JUDGMENT AND/OR ANY ENTRY OF JUDGMENT IN LANGES'  
FAVOR - 2

Suzanne Guest  
Christopher Guest  
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Gig Harbor, Washington 98335  
(253) 495-1244

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**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now, and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, and competent to be a witness herein.

On the dates set forth below, I caused to be served in the manner indicated below a copy of this September 17, 2014 Guest Errata with attached Exhibit B along with this Certificate of Service to the parties and to the attorneys identified below in the manner identified below,

<p><b><u>Former Attorneys for Defendants Lange on the Lange 'Counterclaim' against the Guests (courtesy)</u></b>          Mr. William T. Lynn          Ms. Shelly M. Andrew          Gordon Thomas Honeywell, LLP          1201 Pacific Ave., Ste. 2100          P. O. Box 1157          Tacoma, WA 98401-1157          wlynn@gth-law.com; sandrew@gth-law.com;          fostruske@gth-law.com; lhooper@gth-law.com</p>	<p align="center">( xx )</p>	<p align="center">E-Mail</p>
<p><b><u>Associated Attorney for Defendants Lange on the defense and/or Lange 'counterclaim'</u></b>          Timothy J. Farley, WSBA #19737          Farley &amp; Dimmock, L.L.C.          2012 34th Street          P. O. Box 28          Everett, WA 98206-0028          tifarley@farleydimmock.com</p>	<p align="center">(xx )</p>	<p align="center">E-Mail/E-Service</p>
<p><b><u>Attorney for Christopher and Suzanne Guest on Lange Counterclaim Associated with Christopher and Suzanne Guest</u></b>          David S. Cottnair          Merrick, Hofstedt &amp; Lindsey P.S          3101 Western Ave, Suite 200          Seattle, WA 98121          dcottnair@mhlseattle.com</p>	<p align="center">( xx )</p>	<p align="center">E-Mail/E-Service</p>

ERRATA – MISSING EXHIBIT B TO GUEST SEPTEMBER 17, 2014  
 OPPOSITION AND OBJECTION TO LANGE PRESENTATION OF  
 JUDGMENT AND/OR ANY ENTRY OF JUDGMENT IN LANGES'  
 FAVOR - 3

Suzanne Guest  
 Christopher Guest  
 Pro Se  
 6833 Main Sail Lane  
 Gig Harbor, Washington 98335  
 (253) 495-1244

1 Attorney for The Coe Family Trust, Trustee Michael Coe,  
2 Counterclaimants, Third-Party Defendants, Cross-Claimants  
3 and Thirdparty Trust, Michael Coe, Carol Coe, Carol Ann White  
4 and John L. White, Michael Cox, Marilyn LaBarbara et al

4 Patrick McKenna  
5 Betsy A. Gillaspy  
6 Salmi & Rhode, PLLC  
7 821 Kirkland Avenue Suite 200  
8 Kirkland, WA 98033  
9 pmckenna@gillaspyrhode.com; bgillaspy@gillaspyrhode.com

(xx )

E-Mail/E-Service

8 Appellate and Association Trial Court Attorney for David Lange  
9 and Karen Lange

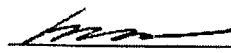
9 Irene Hecht  
10 Keller Rohrback  
11 1201 Third Avenue, Suite 3200  
12 Seattle, WA 98101-3052  
13 ihecht@kellerrohrback.com  
14 Barbara Creely (assistant to Ms. Hecht)  
15 bcreely@kellerrohrback.com

(xx )

E-Mail/E-Service

14 I declare under penalty of perjury under the laws of the State of Washington that  
15 the foregoing is true and correct.

16 EXECUTED this 18th day of September, 2014, at Gig Harbor, Washington.

17  
18   
19 Suzanne Guest

20  
21  
22  
23  
24  
25  
26  
ERRATA – MISSING EXHIBIT B TO GUEST SEPTEMBER 17, 2014  
OPPOSITION AND OBJECTION TO LANGE PRESENTATION OF  
JUDGMENT AND/OR ANY ENTRY OF JUDGMENT IN LANGES'  
FAVOR - 4

Suzanne Guest  
Christopher Guest  
Pro Se  
6833 Main Sail Lane  
Gig Harbor, Washington 98335  
(253) 495-1244



**EXHIBIT B**

6704230509

VS. 0412 PMS 2368

ESM Inc.

A CIVIL ENGINEERING, LAND SURVEY, AND PROJECT MANAGEMENT CONSULTING FIRM

Mr. Dean Evans  
Job No. 115-03-001  
April 29, 1987

WATTO OR DOCK EASEMENT

For and in consideration of mutual benefit and other valuable consideration, receipt of which is hereby acknowledged, Mr. Dean Evans, Incorporated, owner of Lot 3, hereinafter called "Grantor," hereby grants to the owner of Lot 4 and their successors and assigns, hereinafter "Grantee," a perpetual easement for the installation, enjoyment, and maintenance of a pier or dock upon the following described property in Pierce County, Washington, to wit:

COMMENCING at the most Northerly corner of Lot 4, plat of Spymaster Ridge as recorded in volume 308, pages 1447 through 1451 including records of Pierce County, Washington;

THENCE N 18°30'00" E 21.00 feet along a line common to Lot 4 and Lot 3 of said plat to the TRUE POINT OF BEGINNING;

THENCE N 61°30'00" E, 5.0 feet;

THENCE S 28°30'00" E, 51.00 feet;

THENCE S 61°30'00" W, 5.0 feet to a point on said common line;

THENCE N 18°30'00" W, 51.00 feet along said common line to the TRUE POINT OF BEGINNING.

In exchange for the easement herein above described, the Grantee hereby does covenant and agree as follows:

- A. Grantor shall be solely responsible for the care, repair, and maintenance of the property contained in this easement and for any and all improvements placed thereupon.
- B. It is hereby agreed that the materials, design, and general construction type as first installed by the developer, shall be maintained at a level of existing quality construction or higher unless a change in construction standards is approved by the then owner of the lot granting the easement.
- C. Grantee shall be responsible for the removal and/or restoration of any improvements placed upon this easement if same is necessitated in the future for the purpose of a utility improvement, the renovation and/or construction of any existing improvement, and/or the removal and restoration of an improvement having been damaged by fire, windstorm, natural deterioration, and/or acts of God.

6  
541 Powell Avenue S.W., Suite 100 • • • Tacoma, Washington, 98533 • • • (206) 226-9226

FILED IN PUBLIC DATA 4-29-87  
Pierce County

STATE OF WASHINGTON, County of Pierce  
ss: I, Julie Anderson, of the above  
entitled county, do hereby certify that this  
forgoing instrument is a true and correct copy  
of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of Said County.



By: \_\_\_\_\_ Deputy  
Date: Apr 18 2013

DEFS 000001

Case No. 133-22-851  
April 29, 1967  
Page Two

- 2. Grantee promises, covenants and agrees that the Grantor shall not be liable for any injuries incurred by the Grantee, the Grantee's guests and/or third parties arising from the utilization of said premises and further Grantee agrees to hold Grantor harmless and defend and fully indemnify Grantor against any and all claims, suits, and costs arising from the utilization of said premises and to satisfy and all judgments that may result from said claims, suits and/or suits.
- 3. These special covenants shall be not binding upon the Grantee herein but also Grantee's successors, assigns and/or personal representatives.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals at the city and year below written.

[Signature]  
[Name], Inc.

4-29-67  
Date

Date

and/over

FILED  
APR 29 1967  
CLERK OF SUPREME COURT  
STATE OF NEW YORK

**EXHIBIT G**

0150



11-2-16364-0 42966400 PLPIN 07-23-14

The Honorable Stanley J. Rumbaugh  
Trial Date: July 8, 2014

FILED  
DEPT. 18  
IN OPEN COURT

JUL 10 2014

Pierce County Clerk

By *[Signature]*  
DEPUTY

2072

7/23/2014

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife, )

Plaintiffs, )

NO. 11-2-16364-0

v. )

DAVID LANGE and KAREN LANGE,  
husband and wife, and the marital community  
comprised thereof, )

Defendants. )

THE COE FAMILY TRUST and Trustee  
Michael Coe, )

Interveners, )

v. )

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife, )

Respondents. )

CHRISTOPHER GUEST and SUZANNE  
GUEST, husband and wife, )

Third-Party Plaintiffs, )

v. )

MICHAEL COE and CAROL COE,  
individually and as husband and wife and the  
marital community thereof, and CAROL ANN  
WHITE and JOHN L. WHITE, individually  
and as wife and husband and the marital )

0151

2072

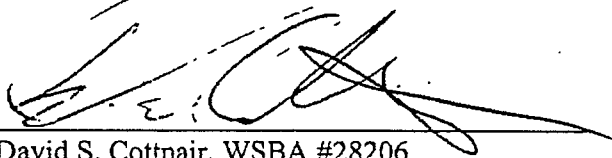
7/23/2014

community thereof,
Third-Party Defendants.

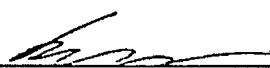
**PLAINTIFF'S PROPOSED JURY INSTRUCTIONS**

DATED this 16<sup>th</sup> day of July, 2014.

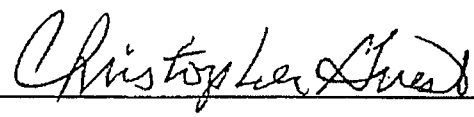
MERRICK, HOESTEDT & LINDSEY, P.S.

By:   
 David S. Cottnair, WSBA #28206  
 Of Attorneys for Plaintiff

DATED this 10<sup>th</sup> day of July, 2014.

By:   
 Suzanne Guest, Pro Se and also  
 Associated with the Merrick Law Firm  
 on the Lange 'Counterclaim' (without waiver)

DATED this \_\_\_\_\_ day of July, 2014

By:   
 Christopher Guest, Pro Se and also  
 Associated with the Merrick Law Firm  
 on the Lange 'Counterclaim' (without waiver)

INSTRUCTION NO. \_\_\_\_\_

**CONSIDERATION**

If you find that the Guests, in return for a Lange promise did anything legal which they were not bound to do, or refrained from doing anything that they had a right to do, whether there is actual loss or detriment to the Guests or actual benefit to the Langes or not, then there was consideration.

0160

2072

7/23/2014

WPI 301.04; *Browning v. Johnson* 70 Wn.2d 145, 422 P.2d 314 (1967)

INSTRUCTION NO. \_\_\_\_

**IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING**

A duty of good faith and fair dealing is implied in every contract. This duty requires the parties to cooperate with each other so that each may obtain the full benefit of performance. However, this duty does not require a party to accept a material change in the terms of its contract.

WPI 302.11

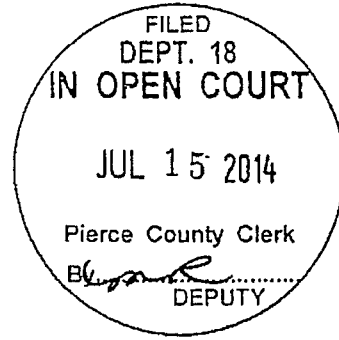


**EXHIBIT II**

0211



11-2-16364-0 42966451 CTINJY 07-23-14



2072

7/23/2014

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

CHRISTOPHER GUEST, et al.

Plaintiffs,

vs.

DAVID LANGE, et al.

Defendants.

Cause No. 11-2-16364-0

COURT'S INSTRUCTIONS TO THE JURY

Dated this 15<sup>th</sup> day of July, 2014.

[Signature]  
Judge Stanley J. Rumbaugh

INSTRUCTION NO. 9

If you find that plaintiffs justifiably relied on defendants' promise not to build a new deck in the area identified in the patio or deck easement, then there was consideration.

0222

7/23/2014 2072

Instruction No. 17

The court has determined as a matter of law that defendants had the right to rebuild in, and occupy, the area described in the Patio or Deck Easement recorded under Pierce County Auditor Document Number 8704290509.

EXHIBIT

No. 9'

PROPOSED  
SUBDIVISION ORDINANCE  
OF THE TOWN OF GIG HARBOR

NOTE:

1. The section and subsection numbers should be changed to be in accord with the usual numbering sequence in local ordinances.
2. Lot sizes should reflect the availability of water and sewerage facilities as controlled by the zoning ordinance.

DECEMBER 5, 1965

Consulting Services Corporation  
1602 Tower Building  
Seattle, Washington 98101

2/10

EXH. 1

0-1-11-11-11  
~~PROPOSED~~  
SUBDIVISION ORDINANCE  
OF THE TOWN OF GIG HARBOR

An ordinance providing rules and regulations for the municipal approval of the partitioning of land into platted subdivisions prescribing standards for the design, layout and development there-of; providing procedure for municipal approval or dis-approval thereof; providing for the granting of variations and exceptions thereto; providing a penalty for the violation thereof; and repealing all other ordinances in conflict therewith.

BE IT ORDAINED BY the Council of the Town of Gig Harbor:

Title

1.0 This ordinance shall hereafter be known as the Subdivision Ordinance for the Town of Gig Harbor.

2.0 Definitions

2.1 Comprehensive Plan

The Comprehensive Plan, or portions thereof, consists of those coordinated plans in preparation or which have been prepared by the Planning Commission for the physical development of the municipality; or any plans, being portions of the comprehensive plan, prepared for the physical development of such municipality, that designate, among other things, plans and programs to encourage the most appropriate use of land, and lessen congestion throughout the municipality, in the interest of public health and welfare.

2.2 Dedication

Dedication is the deliberate appropriation of land or rights in land by its owner for any general and public use, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public use to which the property has been devoted.

2.3 Final Plat

Final plat is the plan of the subdivision plat, or any portions thereof prepared for filing of record by the County Auditor, and containing those elements and requirements set forth in Section 8 of this ordinance. After the County Auditor has filed for record the final plat, it shall thereafter be known as an authorized subdivision plat.

2.4 Official Maps

Official maps are those official maps or map, or portions thereof, adopted by ordinance by the Council as provided in Ch. 44, Sec. 6, Laws, 1935, as amended (RCW 35.63.110).

2.5 Planning Commission

The Planning Commission shall be that Commission established by the Council of the Town of Gig Harbor as provided in Ch. 44, Laws, 1935, as amended (Ch. 35.63, RCW).

2.6 Preliminary Plat

*Subdivision* → A Preliminary subdivision plat is a preliminary plan of the subdivision plat, containing the elements and requirements as set forth in Section 5 hereof.

2.7 Subdivider

A subdivider is any person, firm or corporation proposing to make, or having made, a subdivision plat.

2.8 Subdivision or Plat

A subdivision plat is an area of land, which has been divided into lots or tracts of land and must include a map, or maps related thereto, for the purpose, whether immediate or future, of transfer of ownership.

2.9 Tentative Approval

Tentative approval is the official approval given to the proposed preliminary subdivision plat, or dedication by the Planning Commission, and the Town Council, meeting in regular session.

2.10 Final Approval

Final approval is the final official approval given by the Planning Commission and the Town Council on the Final subdivision plat, or dedication or portion thereof that has previously received tentative approval.

3.0 Regulation of Land Development

No person, firm or corporation may alter or revise the boundary lines of any property or partition, or divide for separate ownership any land, or proposing to make, or having made a plat or subdivision of land containing four or more lots, plats, or tracts, or proposing to make or having made a plat or subdivision containing a dedication of any part thereof as a public street or highway, or shall enter into any contract for the sale of, or shall offer to sell said subdivision, or plat, or any part thereof until there has been obtained from the Planning Commission final approval of the subdivision plat, or dedication in accordance with the prescribed rules and regulations contained herein.

4.0 Procedure

4.1 Preliminary Review

The subdivider, his engineer and/or land surveyor, while the proposed plat, subdivision, or dedication is in sketch form shall consult with the planning commission, for the purpose of



ascertaining the requirements of Official Maps or any portions thereof, and obtaining any explanation of the rules and regulations herein contained as may be necessary and related to the proposed plat, subdivision, or dedication.

4.2 Preparation of the Proposed Plat

The subdivider shall employ a licensed professional land surveyor to prepare the proposed plat in accordance with the requirements of Section 5 hereof.

4.3 Tentative Approval

4.3.1 Four copies of all data constituting the proposed plat shall be submitted to the Town Clerk together with an application for tentative approval.

4.3.2 Fees

The application for tentative approval of a proposed subdivision plat shall be accompanied by a fee in the amount of \$5.00 for each lot to be created up to a maximum of \$125.00 per subdivision.

4.3.3 The Town Clerk will affix to the application for tentative approval of a proposed subdivision plat a file number and the date it is received.

4.3.4 The Town Clerk will transmit one copy of the proposed plat to the town engineer for recommendations regarding the proposed subdivision plat or dedication, and transmit one copy to the Planning Commission, one copy to the County Health Officer, and retain in a file one copy for public reference.

4.3.5 The Town Engineer, and other interested Town department heads within the scope of their municipal functions shall submit their recommendations regarding the proposed subdivision plat, or dedication to the Planning Commission within a period of three weeks from the day the Town Clerk receives the application for its approval.

4.3.6 Notice of public hearing on the proposed subdivision plat, or dedication shall consist of at least three copies of the notice of the hearing, posted in conspicuous places, on or adjacent to the land proposed to be platted, in which the time and place of such hearing is clearly indicated, all of which shall be posted not less than seven days prior to the hearing; and the announcement of public hearing shall be submitted by registered or certified mail not less than seven days prior to the time of the public hearing to the owners of record of all contiguous properties to the proposed subdivision plat, or dedication. Notice of each such public hearing shall be given in accordance with Ch. 216, Laws, 1935, State of Washington.

4.3.7 The Planning Commission and Town Council will either tentatively approve or disapprove the proposed subdivision plat, or dedication within a period of 60 days after the Town Clerk has received the application. A certificate of approval or disapproval shall be forwarded to the subdivider and each of the municipal officers that received a copy of the proposed subdivision plat, or dedication. Tentative approval shall be effective for a period of one year. An extension of one year may be granted by the Planning Commission upon the application of the subdivider.

4.4 Installation of Improvements

4.4.1 When the proposed subdivision plat is approved by the Planning Commission the subdivider, before requesting final approval, shall elect by a written statement to carry out minimum improvements in accordance with the provisions of Section 7 herein contained by either of the following methods or by a combination of these methods:

4.4.2 By furnishing the Town of Gig Harbor with a subdivision plat bond, in which assurance is given the Town that the installation of the minimum improvements will be made within one year from the date of final approval and that such improvement will be carried out as provided in Section 7.0. The amount of the subdivision plat bond shall be determined by the Town Engineer. All legal costs incurred by the Town to enforce completion of site improvements shall be borne by the subdivider, ~~and~~ <sup>and/or</sup> become a lien against the property.

4.4.3 By actually installing the minimum improvements in accordance with the provisions of Section 7.

4.5 Final Approval

4.5.1 After completion of all improvements or complying with the requirements set forth in 4.4.2, the subdivider shall submit the original and four copies of his final subdivision plat to the Town Clerk with a request for final approval together with the required fee as specified in 4.3.2.

4.5.2 The Town Clerk will forward the subdivision plat to the Town Engineer who will check it for completeness and accuracy and indicate his satisfaction by affixing his signature and seal thereto and forward the subdivision plat to the Planning Commission.

4.5.3 The Planning Commission shall hold a public meeting to consider final approval within 30 days of the date of request.

4.5.4 The Planning Commission and the Town Council shall grant final approval after ascertaining that all requirements of these regulations and any other requirements specified by the Planning Commission and the Town Council have been met.

4.5.5 The final subdivision plat shall then be submitted by the Town Clerk to the Town Treasurer who shall affix his signature thereto after all town assessments on the property being platted have been paid.

- 4.5.6 The Town Clerk shall transmit the approved plat to the following officials:
  - 4.5.6.1 One copy to the County Assessor for the segregation of taxes and assessments.
  - 4.5.6.2 The original to the County Treasurer for endorsement of the Treasurer's Certificate.
  - 4.5.6.3 The original to the County Auditor for filing for record. Also the plat shall pay the filing fees stipulated by the County Auditor.
  - 4.5.6.4 One copy to the Planning Commission.
  - 4.5.6.5 One copy shall be retained by the Town Clerk and the same to be placed in a file available to the public.
  - 4.5.6.6 After the final plat has been filed for record by the County Auditor it shall be known as an authorized plat, subdivision, or dedication of the land as provided in Ch. 136, Sec. 7, Laws, 1937 as hereafter amended (RCW 58.16.060).

5.0 Requirements of the Preliminary Plat

5.1 General Requirements

- 5.1.1 The preliminary subdivision plat shall be prepared by a licensed, professional ~~Engineer and/or~~ land surveyor in accordance with the requirements established herein.
- 5.1.2 The maps, drawings and data of the preliminary subdivision plat shall be of size 18 inches by 24 inches.
- 5.1.3 All maps shall show the date, scale and the direction of true north, referenced to Washington Lambert Grid, North Zone.
- 5.1.4 The map of the preliminary subdivision plat shall be drawn to a scale 50 feet to the inch.
- 5.1.5 Any of the following specified maps may be combined in any way which will clearly show the information required.

5.2 Specific Requirements

The proposed Subdivision plat, shall contain the following information.

5.2.1 Identification and Description

- 5.2.1.1 Proposed name of the plat.
- 5.2.1.2 Name and address of the developer.
- 5.2.1.3 Name, address and seal of registered ~~engineer and/or~~ <sup>Engineer and/or</sup> land surveyor who prepared the plat drawings.

- 5.2.1.4 Location of the land to be platted by Section, Township and Range and legal description as shown in the records of the County Auditor of Pierce County.
- 5.2.1.5 No name streets shall duplicate others within city.
- 5.2.1.6 Land use classification as established by zoning ordinances.
- 5.2.2 Delineation of Existing Conditions
- 5.2.2.1 A vicinity map drawn to a scale of four hundred (400) feet to the inch showing the tract to be subdivided, the proposed streets and adjacent and existing connecting streets.
- 5.2.2.2 A map showing the relative location of all lots and tracts contiguous to the proposed subdivision plat and the names and addresses of the owners of these lots and tracts as shown by the record of the Auditor of the County.  
Section Subdivision
- 5.2.2.3 A map showing existing monuments of record which will be used in the plat survey.
- 5.2.2.4 A map shall be prepared showing topography with contour intervals of five feet or less, referenced to the United States Coast and Geodetic Survey Datum.
- 5.2.2.5 A map showing existing easements within the tract.
- 5.2.2.6 A map showing the outline of all existing buildings within the tract and their relationship to proposed lot lines.
- 5.2.3 Delineation of Proposed Conditions
- 5.2.3.1 Layout and dimensions of lots with each lot identified by number or by number and block.
- 5.2.3.2 Indication of all land areas to be used for purposes other than residential building sites. The nature, conditions and limitations of such uses shall be indicated.
- 5.2.3.3 Permanent cased survey monuments shall be indicated as specified by the Town Engineer.
- 5.2.3.4 Layout and dimensions and profiles of proposed streets, alleys, footpaths and easements.
- 5.2.3.5 Storm water drainage system.
- 5.3 Water System
- 5.3.1 Application for tentative approval shall be accompanied by written evidence from the appropriate water utility that water is available and will be furnished to serve the proposed water distribution system.
- 5.3.2 A diagram shall be prepared showing the proposed water distribution system. Fire hydrants shall be located at 600 foot intervals as measured along streets or easements for vehicular traffic.

5.4 Sewer System

5.4.1 Application for tentative approval shall be accompanied by written evidence from the appropriate sewer utility that the proposed subdivision will be served by such sewer district - if such sewer utility exists.

5.4.2 If a public sewer main is not within 800 feet of the proposed subdivision or if connection to a public sewer is impossible, as certified by a letter from the sewer utility, a letter from the county health officer is required indicating that septic tanks or other methods of handling wastes can be installed on the proposed subdivision, without adverse effect on water supply or health of the residents of the area.

5.4.3 A diagram shall be prepared showing the proposed sewage disposal system.

6.0 General Principles of Design and Minimum Requirements for the Layout of Subdivisions

6.0.1 In the planning of a subdivision plat the subdivider shall prepare his proposed plat in conformance with the following provisions:

6.1 Provisions of the Comprehensive Plan

6.1.1 The proposed subdivision shall provide for such requirements contained in official plans or portions thereof and development plans for the Town of Big Harbor.

6.1.2 The subdivider shall make available for public acquisition such lands in the area to be subdivided as are designated by the official map for parks, playgrounds and public buildings.

6.1.3 Land which the Planning Commission has found unsuitable for subdivision due to flooding, bad drainage, steep slopes, rock formations, or other features likely to be harmful to the safety, welfare, and general health of the future residents, and the Planning Commission considers inappropriate for subdivision, shall not be subdivided, unless adequate and feasible subdivision methods are formulated by the developer and approved by the Town Engineer and the County Health Department.

6.1.4.1 Special drainage easements shall be worded individually to suit the drainage situation on each plat.

6.1.4.2 Where appropriate, the plat shall include a drainage easement as follows: "An easement is reserved upon the following lots in \_\_\_\_\_ subdivision, granting the right for surface water to drain across, in a natural course, said lots of the subdivision."

6.1.5 Those areas of the Town, where topographical slopes are 30 percent or more, shall be subdivided in conformance with any additional requirements which the Planning Commission shall provide to any subdivider within three weeks after preliminary review by the Planning Commission.

6.2 Streets

The following requirements are applicable when the plat is provided with dedicated public streets.

6.2.1.1 Street layout shall conform to the most advantageous development of the adjoining areas, and the entire neighborhood, and shall provide for the continuity of appropriate streets and arterials.

6.2.1.2 The length of blocks shall not exceed Thirteen hundred twenty feet (1,320 feet).

6.2.2 Rights-of-Way

6.2.2.1 Dead end streets less than Six Hundred sixty (660) feet in length shall have a minimum right-of-way of fifty (50) feet.

6.2.2.2 Through streets and dead end streets over Six hundred sixty feet in length shall have a minimum right-of way of Sixty (60) feet.

6.2.2.3 All dead-end streets and private lanes shall terminate in a cul-de-sac having a minimum diameter of eighty(80) feet or other equivalent design as approved by the Planning Commission.

6.2.2.4 Where cut slopes and street fills fall outside a normal width street, extra street right-of-way to accommodate such cuts and fills, and their maintenance, shall be provided or an easement for said cut slopes or fill slopes, falling outside of said right-of-way, may be provided for on the face of the final plat.

6.2.3 Grades and Curves

6.2.3.1 Grades of streets shall not exceed eight(8) percent unless conditions of topography require a steeper grade for practical reasons, in the judgment of the Town Engineer.

6.2.3.2 All Changes in street grades shall be connected by vertical curves meeting the standards of the Town Engineer.

6.2.3.3 The lot or tract lines at street intersections shall be rounded with a minimum radius of twenty (20) feet.

6.3 Private Lanes

The following requirements and limitations are applicable when the plat, by virtue of its unique or small size or dimensions, cannot, in the judgment of the Planning Commission, reasonably provide a right-of-way as defined in Section 6.2.2

- 6.3.1 Land may be subdivided where access is provided between the building sites and a public street via a private lane when such lane shall serve a maximum of three building sites or less and when the following conditions are met by the subdivider:
- 6.3.1.1 The total number of building sites is the maximum number of building sites permitted under the zoning ordinance area requirements, or restrictions of protective deed covenants.
- 6.3.1.2 Perpetual and reciprocal easements between the several lots of the subdivision shall be in a form approved by the Planning Commission and recorded with the Auditor. Such easements, generally, shall be for ingress and egress of vehicular and pedestrian traffic, utilities, including those underground and for the setting of poles and the stringing of wires and by the terms of its grant, it shall cease as to any dominant tenement whenever such dominant tenement shall abutt upon a public street. In particular, such easements shall perpetually grant to the Town of Gig Harbor the right of ingress and egress over and upon the same for the exercise of the police power of the town including the conduct of all municipal responsibility, the protection of life, property and the general welfare and such easements shall perpetually burden the servient tenements with the obligation of upkeep, maintenance and repair of the private lane, in accordance with minimum standards for such work prevailing in the town, so as to insure, in the future, the continuing exercise by the town, of its police power in the subdivision.
- 6.3.3 Private lanes shall have a minimum width of twenty (20) feet.
- 6.3.4 The location of all private lanes and turn-around areas shall be subject to the approval of the Planning Commission.
- 6.3.5 Private lanes are prohibited where adequate lot size and proportions can be obtained by the dedication of full width streets, notwithstanding the provisions of Section 6.3.1 or that the maximum number of lots or tracts possible with a dedicated street may be less than would be possible if the plat utilized a private lane in lieu of a dedicated street.
- 6.4 Lots
- 6.4.1 Minimum lot size shall be as specified in the zoning ordinance, provided further that any area designated as a private lane for use as access to more than one lot shall not be included in lot area computations.
- 6.4.2 Lots shall be of as simple geometric shape as possible.

- 6.4.3 Lots designed with long private driveways as a means to avoid the dedication of a public street, or a portion thereof, should be discouraged.
  - 6.4.4 Excessive depth in relation to width shall be avoided. A proportion of depth to width of one and one-half to one shall be considered as desirable.
  - 6.4.5 Every lot shall abutt on a public street by a minimum of twenty (20) feet, or shall have access to a public street by a private lane easement as provided in Section 6.3.
  - 6.4.6 Interior lots (lots not on a corner) shall be at least eighty (80) feet wide.
  - 6.4.7 Side lot lines shall be approximately at right angles to the right-of-way line of the street on which the lot faces.
  - 6.4.8 Existing structures shall meet all the setback requirements of the zoning ordinance with respect to all new property lines.
- 7.0 Procedure for Installing Improvements and Establishing Standards Thereto
- 7.1 Streets and Private Lanes
- 7.1.1 Streets shall be constructed to full width and surfaced in accordance with the Town's standard plans and under the supervision of the Town Engineer.
  - 7.1.2 Private lanes shall be constructed as half width streets and surfaced in accordance with the Town's standard plans and under the supervision of the Town Engineer.
  - 7.1.3 Street drainage and lot drainage shall be installed in accordance with the Town standards and to the satisfaction of the Town Engineer.
- 7.2 Water System
- The water distribution system, including the locations of fire hydrants, shall be designed and installed in accordance with the standards of the Town of Gig Harbor. Connection shall be provided for each lot.
- 7.3 Sewer System



- 713.1 The subdivision shall be provided with a complete sanitary sewer system providing a public sewer main is lying within eight hundred (800) feet of the proposed subdivision. The sanitary system shall be designed and installed in accordance with the standards of the sewer utility.
- 7.3.2 If a public sewer main is not located within eight hundred (800) feet of the proposed subdivision and the County Health Officer has found the soil conditions satisfactory, septic tanks or other methods of handling waste, as approved by the County Health Officer, may be installed. Septic tank drain fields may not be installed closer than one hundred (100) feet to the line of ordinary high water. Such sewage disposal systems shall be installed under the supervision of the County Health Officer and the Town Engineer. No septic tank and drain field for same shall be constructed closer than 100 feet from an existing well used for domestic purposes.
- 7.4 Underground Utilities
- All underground utilities shall be installed complete to the property line of each lot served.
- 7.5 Survey Monuments
- Permanent cased monuments and other markers shall be erected and located and each lot shall be staked under the supervision of the Town Engineer, as follows:
- (a) The surveyor shall show on the face of the plat a description of monuments and lot corner markers placed or found by said surveyor.
  - (b) Monuments shall be placed on line of sight on all plat boundaries and at corners of plat boundaries.
  - (c) Monuments shall be placed on roadway centerlines, intersections, point of curve, point of tangency, point of intersection of curve tangents, centers of cul-de-sacs, and other dimension points.
- 8.0 Requirements of the Final Plat
- 8.1 General
- The final plat shall be of form and content as specified herein.
- 8.1.2 The final subdivision plat shall not deviate from the intent of the proposed subdivision plat upon which tentative approval was granted.
- 8.1.3 The final subdivision plat shall be prepared on linen cloth, or mylar plastic, 18 (18) inches by twenty-four (24) inches including borders, drawn with india ink to a scale of one inch equals 50 feet. More than one sheet may be used as required.
- 8.1.4 All signatures shall be in india ink. No interlineations will be permitted.

8.2 Identification and Description

The following data shall be shown on the final plat:

8.2.1 Name or subdivision.

8.2.2 Location by Section, Township and Range, and the notation "Town of Gig Harbor, Washington".

8.2.3 The name of the ~~land surveyor and/or engineer.~~ *and/or Engineer and/or Land Surveyor*

8.2.4 Scale, date and the direction of North referenced to Washington Lambert Grid, North Zone.

8.2.5 Description

The description of the property platted shall be the same as that on the title certificate per Section 8.5.

8.3 Delineation

The delineation of the map shall be complete with respect to the following:

8.3.1 Section lines accurately referenced to the lines of the subdivision.

8.3.2 True courses and distances to the nearest section corners which shall accurately establish the location of the plat.

8.3.3 The plat boundary lines with accurate distances and bearings shall be shown on the map and referenced to the Washington Lambert Grid, North Zone.

8.3.4 The name, location, width, bearings and distances of the centerline and right-of-way of all streets within and adjoining the plat.

8.3.5 The location, width, bearings and distances of all easements within the plat.

8.3.6 Radii, internal or external angles, points of curvature, tangent bearings and length of all arcs.

8.3.7 All lot numbers, and lot perimeter dimensions and bearings - including block no's, if more than one block in plat.

8.3.8 The location of all survey monuments.

8.3.9 Accurate outlines of any areas to be dedicated or reserved for public use, with the purposes indicated thereon and in the dedication and of any area to be reserved by deed covenant for common uses of certain property owners.

8.3.10 Building setbacks lines, as specified by zoning ordinances, shall be accurately shown with their principal controlling dimensions.

*King County, Washington*  
*July 19...*

8.3.11 The accuracy required for horizontal control of the plat shall be of the order of one in 4,000, with all dimensions on the face of the plat to close within plus or minus .05 feet.

8.4 Attendant Items

The final plat shall include the following forms, properly endorsed:

8.4.1 Certificate by Registered Land Surveyor (to be designated "Surveyor's Certificate"):

I hereby certify that this plat of \_\_\_\_\_ is based upon an actual survey and subdivision of Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, that the distances, courses and angles are shown hereon correctly; and that the monuments have been (or will be) set, and the lot and block corners have been (or will be) staked correctly in the ground thereof, and that I have fully complied with the provisions of the statutes of the State of Washington under the regulations of the Town of Gig Harbor governing platting.

(A two-inch diameter space shall be left blank for ~~Surveyor's~~ seal)  
*Surveyor's*

8.4.2 Certificate by County Treasurer (to be designated "Treasurer's Certificate"):

I hereby certify that all property taxes are paid, there are no delinquent special assessments and all special assessments on any of the property herein contained dedicated as streets, alleys or for other public use are paid in full, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

County Treasurer

By: \_\_\_\_\_  
Deputy County Treasurer

8.4.3 Certificate by Town Engineer (to be designated as "Approval"):

Examined and approved this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

A two-inch diameter space shall be left blank for engineer's seal)

\_\_\_\_\_  
Engineer, Town of Gig Harbor

8.4.4

Certificate by Town Treasurer (to be designated as "Treasurer's Certificate"):

I hereby certify that there are no delinquent special assessments and all special assessments on any of the property herein contained as dedicated streets, alleys, or for other public use are paid in full, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Treasurer, Town of Gig Harbor

8.4.5

Certificate by Chairman and Secretary of Town Planning Commission (to be designated as "Approval"):

I hereby certify that this plat of \_\_\_\_\_ is duly approved by the Town of Gig Harbor Planning Commission this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, by Resolution No. \_\_\_\_\_.

(A two-inch diameter space shall be left blank for Town Seal)

\_\_\_\_\_  
Chairman

Attest: \_\_\_\_\_  
Clerk, Town of Gig Harbor

\_\_\_\_\_  
Secretary

8.4.6

Recording Certificate:

Filed for record at the request of the Town of Gig Harbor this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ minutes past \_\_\_\_\_ m., and recorded in Volume \_\_\_\_\_ of Plats, records of \_\_\_\_\_, County, Washington.

\_\_\_\_\_  
County Auditor

8.4.7

Dedication

Know all men by these presents that we the undersigned, owners in fee simple of the land hereby platted, declare this plat and dedicate to the use of the public forever, all streets, avenues, and easements shown hereon and the use thereof for any and all public purposes not inconsistent with the use thereof for public highway purposes, together with the right to make all necessary slopes for cuts or fills upon the lots and blocks shown thereon in the reasonable grading of the streets or avenues shown hereon.

In witness whereof we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.4.8 Acknowledgment (as applicable):

8.4.8.1 Individual

State of Washington) SS  
County of \_\_\_\_\_)

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me the undersigned, a Notary Public, personally appeared \_\_\_\_\_, to me known to be the individuals who executed the foregoing dedication, and who acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year first above written.

(A two-inch diameter space shall be left blank for Notary Public seal)

\_\_\_\_\_  
Notary Public in and for the State of Washington, residing at \_\_\_\_\_

8.4.8.2 Corporate

State of Washington) ) SS  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, and for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of Washington, residing at \_\_\_\_\_

8.4.9 Restrictions

8.4.9.1 Structures except wharves or piers erected upon the land are restricted, by ordinances of the Town of Gig Harbor, to lie completely within the area enclosed by the setback lines shown on each lot of this plat and such restriction shall be considered as a restrictive covenant of this plat.

8.4.9.2 All lots are subject to restrictive covenants as filed with this plat and recorded under \_\_\_\_\_ County Auditor File No. \_\_\_\_\_.

8.5 Certificate of Title

A certificate of title to the Town of Gig Harbor from a reputable abstractor, showing the ownership and title of all interested parties in the plat, subdivision or dedication, shall accompany the final plat. The certificate shall be dated not to exceed 30 days prior to the time of submitting the plat for final approval.

8.6 Deed Covenants

A properly endorsed typewritten copy of the protective deed covenants, if applicable, shall accompany the final plat.

8.7 Sewer System Approval

A letter from the sewer utility (if applicable), indicating complete and final approval and acceptance of the sewer installation system.

8.8 Water System Approval

A letter from the appropriate water utility indicating complete and final approval and acceptance of the water distribution system.

9.0 The Partition of Land by Metes and Bounds

Full compliance with all requirements of Section 4 of this ordinance may be waived at the discretion of the Planning Commission, when area or land is to be divided into four parts, or less, when all of the following requirements are satisfied:

9.1 The resulting lots meet all the requirements of section 6.4 herein.

9.2 The resulting lots are smaller than twice the minimum size specified in the zoning ordinance, or prohibited from further partition by deed covenant.

9.3 Each lot shall abutt a public street by a minimum of twenty (20) feet, or have access to a public street by means of a private lane easement meeting all the requirements of Section 6.3 herein.

9.4 Application for the partition of Land under the provisions of this section shall be made to the Planning Commission and shall be accompanied by the following data.

9.4.1 Letter of application.

9.4.2 A drawing to a scale of fifty (50) feet to the inch depicting the area to be divided, and showing the legal description of the property.

- 9.4.3 A letter from the sewer utility indicating that a sewer connection is provided for each lot, or compliance with Section 5.4.2.
- 9.4.4 A letter from the appropriate water utility indicating that a private water connection is provided for each lot.
- 9.4.5 When site improvements as required by Section 6 and Section 7 are not complete, a letter is required from each public utility indicating that their respective services are available and, in addition, the applicant shall post a bond, satisfactory to the Town, in which assurance is given the Town that the installation of the minimum improvements required under Section 6 and Section 7 will be made within one year from the date of application, and that such improvements will be carried out as provided in Section 7.

10.0 Procedure and Authority for Granting Modifications and Exceptions

Any subdivider may make application to the Planning Commission for a variation or modification of any of the regulations contained herein due to pre-existing, topographic, or other physical conditions of the proposed plat, subdivision, or dedication. The Planning Commission shall hold a public hearing to consider the request and shall submit its tentative decision, together with its findings of fact in each case, to the Council for its review of the findings of fact and tentative decision. The Council, within thirty (30) days after receiving the facts and tentative decision from the Commission, shall complete its review, shall concur, modify, or reject the tentative decision of the Planning Commission, and shall issue an order to the Commission containing the standards and requirements which shall govern the subdivision a proval.

11.C Violations and Penalties

Whenever any person or persons, firm or firms, or one or more corporations, at various and successive times, or at any one time, shall have attempted to plat, subdivide, or divide into smaller parts, any parcel of land or property into four or more such lots, plots, tracts, or smaller parts, the area of each of which is five (5) acres or less, for purposes of providing building sites, now, or at any time hence, held in one ownership, either by contract for purchase, by deed or by both, and after the time of the adoption of this ordinance, and have failed to comply with the provisions of this ordinance, such attempted subdivision shall be null and void and the subdivider shall be subject to a fine in any sum not to exceed five hundred dollars (\$500.00) for each of said lots, plots, tracts, or smaller parts, or imprisonment for a period not to exceed thirty (30) days, or both such fine and imprisonment, in the discretion of the court: and whoever, being the owner or agent of the owner, of any land located within such plat or subdivision containing more than four such lots, plots, tracts, or smaller parts, transfers or sells, or agrees to sell,

or option any land, before such plat or subdivision has been approved by the Town, shall be subject to a fine of not more than five hundred dollars (\$500.00). The Planning Commission may initiate an action to enjoin such transfer, sale, agreement or option by making application for an injunction in the Superior Court; or the Planning Commission may recover said penalty for the Town of Gig Harbor by a civil action in any court of competent jurisdiction, if, in the opinion of the Planning Commission either of said actions is justifiable.

12.0 Enforcing Authority

The Town Planning Commission is designated and assigned the administrative and coordinating responsibilities contained herein, pursuant to the Laws of the State of Washington, Ch. 186, Laws, 1937, as hereafter amended (Ch. 58.1 RCW) for the approval or disapproval of plats, subdivisions, or dedications.

13.0 Conflict

The following ordinances are hereby repealed.

Ordinances No:

14.0 Validity

Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

15.0 Effective Date

This ordinance shall be in full force and effect after its passage, approval and publication as provided by law.

Passed by the Council this 25<sup>th</sup> day of August, 1966.

Approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

[Signature]  
MAYOR

ATTEST:

[Signature]  
Town Clerk

I hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_ of the Town of Gig Harbor, the title to which is as set forth above, and that said ordinance was posted according to law on \_\_\_\_\_.

\_\_\_\_\_  
TOWN CLERK



# Affidavit of Publication

STATE OF WASHINGTON, }  
 COUNTY OF PIERCE. } S.S.

Dorothy Platt being first duly sworn,

on oath deposes and says that he is the Publisher  
 of THE PENINSULA GATEWAY, a weekly newspaper. That said  
 newspaper is a legal newspaper and it is now and has been for  
 more than six months prior to the date of the publication hereinafter  
 referred to, published in the English language continually as a weekly  
 newspaper in Gig Harbor, Pierce County, Washington, and it is  
 now and during all of said time was printed in an office maintained  
 at the aforementioned place of publication of said newspaper.

That the annexed is a true copy of a \_\_\_\_\_

Form of Gig Harbor Ordinance

No. 61

as it was published in regular issues (and not in supplement form)

of said newspaper once each week for a period of 1

consecutive weeks, commencing on the 1 day of Sept.,

1966, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,

both dates inclusive, and that such newspaper was regularly dis-  
 tributed to its subscribers during all of said period.

That the full amount of the fee charged for the foregoing publi-  
 cation in the sum of \$134.40, which amount has been paid in  
 full, at the rate of \$2.00 a hundred words for the first insertion and  
 \$1.50 a hundred words for each subsequent insertion.

*Handwritten signature*


Subscribed to and sworn before me this 26<sup>th</sup> day of  
September, 1966.

*Eugene V. [Signature]*  
 Notary Public in and for the State of Washington.

Residing at Gig Harbor, Wash.

Spreckels  
 5-Lb. Bag  
**Sugar**  
**49<sup>c</sup>**

Hunt's  
 300 Tins  
**Fruit Cocktail**  
**19<sup>c</sup>**



**GPR**  
 SEEDLES  
 U.S.



**Cuts**  
**Lb.**  
**Fryers**

Fresh Washington Grown  
 (Cut-ups 4lb lb.)  
 Whole Bodied . . .

**35**







**From:** Shope, Christian <ShopeC@cityofgigharbor.net>  
**To:** 'emma1g@aol.com' <emma1g@aol.com>  
**Subject:** Gig Harbor Municipal Code: 1985  
**Date:** Mon, Sep 29, 2014 10:30 am

---

I spoke with Paul Rice to gain a background on the situation and have a better understanding now.

The information you need is available online. This link is for all Gig Harbor ordinances:  
<https://gigharbor.imagenetllc.net/Administration/Ordinances/>

For a little guidance: Ord 701 updated the subdivision code in 1996 which had previously been adopted and unchanged since 1966(ord 91))

The code is an ever changing document, and ordinances record each change. You can use the find feature of your web browser to quickly find any ordinances referring to GHMC 16.06, 16.07, or 16.08 or whichever code you need.

-Christian

Christian Shope

City of Gig Harbor

Assistant Planner

[shopec@cityofgigharbor.net](mailto:shopec@cityofgigharbor.net)

253.851.6135

**EXHIBIT J**

8608080472

VOL 0349 PAGE 0060

When Recorded, Return to:

James C. Middlebrooks  
1520 Plaza 600 Building  
Seattle, Washington 98101

RECORDED

86 AUG 8 P 3: 56

RICHARD A. GREGG AUDITOR  
PIERCE COUNTY WASH  
DEPUTY

CHICAGO TITLE AUG 8 1986

8-516-W

For reference only, not for re-sale.

SPINNAKER RIDGE DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS  
PIERCE COUNTY, WASHINGTON

6000

agencies, institutions or lenders financing and/or title insuring the purchase of a Lot from the Developer.

ARTICLE 16  
EASEMENTS

16.1 Association Functions: There is hereby reserved to Developer and the Association, or their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Declaration, or in the bylaws, and rules and regulations adopted by the Association.

16.2 Utility Easements: The Board, on behalf of the Association and all members thereof, shall have authority to grant utility, road and similar easements, licenses and permits, under, through or over the Common Area, which easements the Board determines are reasonably necessary to the ongoing development and operation of the Property.

16.3 Access to Public Streets: Each Owner and his guests and invitees shall have a perpetual, non-exclusive easement across the Common Areas and across all roadways constructed within the project, thereby providing access throughout the Property and to public streets.

For reference only, not for re-sale.

16.4 Encroachments: Each Lot and all Common Areas are hereby declared to have an easement over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting or movement of any portion of the building, or any other similar cause, and any encroachment due to building overhang or projection, and any encroachment for a deck, patio and/or parking area or driveway constructed (and assigned for the use of a Lot) by Developer. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Lot or Common Areas are partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Lots and Common Areas shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

ARTICLE 17

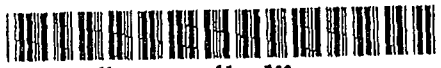
CONDEMNATION OF COMMON AREAS

17.1 Consequences of Condemnation: If at any time or times during the continuance of the development, all or any part of the Common Areas shall be



**EXHIBIT K**

Spinner Ridge



200705290274 33 PGS  
05/29/2007 11:08am \$64.00  
PIERCE COUNTY, WASHINGTON

Name & Return Address:

SPINNAKER RIDGE COMMUNITY ASSOCIATION  
6799 ERICKSON STREET  
CLIP HARBOR, WA 98335

Please print legibly or type information.

Document Title(s) SPINNAKER RIDGE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS & RESERVATIONS PIERCE COUNTY, WA
Grantor(s) SPINNAKER RIDGE COMMUNITY ASSOCIATION Additional Names on Page ___ of Document
Grantee(s) N/A Additional Names on Page ___ of Document
Legal Description (Abbreviated, i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section) SPINNAKER RIDGE, ACCORDING TO THE DECLARATION THEREOF, RECORDED UNDER RECORDER'S FILE # B128000472, RECORDS OF PIERCE COUNTY, WA Complete Legal Description on Page ___ of Document
Auditor's Reference Number(s)
Assessor's Property Tax Parcel/Account Number(s)
The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.  I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.  <u>William R. Ouel</u> Signature of Requesting Party (Required for non-standard recordings only) Gpcovst.doc rev 4/02

For reference only, not for re-sale.

**SPINNAKER RIDGE AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS  
PIERCE COUNTY, WASHINGTON**

For reference only, not for re-sale.

Drafting's Document

14.2: Plat Map: Except as otherwise provided herein, the Plat Map may be amended by a revised version or revised portions thereof referred to and described as to affect in an amendment to the Declaration adopted as provided for herein. Copies of any such proposed amendment to the Plat Map shall be made available for the examination of every Owner. Such amendment to the Plat Map shall also be effective, once properly adopted, upon recordation in the appropriate county office in conjunction with the Declaration amendment.

14.3: Amendments to Conform to Lending Institution Guidelines: The Board, on behalf of the Association, may file such amendments to the Declaration as are necessary to meet the requirements of Federal National Mortgage Association, Veterans Administration, Federal Home Loan Mortgage Corporation, or other agencies, institutions or lenders financing and/or title insuring the purchase of a Lot in the Association.

#### ARTICLE 15 EASEMENTS

15.1: Association Functions: There is hereby reserved to the Association or its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Declaration, or in the bylaws and rules and regulations adopted by the Association.

15.2: Utility Easements: The Board, on behalf of the Association and all members thereof, shall have authority to grant utility, road and similar easements, licenses and permits, under, through or over the Common Areas, which easements the Board determines are reasonably necessary to the community and operation of the Property.

15.3: Access to Public Streets: Each Owner and his guests and invitees shall have a perpetual, non-exclusive easement across the Common Areas and across all roadways constructed within the project, thereby providing access throughout the Property and to public streets.

15.4: Encroachments: Each Lot and all Common Areas are hereby declared to have an easement over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting or movement of any portion of the building, or any other similar cause, and any encroachment due to building overhang or projection, and any encroachment for a deck, patio and/or parking area or driveway. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Lot or Common Areas are partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Lots and Common Areas shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

#### ARTICLE 16 CONDEMNATION OF COMMON AREAS

16.1: Consequences of Condemnation: If all or any part of the Common Areas shall be taken

**EXHIBIT L**

64.04.010 Conveyances and encumbrances to be by deed.

**RCW 64.04.010**

**Conveyances and encumbrances to be by deed.**

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid.

[1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

**EXHIBIT M**

4.24.630 Liability for damage to land and property -- Damages -- Costs -- Attorneys' fees --  
Exceptions.

**RCW 4.24.630**

**Liability for damage to land and property — Damages — Costs — Attorneys' fees  
— Exceptions.**

(1) Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, \*79.01.756, 79.01.760, 79.40.070, or where there is immunity from liability under RCW 64.12.035.

[1999 c 248 § 2; 1994 c 280 § 1.]

**Notes:**

**\*Reviser's note:** RCW 79.01.756, 79.01.760, and 79.40.070 were recodified as RCW 79.02.320, 79.02.300, and 79.02.340, respectively, pursuant to 2003 c 334 § 554. RCW 79.02.340 was subsequently repealed by 2009 c 349 § 5.

**Severability -- 1999 c 248:** See note following RCW 64.12.035.



**EXHIBIT N**

4.84.185 Prevailing party to receive expenses for opposing frivolous action or defense.

**RCW 4.84.185**

**Prevailing party to receive expenses for opposing frivolous action or defense.**

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute.

[1991 c 70 § 1; 1987 c 212 § 201; 1983 c 127 § 1.]

**Notes:**

Administrative law, frivolous petitions for judicial review: RCW 34.05.598.