

No. 36609-6-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

GRAND RIDGE PROPERTIES IV, LLC, an Oregon limited liability  
company,

Appellant,

vs.

GEONERCO, INC., and/or assigns, n/k/a RIVERSIDE HOMES, INC., an  
Oregon corporation d/b/a Riverside Homes Vancouver,

Respondent.

---

APPELLANT'S OPENING BRIEF

---

Bradley W. Andersen, WSBA No. 20640

Phillip J. Haberthur, WSBA No. 38038

Attorneys for Appellant

Schwabe, Williamson & Wyatt, P.C.

700 Washington Street, Suite 701

Vancouver, WA 98660

(360) 694-7551

## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. ASSIGNMENTS OF ERROR.....	1
III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR .....	2
IV. STATEMENT OF THE CASE.....	3
A. The Parties .....	3
B. Original PSA.....	3
C. The Addenda to the PSA.....	6
D. Grand Ridge Seeks to Subdivide Its Property.....	8
E. Procedural History .....	10
V. SUMMARY OF ARGUMENT .....	10
VI. STANDARD OF REVIEW .....	12
A. Standard of Review on Appeal is De Novo .....	12
B. Riverside Must Prove The Validity of The PSA by Clear and Unequivocal Evidence .....	13
VII. ARGUMENT .....	13
A. Washington’s Statute Of Frauds .....	13
B. A PSA Must Contain A Legal Description.....	14
C. The PSA Does Not Satisfy the Statute of Frauds .....	15
1. The PSA does not contain a valid legal description.....	15

2.	The PSA violates the statute of frauds by attempting to convey future parcels ( <i>i.e.</i> , parcels that did not exist at the time the PSA was signed).	17
3.	The PSA violates the statute of frauds because it attempts to convey a portion of a larger parcel...	22
D.	Escrow Could Not Save This PSA by Later Inserting a Legal Description.....	24
1.	Escrow only has the authority granted to them by the parties .....	25
2.	Escrow does not have the authority to describe future lots .....	26
E.	The PSA is Void as a Matter of Law Because There Was No Meeting of the Minds.....	28
F.	Attorney’s Fees to Grand Ridge .....	30
VIII.	CLOSING .....	30
IX.	APPENDIX.....	32

## TABLE OF AUTHORITIES

	Page
<i>Berg v. Ting</i> , 125 Wn.2d 544, 886 P.2d 564 (1995).....	13, 18, 19, 20
<i>Denaxas v. Sandstone Court of Bellevue, LLC</i> , 148 Wn.2d 654, 63, P.3d 125 (2003).....	25
<i>Ecolite Mfg. Co. v. R.A. Hanson Co.</i> , 43 Wn. App. 267, 716 P.2d 937 (1986).....	19
<i>Edwards v. Meader</i> , 34 Wn.2d 921, 210 P.2d 1019 (1949).....	27
<i>Garrett v. Shriners Hosps. For Crippled Children</i> , 13 Wn. App. 77, 533 P.2d 144 (1975).....	22
<i>Herzog Aluminum, Inc. v. Gen. Am. Window Corp.</i> , 39 Wn. App. 188, 692 P.2d 867 (1984).....	30
<i>Howell v. Inland Empire Paper Co.</i> , 28 Wn. App. 494, 624 P.2d 739 (1981).....	22
<i>Hubbell v. Ward</i> , 40 Wn.2d 779, 246 P.2d 468 (1952).....	29
<i>Key Design, Inc. v. Moser</i> , 138 Wn. 2d 875, 983 P.2d 653 (1999).....	14
<i>Keys v. Klitten</i> , 21 Wn.2d 504, 151 P.2d 989 (1944).....	13
<i>Knight v. Am. Nat'l Bank</i> , 52 Wn. App. 1, 756 P.2d 757 (1988).....	27
<i>Kruse v. Hemp</i> , 121 Wn.2d 715, 853 P.2d 1373 (1993).....	13, 15

<i>Labriola v. Pollard Group, Inc.</i> , 152 Wn.2d 828, 100 P.3d 791 (2004).....	30
<i>Marincovich v. Tarabochia</i> , 114 Wn.2d 271, 787 P.2d 562 (1990).....	12
<i>Martin v. Seigel</i> , 35 Wn.2d 223, 212 P.2d 107 (1949).....	14, 15
<i>Martinson v. Cruikshak</i> , 3 Wn.2d 565, 101 P.2d 604 (1940).....	13, 22, 28
<i>McKoin v. Kunes</i> , 5 Wn. App. 731, 490 P.2d 735 (1971).....	27
<i>National Bank of Washington v. Equity Investors</i> , 81 Wn.2d 886, 506 P.2d 20 (1973).....	25
<i>Nishikawa v. U.S. Eagle High, LLC</i> , 138 Wn. App. 841, 158 P.3d 1265 (2007).....	10, 14, 26, 27
<i>Saunders v. Callaway</i> , 42 Wn. App. 29, 708 P.2d 652 (1985).....	29
<i>Schweiter v. Halsey</i> , 57 Wn.2d 707, 359 P.2d 821 (1961).....	14
<i>Vallandigham v. Clover Park Sch. Dist. No. 400</i> , 154 Wn.2d 16, 109 P.3d 805 (2005).....	12
<i>Wallace v. Kuehner</i> , 111 Wn. App. 809, 46 P.3d 823 (2002).....	30
<i>Wilson v. Steinbach</i> , 98 Wn.2d 434, 656 P.2d 1030 (1982).....	12

**STATUTES**

CR 56(c).....	12
RCW 64.04.010 .....	13

RCW 64.04.020 .....	13
RCW 58.17.020(4).....	21
RCW 58.17.020(5).....	21
RCW 58.17.205 .....	20

**OTHER AUTHORITIES**

<i>Stoebuck &amp; Weaver</i> , 18 Washington Practice Series, Real Estate: Transactions, § 16.3 (2 Ed. 2004) .....	14
-----------------------------------------------------------------------------------------------------------------------	----

I. **INTRODUCTION**

The parties dispute the validity of the Real Estate Purchase and Sale Agreement (“PSA”) at issue in this case. Appellant, Grand Ridge Properties IV, LLC (“Grand Ridge”), contends that the PSA violates Washington’s statute of frauds because it does not contain an adequate legal description. The Respondent, Geonerco, Inc. (“Riverside”), counters that the absence of a legal description does not matter because the parties authorized escrow to insert, “over their signatures,” a correct legal description.

At issue is whether the property to be conveyed by a PSA must exist and be capable of being legally described at the time the PSA is signed. Grand Ridge contends the statute of frauds bars the sale of “future finished lots.” Grand Ridge further argues that while escrow<sup>1</sup> may be authorized to insert a “correct” legal description after a PSA is signed, the property must exist and be capable of being legally described at the time the PSA is signed.

II. **ASSIGNMENTS OF ERROR**

Grand Ridge hereby assigns error to the trial court’s June 4, 2007 Memorandum of Opinion, its June 29, 2007 Order and Subjoined

---

<sup>1</sup> Grand Ridge denies that escrow had the authority to insert a legal description in this case.

Judgment on Motions for Summary Judgment granting Plaintiff's Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment, and its August 15, 2007 Supplemental Judgment awarding attorneys' fees.<sup>2</sup>

III. **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

This case presents the following issues:

1. Did Riverside establish, by clear and unequivocal evidence, that the PSA was enforceable?
2. Does a PSA satisfy the statute of frauds if it fails to include a valid legal description of the property to be conveyed?
3. Does a PSA satisfy the statute of frauds if it seeks to convey property to be created and described in the future?
4. Can a PSA authorize escrow to insert, at a later date, a legal description of property if, at the time the PSA is executed, the property cannot be legally described because it does not yet exist?
5. Did the PSA contain all of the "essential terms" to reflect a meeting of the minds between the parties?

---

<sup>2</sup> A copy of the trial court's June 4, 2007 Memorandum of Opinion, June 29, 2007 Order and Subjoined Judgment on Motions for Summary Judgment, and the August 15, 2007 Supplemental Judgment are included in the Appendix.

6. Is the prevailing party entitled to recover their attorney's fees and costs?

IV. **STATEMENT OF THE CASE**

A. **The Parties**

Grand Ridge is in the business of developing real estate. CP 391. It typically purchases large parcels to develop into residential lots. CP 391-393; 640. Riverside is in the business of constructing and selling single-family homes in Oregon and Washington. CP 111. It typically purchases permit-ready residential lots on which to build homes, which it then sells to consumers. *Id.*

In 2000, Grand Ridge owned a large tract of land in unincorporated Clark County, Washington. CP 640-41. Riverside approached Grand Ridge about purchasing some parcels to increase its inventory of residential lots. CP 641. The parties discussed having Grand Ridge subdivide its property so that Riverside could buy some or all of the created lots. CP 642; CP 339. However, Grand Ridge did not apply to subdivide the property until after the parties had entered into a PSA.

B. **Original PSA**

These discussions culminated in the parties signing a Real Estate Purchase and Sale Agreement for the sale of "Oregon Finished Lots" in

June 2002 (“PSA”). CP 395-423.<sup>3</sup> The PSA was amended eight (8) times (“Addenda”). *Id.* All of the documents (*i.e.*, PSA and Addenda — hereinafter “PSA”) were prepared by Riverside and its in-house counsel. CP 392.

The original PSA refers to the sale of “Oregon Finished Lots.” CP 395. Riverside, which operates in both Oregon and Washington, admits it pulled the wrong boilerplate form of PSA when it presented Grand Ridge with its offer to purchase. CP 343; CP 642.

Section 1 of the original PSA describes the property “TO BE CONVEYED” as “22 future finished lots located in Grand Ridge Terrace Phase 4, 22 future finished lot subdivision, Camas, Washington also known as Assessor’s # 125664-000.” CP 395. None of the documents describe the County where the property is located. *Id.*

Section 1 further provides that if the legal description is not complete, then the “Seller shall provide the Buyer with a complete legal description.” *Id.* Section 1 also states that the parties “authorize Escrow to insert over their signatures the correct legal description of the real property” to be conveyed. *Id.*

---

<sup>3</sup> The PSA is included in the Appendix.

Under section 10, Grand Ridge was required to “create the Finished Lots in a timely manner” as “shown on Exhibit ‘A.’” CP 399-400. However, Exhibit “A” is an Addendum to the original PSA that addresses earnest money, closing and the real estate commission; it does not provide a description of the “future finished lots.” CP 408.

Section 9(g) also requires that each “lot conveyed at closing shall be a legal lot in compliance with state statutes and local ordinances.” CP 399. Section 21(c) then defines the state law as “Oregon.”<sup>4</sup> Section 20 also contains a “STATUTORY LAND USE DISCLAIMER” required by Oregon law. CP 404.

Section 2 of the original PSA states that the purchase price is based upon “a lot yield of 22 finished lots at Fifty five thousand dollars (\$55,000.00) per lot for the first 11 closed and \$57,000 for the second 11 closed” for a total of \$1,232,000.00. The PSA further states that “[i]n the event the lot yield is less that 22 finished lots, the purchase price herein shall be reduced by (\$57,000.00) per Finished lot less than 22.” *Id.*

---

<sup>4</sup> “Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.” CP 404.

Section 5 then describes that “Closing” of the parcels is to occur in phases.<sup>5</sup> CP 396-97. Subsection (b) permits Riverside to “determine which lots to close thirty days (30) prior to the closing of each Phase.” CP 396. Riverside interpreted this provision to mean that it could pick and choose which lots, within each phase, it wanted to acquire. Riverside did not believe it was required to buy all of the lots produced. CP 339.

C. **The Addenda to the PSA**

In accordance with its obligations under the original PSA, Grand Ridge, through Chicago Title Company, produced a legal description of its entire property. CP 753-63. Riverside therefore prepared and presented Addendum 1 to Grand Ridge for the purposes of providing a corrected legal description of Grand Ridge’s entire holdings. CP 410; CP 392-3.

Section 1 of Addendum 1 provides as follows:

“The description of the property in paragraph 1 of the agreement is hereby deleted and replace (sic) with the following:

Twenty-One (21) finished lots in the proposed Plat of Grand Ridge Terrace Phase 4. Seller warrants that the property to be conveyed is **contained with (sic) the boundaries of the property** described in schedule A of the commitment for title

---

<sup>5</sup> Riverside initially and mistakenly described the closings as occurring in five phases even though it only described two phases in Section 5. Riverside corrected this mistake in Addenda 1 and 2. CP 410-16.

insurance by Chicago Title Insurance Company Order number K128398 with the effective date June 26, 2002 **attached hereto as Ex. 'C'.**” (Emphasis added). CP 410.

While it purports to be a legal description of Grand Ridge’s entire property, Exhibit “C” is actually a plot map showing 21 Lots. CP 413; CP 450. Despite having submitted no less than seven (7) additional Addenda, Riverside never inserted a proper legal description of Grand Ridge’s property. CP 414-23; CP 410-23.

Prior to signing Addendum 1, Riverside and Grand Ridge had determined that Grand Ridge would likely only be able to obtain approval for 21 lots. CP 410. The parties therefore, in Section 1 of Addendum 1, reduced the projected number of “future finished lots” from 22 to 21. *Id.*

Section 9 of Addendum 1 then purports to replace the reference to the proposed lots in “Exhibit A” in Paragraph 10(f) of the original PSA to Exhibit D. CP 411. However, neither the original PSA nor any of the Addenda contained an Exhibit “D”. CP 410-23.

In early 2003, Riverside wanted Grand Ridge to build retaining walls to accommodate Riverside’s building plans. CP 393-94. The parties therefore agreed, in Addendum 7, that Riverside would pay either \$59,000.00 or \$60,000.00 per lot for the first 11 lots and either \$61,000.00

or \$62,000.00 per lot for the second 10 lots if Grand Ridge would agree to build the additional walls.<sup>6</sup> CP 421.

The last Addenda, Addendum 8, was executed on September 8, 2004, merely to note that Grand Ridge, LLC had assigned its interest under the 2001 PSA to Grand Ridge. CP 423. Addendum 8 did not make any substantive changes.<sup>7</sup>

D. **Grand Ridge Seeks to Subdivide Its Property**

When the original PSA was signed, the parties anticipated that Grand Ridge would apply to subdivide its property into 22 individual lots. CP 392. Indeed, Grand Ridge initially applied to Clark County for preliminary plat approval after the PSA was signed.

After Grand Ridge applied, it became clear that the County was not going to approve 22 lots. CP 569-74. The parties therefore executed Addendum 1, in part, to reduce the number of lots from 22 to 21.

On April 28, 2003, the County issued its preliminary plat approval for 20 lots. CP 569-74. Additionally, the County required Grand Ridge to dedicate additional property for roads and sidewalks and build a storm

---

<sup>6</sup> Addendum 7 contains a discrepancy between the handwritten numerical amount and the typewritten amount that is not crossed out. Both parties initialed indicating their acceptance of the change in price, but in so doing, the parties created a conflict between the handwritten numerical amount shown on the Addendum and the typewritten amount.

<sup>7</sup> *Id.*

water facility dedicated to the County. CP 571. The County also reconfigured the size and shape of the lots from the configuration set forth in Exhibit “C” to Addendum 1. *Id.* The final configuration, size, and location of the parcels differed from the parties described in their PSA. The parties never executed a new PSA to reflect the change in the description of the parcels.

Once the County issued its preliminary plat approval, the parties learned that the County’s additional and unanticipated requirements to the proposed subdivision would increase Grand Ridge’s cost to develop the property and reduce the total number of lots from 21 to 20. CP 429-30. Grand Ridge and Riverside orally agreed that Grand Ridge would receive a higher price per lot to recoup these unforeseen costs. CP 430. Grand Ridge understood that this increase in price, and the reduction in the number of lots, would be reflected in one final addendum. *Id.*; CP 645. However, Riverside failed to prepare a final addendum and instead, when the County approved the final subdivision on March 30, 2006, directed escrow to insert a legal description of the newly created 20 lots. CP 182.

E. **Procedural History**

When Grand Ridge refused to convey the newly created 20 lots absent a final addendum, Riverside sued for Specific Performance. CP 1-37. Grand Ridge countered that the PSA was unenforceable. CP 39-41.

Riverside moved for partial summary judgment to strike Grand Ridge's affirmative defenses, its counterclaim for rescission and promissory estoppel. CP 111. Grand Ridge also moved for summary judgment to dismiss Riverside's Complaint on the ground that the PSA was unenforceable. CP 389.

On June 29, 2007, Clark County Superior Court Judge Robert Harris, relying upon this Court's Opinion in *Nishikawa v. U.S. Eagle High, LLC*,<sup>8</sup> granted Riverside's Motion for Summary Judgment and denied Grand Ridge's Cross Motion for Summary Judgment. CP 961. Despite the fact that Riverside had only requested partial summary judgment, Judge Harris ordered specific performance of the PSA and dismissed Grand Ridge's Counterclaims. CP 960. This appeal followed.

V. **SUMMARY OF ARGUMENT**

The party seeking to specifically enforce a PSA must prove the validity and breach of the agreement by "clear and unequivocal evidence."

---

<sup>8</sup> 138 Wn. App. 841, 158 P.3d 1265 (2007).

A PSA must contain certain “essential terms” to be valid. In particular, the PSA must contain an adequate legal description of the property to be conveyed.

In this case, Riverside cannot meet its burden of proof because the PSA (1) fails to contain a valid legal description; (2) violates the statute of frauds by attempting to convey “future lots” (*i.e.* lots that do not currently exist); and (3) violates the statute of frauds because it attempts to convey a portion of a larger tract without identifying the exact portion.

The fact that the PSA may have<sup>8</sup> authorized escrow to insert a correct legal description does not save the PSA in this case.

Escrow only has that power which the parties have granted to them. The parties cannot grant to escrow more authority than the parties possess. In this case, escrow could only have inserted into the PSA a legal description of property that existed at the time the PSA was signed. Escrow could not, as was required in this case, insert legal descriptions of properties that were created after the PSA was signed.

---

<sup>8</sup> Grand Ridge denies that the PSA granted to escrow authority after Addendum 1 was executed to insert any additional legal descriptions because the parties mutually revoked this authority.

The PSA is unenforceable. Grand Ridge should therefore be deemed the prevailing party and, under the terms of the PSA, be entitled to recover their costs and attorneys' fees.

VI. **STANDARD OF REVIEW**

A. **Standard of Review on Appeal is *De Novo***

An appellate court reviews a trial court's grant or denial of summary judgment *de novo*.<sup>10</sup> This Court engages in the same inquiry as the trial court.<sup>11</sup>

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."<sup>12</sup>

Because it requires the Court to review only the contents within the four corners of the PSA, summary judgment is appropriate to resolve

---

<sup>10</sup> *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

<sup>11</sup> *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

<sup>12</sup> CR 56(c); *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990).

issues involving the statute of frauds. The statute of frauds requires a court to review only the PSA.<sup>13</sup>

B. **Riverside Must Prove The Validity of The PSA by Clear and Unequivocal Evidence**

Riverside seeks specific performance and therefore bears the burden to prove both the validity and breach of the PSA by “clear and unequivocal evidence.”<sup>14</sup> Courts have generally upheld specific enforcement only where material terms are clear on the face of the contract.<sup>15</sup> Riverside has failed to meet its burden because the PSA fails to contain the “essential terms.”

VII. **ARGUMENT**

A. **Washington’s Statute Of Frauds**

A contract for the conveyance of land is void under Washington’s statute of frauds<sup>16</sup> if it does not contain a description of the property to be

---

<sup>13</sup> See *Martinson v. Cruikshak*, 3 Wn.2d 565, 569, 101 P.2d 604 (1940) (Where a contract upon its face is incomplete, resort may be had to parole evidence to supply the omitted stipulation,” but this rule only applies “in cases unaffected by the statute of frauds.” \* \* \* “If the subject matter of the contract is within the statute of frauds and the contract or memorandum is deficient in some one or more of those essentials required by the statute, parole evidence cannot be received to supply the defects, for this would be to do the very things prohibited by the statute.”).

<sup>14</sup> *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993); *Berg v. Ting*, 125 Wn.2d 544, 556, 886 P.2d 564 (1995) (must leave no doubt as to the terms, character, and existence of the contract).

<sup>15</sup> See, e.g., *Keys v. Klitten*, 21 Wn.2d 504, 519, 151 P.2d 989 (1944).

<sup>16</sup> RCW 64.04.010 and 64.04.020 (collectively referred to as the statute of frauds).

conveyed sufficient to locate it without recourse to oral testimony (*i.e.*, “an adequate legal description”).<sup>16</sup>

Washington’s statute of frauds is “strict.”<sup>17</sup> Indeed, Professor Stoebuck commented that “Washington follows the rule, the strictest in the nation, that a contract for the sale of land must describe the land by legal description.”<sup>18</sup>

In justifying its stance, the Washington Supreme Court proclaimed in *Martin v. Seigel* that “it is fair and just to require people dealing with real estate to properly and adequately describe it, so that courts may not be compelled to resort to extrinsic evidence in order to find out what was in the minds of the contracting parties.”<sup>19</sup> The Court noted that it was moving “away from indefinite and vague legal descriptions, and in the direction of preciseness and accuracy.”<sup>20</sup>

**B. A PSA Must Contain A Legal Description**

In Washington, a PSA must satisfy the statute of frauds.<sup>21</sup>

---

<sup>16</sup> See *Martin v. Seigel*, 35 Wn.2d 223, 227, 212 P.2d 107 (1949).

<sup>17</sup> See *Key Design, Inc. v. Moser*, 138 Wn.2d 875, 881-84, 983 P.2d 653 (1999); *Nishikawa v. U.S. Eagle High, LLC*, 138 Wn. App. 841, 158 P.3d 1265 (2007).

<sup>18</sup> *Stoebuck & Weaver*, 18 Washington Practice Series, Real Estate: Transactions, § 16.3 (2ed. 2004).

<sup>19</sup> *Martin v. Seigel*, 35 Wn.2d 223, 227, 212 P.2d 107 (1949).

<sup>20</sup> *Id.* at 229.

<sup>21</sup> *Schweiter v. Halsey*, 57 Wn.2d 707, 359 P.2d 821 (1961); *Martin v. Seigel*, *supra*.

In *Martin*, the Supreme Court applied the strict legal description requirement to a PSA and clarified that all “contracts or agreements involving real property” must contain an adequate legal description.

“In the interests of continuity and clarity of the law of this state with respect to legal descriptions, we hereby hold that every contract or agreement involving a sale or conveyance of platted real property must contain, in addition to the other requirements of the statute of frauds, the description of such property by the correct lot number(s), block number, addition, city, county, and state.”<sup>23</sup>

C. **The PSA Does Not Satisfy the Statute of Frauds**

Riverside must prove the validity of the PSA by clear and unequivocal evidence.<sup>24</sup> Because the PSA fails to contain an adequate legal description, Riverside cannot meet its burden.

1. **The PSA does not contain a valid legal description**

As laid out in the statement of facts, the defects in the PSA permeate throughout the entire Agreement. Plain and simple, Riverside used the wrong form – it used an Oregon instead of Washington form of PSA – which failed to provide a proper legal description of the property.

---

<sup>23</sup> *Martin*, 35 Wn.2d at 229.

<sup>24</sup> *Kruse v. Hemp*, 121 Wn.2d 715, 732, 853 P.2d 1373 (1993).

For instance, the PSA is entitled, “Real Estate Purchase and Sale Agreement (Oregon – Finished Lots),” which implies that the PSA is for the sale of finished lots located in Oregon. It then requires Grand Ridge to complete the lots in accordance with state law, but then stipulates that the Agreement is subject to Oregon law. CP 404.

The original PSA also references exhibits that describe the final lots. *See* Section 10(f). However, these attachments do not exist. CP 400. Looking only within the four corners of the PSA, one cannot ascertain the property that is the subject of the parties’ Agreement.

In Addendum 1, Riverside attempted to correct the problem of an inadequate legal description. Addendum 1 expressly “deleted the legal description in the original PSA” and replaced it with the following:

“Twenty-one (21) finished lots in the proposed Plat of Grand Ridge Terrace Phase 4. Seller warrants that the Property to be conveyed is contained within the boundaries of the property described in Schedule A of the commitment for title insurance by Chicago Title Insurance Company Order Number K128398 with the effective date June 26, 2002 **attached hereto as Ex. ‘C’.**” (Emphasis added).  
CP 410.

This would have possibly cured the problem if Exhibit “C” had contained an adequate legal description. In actuality, Exhibit “C” is

simply an early version of a proposed plat map that depicts 21, and not 22, “lots.” CP 413. Exhibit “C” was created before there was preliminary plat approval and does not even reflect the configuration that was eventually approved by Clark County as a preliminary plat. Exhibit “C” does not purport to provide a legal description of the property that Riverside seeks to acquire by specific performance.

Addendum 1 actually adds to the ambiguity by removing all reference to a city, county, or state (this reference would not have satisfied the statute of frauds, but it would at least help to pinpoint where the property was located). After Addendum 1 removed the city and state description, the PSA, on its face, only describes the property as “Oregon – Finished Lots”. It then describes the Property by reference to a plot map (Ex. “C”). Addendum 1 also replaces all of Section 1 of the Agreement, including the provision that permits “escrow”<sup>24</sup> to insert a corrected legal description.<sup>25</sup> Presumably, Riverside believed it had cured the deficiency in the legal description by attaching Ex. “C,” thus eliminating the need to

---

<sup>24</sup> Riverside and Grand Ridge selected Chicago Title to serve as escrow. CP 395.

<sup>25</sup> Paragraph 1 of the PSA provides: “If the above legal description is not a complete legal description of the Property to be conveyed, Seller shall provide Buyer with a complete legal description. Seller and Buyer hereby authorize Escrow to insert over their signatures the correct legal description of the real Property (“Property”).” CP 395.

have escrow “insert” another legal description “over their signatures” at closing.<sup>26</sup>

2. The PSA violates the statute of frauds by attempting to convey future parcels (i.e. parcels that did not exist at the time the PSA was signed)

The PSA purports to sell 22 or 21 “future finished lots.” However, these lots did not exist when the PSA was signed. Riverside does not dispute this fact. It instead argued to the trial court that “[i]n this kind of contract, the developer/seller ‘pre-sells’ the building lots to be created through the subdivision process well before the subdivision process is complete, in this case before preliminary plat approval.” CP 448. Riverside failed, however, to provide any legal support for its novel position.

Based on the Supreme Court’s holding in *Berg v. Ting*,<sup>27</sup> quite the opposite is true. A PSA that purports to convey lots that do not currently exist (*i.e.*, future lots) does not, and cannot, satisfy the statute of frauds.

The application of Washington’s statute of frauds is simple: A valid legal description must contain a description of the land to be conveyed sufficiently definite to locate it without recourse to oral

---

<sup>26</sup> CP 286.

<sup>27</sup> 125 Wn.2d 544, 553, 886 P.2d 564 (1995).

testimony.<sup>28</sup> The court in *Berg v. Ting* stated unequivocally that a reference in a conveyance instrument to parcels to be created in the future is not legally sufficient.<sup>29</sup> The parcel must exist and be subject to legal description at the time the conveyance instrument is signed.

In *Berg*, the parties attempted to describe the servient estate for an easement by referring to property that they anticipated would be created by short plat. Similar to the facts at hand, the parties attempted to describe the property to be burdened, the servient estate, by reference to a “future finally approved short plat application.”<sup>30</sup> The final plat, however, was not approved and filed until nearly four years later.<sup>31</sup> The Court invalidated the conveyance because it described the encumbered property “as the same is approved in the future, and refers to a then *nonexistent instrument* (approved short plat application) as defining the servient estate. The grant thus did not contain a sufficient description of the land nor did it reference an instrument which did contain such a description.”<sup>32</sup>

---

<sup>28</sup> *Ecolite Mfg. Co. v. R.A. Hanson Co.*, 43 Wn. App. 267, 270, 716 P.2d 937 (1986).

<sup>29</sup> 125 Wn.2d at 553.

<sup>30</sup> *Id.* at 549.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 551 (emphasis in original).

*Berg* therefore makes clear that, under Washington law, parties to a PSA cannot rely upon a “then non-existent instrument” for a legal description. As in *Berg*, the PSA in this case “contains its own fatal deficiency by referring to and relying entirely on the description of lots in a short plat [or subdivision] to be later (almost 4 years in fact) approved and recorded.”<sup>33</sup>

Grand Ridge was not conveying a large undeveloped parcel of land to Riverside. Instead, by the plain terms of Riverside’s PSA, Grand Ridge was conveying 22 (later revised to 21) “future finished lots.” None of these smaller parcels existed when the PSA was executed. Indeed, Grand Ridge had not even submitted its application for preliminary plat approval at the time the PSA was signed. Moreover, final plat approval was not obtained until nearly four years after the PSA was signed.

Recognizing the conundrum of describing lots that do not exist at the time the PSA was executed, Riverside argued below that RCW 58.17.205 permits the sale of “future” lots within a subdivision. CP 742. In actuality, compliance with RCW 58.17.205 does not substitute for compliance with the statute of frauds. A PSA that seeks to convey lots within a subdivision must comply with both the statute of frauds and

---

<sup>33</sup> *Id.* at 551.

RCW 58.17.205. Regardless, the subdivision statute only permits the sale of lots within a subdivision if, at the time the PSA is signed, there has been (1) “preliminary plat approval;”<sup>34</sup> and (2) the PSA expressly conditions the sale of the parcels on obtaining “final plat approval.”<sup>35</sup> Since neither of these conditions were satisfied here (*i.e.*, the PSA predates Clark County’s preliminary plat approval and does not expressly condition the sale on final plat approval), RCW 58.17.205 does not apply.

In short, the PSA that Riverside seeks to enforce fails to satisfy the statute of frauds because it purports to convey property that did not exist at the time the PSA was signed. Since the property (or properties) did not exist, the PSA also fails because it could not adequately describe the property to be conveyed. Thus, the PSA is invalid as a matter of law.

---

<sup>34</sup> Preliminary plat approval is the approval from the governing agency of the proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. RCW 58.17.020(4).

<sup>35</sup> Final plat approval is the approval from the governing agency of the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in RCW 58.17 and in local regulations adopted under RCW 58.17. RCW 58.17.020(5).

3. The PSA violates the statute of frauds because it attempts to convey a portion of a larger parcel

The statute of frauds also prohibits a legal description within a PSA “which designates the land conveyed as a portion of a larger tract without identifying the particular tract conveyed.”<sup>36</sup>

In *Howell*, the Court denied specific performance because the legal description sought to convey a smaller portion of a larger lot that was legally described in the agreement.<sup>37</sup> The Court in *Howell* declined to specifically enforce the PSA because the parties were attempting to convey only a portion of the property actually described in the agreement.<sup>38</sup>

In this case, Riverside described the “future finished lots” as follows:

*Twenty-one (21) finished lots in the proposed plat of Grand Ridge Terrace.*  
Seller warrants that **the property is contained with (sic) the boundaries of the property described in Schedule A** of the commitment for title insurance by Chicago Title Insurance Company Order No. K128398 with the effective date

---

<sup>36</sup> *Howell v. Inland Empire Paper Co.*, 28 Wn. App. 494, 624 P.2d 739 (1981); *see also Martinson v. Cruikshank*, 3 Wn.2d 565, 567, 101 P.2d 604 (1940); *Garrett v. Shriners Hosps. For Crippled Children*, 13 Wn. App. 77, 79, 533 P.2d 144 (1975).

<sup>37</sup> *Howell*, 28 Wn. App. at 495-96.

<sup>38</sup> *Id.*

June 26, 2002 attached hereto as Ex. "C."  
(Emphasis added).

As evidenced by the PSA's plain language, Riverside was not seeking to acquire the entire parcel owned by Grand Ridge. It wanted the right to "close" on some or all of the lots. Indeed, once the County issued its final approval, Riverside did not seek to have escrow include, in the final legal description, the storm water retention/detention ponds that Clark County required to be created as a condition of the final plat (this is the reason the lot count dropped from 22 to eventually 20 lots). Riverside only sought to acquire a certain portion of Grand Ridge's entire parcel.

Adding to Riverside's difficulties in trying to defend its use of the wrong form of PSA is the fact that "closing" of the parcels was to occur in at least two phases. According to Riverside, it could pick and choose which parcels, within each of the phases, it wanted to acquire. In other words, Riverside could wait and see how the County finally configured the shape and size of the individual lots before it decided which portion of the larger parcel it wanted to acquire. CP 339. Indeed, Riverside could have, under its interpretation, chosen to close on the most desirable lots.

As stated in *Howell*, specific performance of the PSA must be denied because Riverside cannot prove, by clear and unequivocal

evidence, precisely what property (or properties) the parties intended to be conveyed when they entered into the PSA. Simply describing the property to be conveyed as “future finished lots” within the “boundaries of” a larger parcel is, according to the court in *Howell*, a direct violation of the statute of frauds.

D. **Escrow Could Not Save This PSA by Later Inserting a Legal Description**

Riverside argued below, and Judge Harris agreed, that the PSA’s deficiency in providing an adequate legal description did not matter because the PSA authorized escrow to insert the correct legal description. Riverside’s argument assumes that escrow had extraordinary powers to do what the parties could not (*i.e.*, go beyond the PSA to describe future parcels after they had been created and selected by Riverside for closing). This argument fails as a matter of law.

First, the parties removed escrow’s authority to insert a correct legal description when they signed Addendum 1. Second, even if the parties did not intend to remove escrow’s authority in Addendum 1, escrow did not have the authority to insert a valid legal description over the parties’ signatures because escrow was limited to using the legal description contained in Ex. “C.” CP 450. Finally, escrow did not have

authority to wait until after the lots were created to insert a “corrected” legal description of parcels that did not exist when the PSA was signed.

1. Escrow only has the authority granted to them by the parties

Escrow does not have unlimited authority to compare or insert legal descriptions because an agent’s “duties and limitations are defined . . . however, by his instructions.”<sup>40</sup> In *Denaxas v. Sandstone Court of Bellevue, LLC*, the court found that a title company’s escrow did not breach a fiduciary duty or duty of reasonable care for failing to compare the closing documents and pointing out a discrepancy to the purchaser.<sup>41</sup> The court held that the escrow instructions did not include the duty to compare documents for the purpose of unearthing any discrepancies, nor did they indicate that the title company was expected to locate and identify any discrepancies.<sup>42</sup>

Unlike in *Denaxas*, escrow here did not have any instructions because they were all deleted by Paragraph 1 of Addendum 1. Moreover, even if the instructions survived Addendum 1, the instructions failed to contain any authority to inspect Ex. “C” and compare it to the title

---

<sup>40</sup> *National Bank of Washington v. Equity Investors*, 81 Wn.2d 886, 910, 506 P.2d 20 (1973).

<sup>41</sup> 148 Wn.2d 654, 663, 63 P.3d 125 (2003).

<sup>42</sup> *Id.*

commitment number listed in Addendum 1. Escrow in this case could, at best, only insert Ex. “C,” the document expressly identified by the parties as the legal description.

2. Escrow does not have the authority to describe future lots

In support of its ruling, the trial court held that the case of *Nishikawa v. U.S. Eagle High, LLC*, controlled the outcome of this case. CP 943.<sup>42</sup> *Nishikawa*, a recent case from this Court, is factually and legally distinguishable. In reality, *Nishikawa* supports Grand Ridge’s position.

In *Nishikawa*, this Court addressed whether a party may unilaterally revoke the authority given to an agent to correct or insert a legal description.<sup>43</sup> This Court held that the parties “freely entered an agreement and the existence of this agreement precluded agency revocation.”<sup>44</sup> In this case, it is undisputed that both parties mutually (and not unilaterally, as in *Nishikawa*) revoked the authority of escrow to insert or correct the legal description at closing because both parties freely entered into Addendum 1. CP 410-13.

---

<sup>42</sup> 138 Wn. App. 841, 158 P.3d 1265 (2007).

<sup>43</sup> 138 Wn. App. at 848.

<sup>44</sup> *Id.* at 849.

*Nishikawa* did not represent any change in the law. As noted in *Nishikawa*, Washington courts have previously held that a legal description may be added to a contract after it has been executed by the parties, thus satisfying the statute of frauds.<sup>46</sup> Washington courts further recognize that the parties to a contract may appoint an agent in the agreement to addend or write in the legal description.<sup>47</sup> If the agent enters the legal description, the agreement will satisfy the statute of frauds.<sup>48</sup>

The parties to a contract may also refer to another existing document to satisfy the statute of frauds. “Compliance with the statute of frauds is not limited to a single, signed piece of paper, but may be evidenced by several documents clearly related.”<sup>49</sup> However, the courts have held that parol evidence may only be used to apply the description contained in a writing to a definite piece of property, and to ascertain its location on the ground, “but never for the purpose of supplying deficiencies in a description otherwise so incomplete as not to definitely describe any land. The description must be in itself capable of application to something definite before parol testimony can be admitted to identify

---

<sup>46</sup> 148 Wn. App. 841 at 848 (noting the temporal aspect of the statute of frauds).

<sup>47</sup> *Edwards v. Meader*, 34 Wn.2d 921, 925, 210 P.2d 1019 (1949).

<sup>48</sup> *McKoin v. Kunes*, 5 Wn. App. 731, 734, 490 P.2d 735 (1971).

<sup>49</sup> *Knight v. Am. Nat’l Bank*, 52 Wn. App. 1, 4-5, 756 P.2d 757 (1988).

any property as the thing described.”<sup>50</sup> As stated previously, neither of these exceptions apply in this case because the PSA was for the conveyance of lots that did not exist at the time the PSA was signed.

Unlike *Nishikawa*, the PSA in this case attempts to convey “future lots.” Riverside argues that the law permits escrow to wait until the lots are created before inserting a legal description. This argument is not supported by any reading of *Nishikawa* and directly contravenes the Supreme Court’s holding in *Berg v. Ting, supra*.

E. **The PSA is Void as a Matter of Law Because There Was No Meeting of the Minds**

As explained above, closing was to occur in two phases, assuming Riverside chose to close on all of the lots. This phased closing, or the “pick and choose” by Riverside, would, at a minimum, require the parties to execute future agreements in order to convey some or all of the property to Riverside. For example, the trial court ordered specific performance of the PSA, but what if Riverside did not want to acquire all 20 lots? Would the trial court have to determine what lots Riverside was to acquire as part of the first phase of the closing and then direct escrow to provide legal descriptions for those lots?

---

<sup>50</sup> *Martinson v. Cruikshank*, 3 Wn.2d 565, 568, 101 P.2d 604 (1940).

To comply with the statute of frauds, a written memorandum “must embody all essential and material parts of the contemplated lease with sufficient clarity and certainty to indicate the parties’ meeting of the minds on all material terms with no material matter left for future agreement or negotiation.”<sup>51</sup> This Agreement was so fraught with errors and irregularities that it would be impossible to ascertain, from the face of the PSA, the parties’ actual intent.

In this case, the parties mutually understood many of the material terms; however, the parties failed to specify and reduce all material terms to writing, thus there is no valid agreement for a court to enforce. In particular, the “two phased closing,” and the ability of Riverside to determine if it wanted to close on all of the lots, means that the parties would have to execute additional agreements in order to close on the conveyance.

Accordingly, Riverside must prove by clear and unequivocal evidence showing “what must be done [by the parties] to constitute performance.”<sup>52</sup> For example, Riverside cannot meet this burden because it is unclear from the face of the PSA, which of the 20 available lots

---

<sup>51</sup> *Saunders v. Callaway*, 42 Wn. App. 29, 36, 708 P.2d 652 (1985).

<sup>52</sup> *Hubbell v. Ward*, 40 Wn.2d 779, 785, 246 P.2d 468 (1952).

Riverside intended to acquire, and in what order. These essential terms are lacking, making this PSA void and specific performance not available.

F. **Attorney's Fees to Grand Ridge**

The trial court erred when it awarded attorney's fees to Riverside as the prevailing party pursuant to the attorney fee provision in the PSA. CP 406; CP 976-977. For the reasons provided in this brief, Grand Ridge submits that it should be deemed the prevailing party at trial and on appeal. The fact that a PSA is unenforceable does not nullify the attorney fee provision. A party that argues that a contract is unenforceable may still collect attorney fees under the attorney's fee provision.<sup>53</sup>

VIII. **CLOSING**

Riverside simply pulled the wrong form of PSA. Instead of using a form that complies with the laws of Washington, it used an Oregon "future finished lots" agreement. Under Washington's statute of frauds, close is not good enough when it comes to legally describing property, especially when those lots did not exist when the PSA was signed.

The result is that the PSA does not satisfy Washington's statute of frauds and fails to contain essential terms. Riverside cannot prove that the

---

<sup>53</sup> *Herzog Aluminum, Inc. v. Gen. Am. Window Corp.*, 39 Wn. App. 188, 692 P.2d 867 (1984); *see also Labriola v. Pollard Group, Inc.*, 152 Wn.2d 828, 838, 100 P.3d 791 (2004); *Wallace v. Kuehner*, 111 Wn. App. 809, 821-22, 46 P.3d 823 (2002).

PSA is valid. The Court specifically should timely reverse the trial court's decision and grant Grand Ridge its Motion for Summary Judgment.

Dated this 7<sup>th</sup> day of November 2007.

SCHWABE, WILLIAMSON & WYATT, P.C.

By:   
Bradley W. Andersen, WSBA #20640  
Phillip J. Haberthur, WSBA #38038  
Attorneys for Appellant

IX. **APPENDIX**

Trial Court's June 4, 2007 Memorandum of Opinion	APP-1
June 29, 2007 Order and Subjoined Judgment on Motions for Summary Judgment	APP-4
August 15, 2007 Supplemental Judgment	APP-8
Purchase and Sale Agreement	APP-11

COPY  
ORIGINAL FILED

JUN 04 2007

Sherry W. Parker, Clerk, Clark Co.

1

2

3

4

5

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

6

IN AND FOR THE COUNTY OF CLARK

7

8

GEONERCO, INC. and/or assigns, nka )  
RIVERSIDE HOMES, INC., an Oregon )  
corporation dba Riverside Homes )  
Vancouver, )

9

10

Plaintiff. )

) Case No.: 06-2-02579-6

11

vs. )

) Memorandum of Opinion

12

GRAND RIDGE PROPERTIES IV, LLC, an )  
Oregon Limited liability company, )

13

Defendant. )

14

15

Summary Judgment was sought by Geonerco, Inc., against Grand Ridge Properties

16

IV LLC, in which they seek specific performance for a contract entered into

17

June 2002. The real estate purchase and sale agreement described the

18

property in question as 22 future finished lot subdivision located in Grand

19

Ridge Terrace Phase 4 in Camas, Washington. Inserted as the legal

20

description is assessor's tax lot number 125664-000, but at the same time

21

recognizes a tax lot number was not an appropriate legal description.

22

The seller and buyer specifically authorized escrow to insert over their

23

signatures the correct legal description of the real property. Chicago Title

24

was selected as the escrow agent, and the parties agreed that the escrow

25

would be established with them. Upon the acceptance, Chicago Title prepared

ALTA Owners Extended Coverage Title Policy which contained a legal

Memorandum of Opinion - Page 1 of 3

APP-1

1 description for the property described in Exhibit A of the title policy,  
2 which was a metes and bounds prescription of the parcel.  
3  
4 *Nishikawa vs. DS Eagle High, LLC*, was cited May 30<sup>th</sup>, 2007, by Division II and  
5 reaffirms two basic principles. One, that if the parties to the agreement  
6 authorize an independent third party to insert an appropriate legal  
7 description, it is a valid delegation of that authority and the parties are  
8 bound by the legal description that is created dealing with the subject  
9 property. But even more importantly, the case holds for the proposition that  
10 once the agreement is reached, it cannot be unilaterally changed without the  
11 consent of both parties. The initial agreement provided the authority for  
12 Chicago Title to insert the appropriate legal description and was guided by  
13 the tax lot number and other information provided by the seller.

14 In addition, we then need to determine whether the subsequent agreements in  
15 any way modify this authority granted to the title company. Addendum 1  
16 entered into on September 27<sup>th</sup>, 2002, by seller and confirmed by buyer on  
17 October 2<sup>nd</sup>, 2002, that the title order number K128398 contains Schedule A for  
18 a commitment, which were the boundaries for the property that would be  
19 conveyed under the agreement. The inked Exhibit C shows a proposed  
20 development of plots within Schedule A as proposed at the time in question,  
21 but the key is still the boundaries of the property described in Schedule A.  
22 Exhibit A and Exhibit B, which were also deleted, referenced the agreements  
23 that were attached to the original purchase agreement and no longer had any  
24 effect dealing with the transaction.

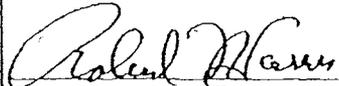
25 Subsequent agreements dealt with grading and paving but still indicate that  
the preliminary title policy was governing the transaction. There were

1 additional subsequent agreements which affected the final payment price due  
2 to some changes that were accepted by the buyer for the problem dealing with  
3 the current situation. Plans having now been finalized are subject to being  
4 conveyed. A specific performance shall be granted conveying the property in  
5 question.

6 Grand Ridge further asserts that if the contract was enforceable, that they  
7 had the right of renegotiation due to the increased cost which incurred  
8 during the permitting process. However, the contracts clearly call for an  
9 integrated agreement and nowhere in the testimony asserted was there any  
10 agreement by Geonerco that they would modify the payment conditions in  
11 response to cost analysis being submitted. The testimony from the  
12 depositions does not give rise to an agreement to modify on the face of the  
13 integrated contract of the parties.

14  
15 Time of performance is that which was contemplated as the platting process is  
16 an uncertain time frame and each may waive untimely performance to insure  
17 compliance with the contract at the time of completion, which was the date  
18 set in the proposal. Therefore, having found that the legal description is  
19 adequate under the statute of frauds, summary judgment is granted to  
20 Geonerco

21 Dated this 4 day of June, 2007.

22 

23 Robert L. Harris  
24 Superior Court Judge, Dept. 5

25

RLH:lmk

Memorandum of Opinion - Page 3 of 3

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

*The Honorable Robert L. Harris*  
Hearing Date: June 29, 2007  
Hearing Time: 9:00 a.m.  
With Oral Argument

**FILED**  
**JUN 29 2007**  
*Sherry W. Parker, Clerk, Clark Co.*

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK

GEONERCO, INC. and/or assigns, n/k/a  
RIVERSIDE HOMES, INC., an Oregon  
corporation d/b/a Riverside Homes Vancouver,  
  
Plaintiff,  
  
v.  
  
GRAND RIDGE PROPERTIES IV LLC, an  
Oregon limited liability company,  
  
Defendant.

Case No. 06-2-02579-6

**ORDER AND  
SUBJOINED JUDGMENT ON  
MOTIONS FOR SUMMARY  
JUDGMENT**

***[Clerk's Action Required]***

THIS MATTER came on before the Court for hearing on Plaintiff's and Defendant's  
Motions for Summary Judgment. In connection with the Motions, the Court has reviewed  
the following submissions by the parties:

1. Plaintiff's Motion for Partial Summary Judgment, dated March 8, 2007;
2. Declaration of Todd Boyce in Support of Plaintiff's Motion for Partial Summary Judgment, March 8, 2007;
3. Declaration of Paul E. Brian in Support of Plaintiff's Motion for Partial Summary Judgment, March 8, 2007;
4. Defendant Grand Ridge Properties IV LLC's Motion for Summary Judgment, dated March 16, 2007;
5. Memorandum in Support of Defendant Grand Ridge Properties IV LLC's Motion for Summary Judgment, dated March 16, 2007;

ORDER AND SUBJOINED JUDGMENT ON MOTIONS  
FOR SUMMARY JUDGMENT - Page 1

**CL**

*Smith  
Alling  
Lane*  
A Professional Services Corporation  
Attorneys at Law

1102 Broadway Plaza, #403  
Tacoma, Washington 98402  
Tacoma: (253) 827-1091  
Seattle: (425) 251-6838  
Facsimile: (253) 827-0123

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

6. Declaration of Jeff. F. Dulcich in Support of Defendant Grand Ridge Properties IV LLC's Motion for Summary Judgment, dated March 16, 2007;
7. Plaintiff's Response to Defendant's Motion for Summary Judgment, dated April 2, 2007;
8. Declaration of Stacey E. Mark in Opposition to Defendant's Motion for Summary Judgment, dated April 2, 2007;
9. Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, dated April 2, 2007;
10. Declaration of Phillip A. Plescia in Support of Defendant Grand Ridge Properties IV LLC's response to Plaintiff's Motion for Partial Summary Judgment, dated April 2, 2007;
11. Declaration of Kelly M. Walsh in Support of Defendant Grand Ridge Properties IV LLC's Response to Plaintiff's Motion for Partial Summary Judgment, dated April 2, 2007;
12. Reply in Support of Defendant's Motion for Summary Judgment, dated April 6, 2007;
13. Declaration of Kelly M. Walsh in Support of Reply in Support of Defendant's Motion for Summary Judgment, dated April 6, 2007;
14. Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Summary Judgment, dated April 9, 2007;
15. Oral Argument of April 19, 2007;
16. Plaintiff's letter to Judge Harris, dated April 20, 2007;
17. Plaintiff's Supplemental Memorandum on Cross Motions for Summary Judgment, dated April 20, 2007;
18. Declaration of Jennifer Valenta in Support of Plaintiff's Supplemental Memo, dated April 20, 2007;
19. Defendant's letter to Judge Harris, dated April 23, 2007;
20. Judge Harris' letter to parties, dated May 2, 2007;
21. Oral Argument of May 11, 2007;
22. Defendant's Response to Plaintiff's Supplemental Memorandum on Cross Motions for Summary Judgment, dated May 14, 2007; and

ORDER AND SUBJOINED JUDGMENT ON MOTIONS  
FOR SUMMARY JUDGMENT – Page 2

*Smith  
Alling  
Lane*

A Professional Services Corporation  
Attorneys at Law

1102 Broadway Plaza, #403  
Tacoma, Washington 98402  
Tacoma: (253) 827-1001  
Seattle: (425) 251-6938  
Facsimile: (253) 827-0123

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

23. Memorandum of Opinion, dated June 7, 2007.

The Court has also heard and considered the oral arguments by counsel and finds and concludes that no genuine issues of material fact exist and Plaintiff is entitled to judgment as a matter of law. Based on the Court's review and consideration, it is hereby:

ORDERED as follows:

- 1. Plaintiff's Motion for Summary Judgment is GRANTED, and a Decree of Specific Performance is hereby made to Plaintiff with respect to that certain Purchase and Sale Agreement, dated June 13, 2001, as amended, between Plaintiff and Defendant;
- 2. Defendant Grand Ridge Properties IV LLC's Motion for Summary Judgment is DENIED;
- 3. Defendant is ordered to sell to Plaintiff, and to fully cooperate in any activities necessary to closing the sale, the property at issue in this proceeding, specifically Lots 1 through 20, Grand Ridge Phase IV, according to the plat thereof, recorded in Volume 311 of Plats, Page 367, records of Clark County, Washington, at the purchase price of \$1,219,000, prior to any offset for attorneys fees and costs which may be awarded to Plaintiff (the "Purchase Price");
- 4. Closing of the sale shall take place no later than thirty-five (35) days after entry of an order on Plaintiff's request for an award of attorney's fees and costs; and
- 5. Judgment is hereby granted in favor of Plaintiff on all issues and claims in this proceeding, and the following information should be entered in the Clerk's Execution Docket:

JUDGMENT SUMMARY

- a. Judgment Creditor: ..... Riverside Homes, Inc.,  
d/b/a Riverside Homes  
Vancouver
- b. Judgment Creditor's Attorneys: ..... Ater Wynne LLP  
Paul E. Brain  
601 Union Street, Suite 5450  
Seattle, WA 98101
- c. Judgment Debtor: ..... Grand Ridge Properties IV LLC

ORDER AND SUBJOINED JUDGMENT ON MOTIONS  
FOR SUMMARY JUDGMENT - Page 3

*Smith  
Alling  
Lane*  
A Professional Services Corporation  
Attorneys at Law

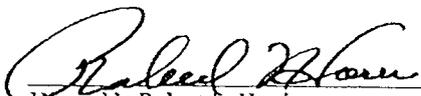
1102 Broadway Plaza, #403  
Tacoma, Washington 98402  
Tacoma: (253) 627-1091  
Seattle: (425) 251-5938  
Facsimile: (253) 627-0123

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

- d. Judgment Debtor's Attorneys:..... Schwabe Williamson & Wyatt PC  
Bradley W. Andersen  
700 Washington Street, Suite 701  
Vancouver, WA 98660
- e. Attorney's Fees and Costs:..... \$ \_\_\_\_\_
- f. Post-judgment interest as provided by statute.

6. This judgment shall constitute a final judgment on all claims and defenses asserted by the parties herein.

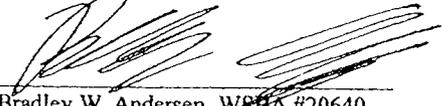
DATED this 29 day of June, 2007.

  
\_\_\_\_\_  
Honorable Robert L. Harris

**Presented By:**  
SMITH ALLING LANE, P.S.

By:   
Paul H. Brain, WSBA #13438  
Attorneys for Plaintiff

**Approved as to Form Only for Entry:**  
SCHWABE, WILLIAMSON & WYATT, P.C.

By:   
Bradley W. Andersen, WSBA #20640  
Attorneys for Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

The Honorable Robert L. Harris  
BDP - 7/19/07

**COPY  
ORIGINAL FILED  
AUG 15 2007**

Sherry W. Parker, Clerk, Clark Co.

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

GEONERCO, INC. and/or assigns n.k/a  
RIVERSIDE HOMES, INC., an Oregon  
Corporation d/b/a Riverside Homes  
Vancouver,  
  
Plaintiff  
  
v  
  
GRAND RIDGE PROPERTIES IV LLC, an  
Oregon limited liability company,  
  
Defendant

No. 06-2-02579-6  
SUPPLEMENTAL JUDGMENT  
[Clerk's Action Required]

On June 29, 2007, this Court entered judgment in the instant action in favor of the Plaintiff but reserving for later determination, the amount of attorneys fees and costs to be awarded to Plaintiff as the prevailing party. Based on this Court's Review of Plaintiff's Motion and Affidavit in Support of an award of fees and costs and Defendant's submissions and arguments in response, IT IS HEREBY ORDERED as follows:

I. Supplemental judgment is entered in favor of Plaintiff for fees in the amount of \$88,712, for costs in the amount of \$1317.25 for a total judgment of \$90,029.25.

SUPPLEMENTAL JUDGMENT - Page 1

*Smith  
Alling  
Lane*  
A Professional Service Corporation  
Attorneys at Law

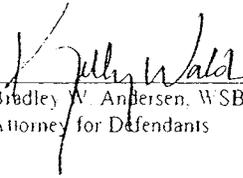
1167 Broadway Plaza #403  
Tacoma Washington 98402  
Tacoma 125316771091  
Seattle 125317515936  
Facsimile 125316770172



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

*Approved as to Form Only for Entry:*

SCHWABE, WILLIAMSON & WYATT, P.C.

 #35718  
Bradley W. Andersen, WSBA 20640  
Attorney for Defendants

**REAL ESTATE PURCHASE AND SALE AGREEMENT**  
(Oregon Finished Lots)

This Real Estate Purchase and Sale Agreement ("Agreement") is made and entered into this 3<sup>rd</sup> day of May, 2002, by and between Grand Ridge LLC ("Seller") and Geonrico, Inc., an Oregon corporation, and/or assigns ("Buyer"). In consideration of the promises and mutual covenants set forth herein, Buyer and Seller agree as follows:

1. **DESCRIPTION OF PROPERTY TO BE CONVEYED** - Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, that certain real Property described as follows: 22 future finished lots located in Grand Ridge Terrace Phase 4, 22 future finished lot subdivision, Camas, Washington, also known as:

Legal Description: ASSIGN # 125664-000 -8

together with all improvements and fixtures thereon and all related rights and appurtenances thereto, as well as all Intangible Property associated therewith. Seller warrants that this is the correct legal description of the Property to be conveyed pursuant to this Agreement.

If the above legal description is not a complete legal description of the Property to be conveyed, Seller shall provide Buyer with a complete legal description. Seller and Buyer hereby authorize Escrow to insert over their signatures the correct legal description of the real Property ("Property").

2. **PURCHASE PRICE** - The purchase price shall be One Million Two Hundred Thirty Two Thousand dollars (\$1,232,000.00). The purchase price shall be paid in cash at the time of closing, less any earnest money previously paid by Buyer. The purchase price herein is based on a lot yield of 22 Finished lots at Fifty Five Thousand dollars (\$55,000.00) per lot for the first 11 closed and \$57,000 for the second 11 closed. In the event the lot yield is less than 22 Finished lots, the purchase price herein shall be reduced by \$57,000.00 per Finished lot less than 22.
3. **EARNEST MONEY RECEIPT** - Upon the date Buyer acknowledges receipt of a fully-executed copy of this Agreement ("Mutual Acceptance"), Buyer shall deliver and deposit with Chicago Title Company ("Escrow") an Earnest Money Promissory Note payable in the sum of Twenty Two Thousand Dollars (\$22,000.00). Within Five (5) business days after Buyer notifies Seller that it has removed the Feasibility Contingency stated below, Buyer shall convert the promissory note to cash and release its proceeds to Escrow with

instructions to release the Earnest Money to Seller. All Earnest Money shall apply to the purchase price at closing, *ALSO REFER TO EXHIBIT "A" ATTACHED PLANS.*

4 FEASIBILITY CONTINGENCY - This offer is expressly subject to Buyer completing, at its sole expense, a feasibility study for the development of the Property. This feasibility study shall be completed within fifteen (15) business days from the later of Mutual Acceptance or the date Seller has provided Buyer with all of the Property Documents described below (the "Feasibility Period"). If Buyer shall deem, in its sole and absolute discretion, that its intended use of the Property appears to be economically viable and architecturally feasible, then notification shall be provided to Seller in writing, on or before the last day of the Feasibility Period, stating that the contingency has been removed. If Buyer elects not to proceed with the transaction, no notice shall be given to Seller, this transaction shall be null and void unless otherwise agreed upon by the parties to this Agreement, and all Earnest Money deposited under this transaction together with any accrued interest shall be returned to Buyer.

5 CLOSING

a) This transaction shall close in Five (5) Phases according to the schedule set forth below:

	<u>Phase</u>	<u>Closing Date</u>	<u>Lot Quantity</u>	<u>Total Price</u>
I.	Sixty (60) days after the lots are "Finished" according to the definition of Finished Lots set forth below		11	\$605,000.00
II.	One Hundred (100) days after the Closing of Phase I or thirty (30) days after the lots are Finished, whichever is later		11	\$677,000.00

b) Buyer shall determine which lots to close thirty (30) days prior to the closing of each Phase. Seller agrees that Buyer may elect, in its sole discretion, to waive all contingencies and accelerate the closing schedule at anytime during this Agreement. If any phase closing is accelerated, the next scheduled closing date shall occur as if the prior phase closing was not accelerated.

c) The closing of this transaction shall take place at Escrow.

6. CONVEYANCING - Title to the Property shall be conveyed to Buyer at closing by warranty deed free of encumbrances or defects and Seller shall deliver possession of the Property to Buyer free of all tenancies on the date of closing. In addition, Seller shall provide Buyer with a written assignment of the Intangible Property relating to the Property at Closing.

7. CLOSING ADJUSTMENTS AND COSTS

- a) Any and all state, county and city taxes for the current year, rents or other income and operating expenses for or pertaining to the Property, shall be pro-rated between Seller and Buyer as of the closing date. Any pro-rations based on estimates shall be subsequently adjusted after closing when actual costs and pro-rations can be calculated, and the obligated party for any overage or adjustment shall promptly pay the amount due to the other party.
- b) Seller shall pay for the cost of the ALTA Title Policy, transfer taxes, pro-rata share of the property taxes and one-half Escrow Fees and all other customary closing costs for Seller. Seller shall also pay at or prior to closing Clark County Local Improvement District, and all fees require and associated with filing, processing, and recording of final subdivision map.
- c) Seller to pay all impact fees required to complete the subdivision improvements and to record the plat. The PURCHASER will pay all fees associated with obtaining a normal building permit for subject lots.

8. INTERIM ACTIONS/RIGHT OF ACCESS

- a) After the date of Mutual Acceptance, Buyer, its agents and employees shall have the right to enter onto the Property for the purpose of accomplishing Buyer's objectives for the study and development of the Property. Buyer shall restore the Property reasonably consistent with its present condition in the event of termination of this Agreement except in the case of Seller's default. Buyer agrees to hold Seller harmless from any and all damages or claims arising out of or in connection with Buyer's actions in inspecting and testing the Property. The foregoing indemnity shall not apply to: (i) any toxic or hazardous substance existing on the Property; (ii) any dispersion of any existing toxic or hazardous substance as a result of Buyer's testing; (iii) any act or omission by Seller; and (iv) any latent defect in the Property.
- b) At the conclusion of the Feasibility Period, Buyer shall have the right to place signs on the Property in accordance with local sign ordinances.

9. SELLER'S REPRESENTATIONS AND WARRANTIES - Seller represents, warrants and covenants the following to Buyer:
- a) Power and Authority - Seller is the owner of the Property and has the authority and power to enter into this Agreement and to consummate the transaction provided for herein. This Agreement and all other documents executed and delivered by Seller constitute a legal, valid, binding and enforceable obligation of Seller.
  - b) Title - Seller has fee simple title to the Property which as of the Closing Date, will be free and clear of all encumbrances, defects, and encroachments. The term Property includes any easements, rights of way, or appurtenances necessary to record the final plat, obtain building permits, and certificates of occupancy.
  - c) Hazardous Substances - To the best of Seller's knowledge there is no hazardous waste or hazardous substances on the Property (including the land, surface water, ground water, and any improvements) as such terms are defined by any law, ordinance, or regulation applicable to the Property. If any hazardous waste or hazardous substances are discovered on the Property, Seller agrees to indemnify and hold Buyer harmless from and against any and all clean up costs, fees or fines, including attorney and consultant fees incurred by or assessed against Buyer. There is not now, nor has there ever been on or in the Property underground storage tanks, asbestos-containing materials, or any material spills or polychlorinated biphenyls, including those used in hydraulic oils, electric transformers or other equipment. There are no actual, alleged or perceived health issues applicable to the Property.
  - d) Other Claims or Commitments - Seller warrants that there are no written or verbal contracts or agreements for the sale, lease, rental or use of the Property or any portion thereof, which contract or agreement may be binding against the Property and may subsequently result in a claim against Buyer. Also, there are no other agreements, whether written or unwritten, covering or affecting the Property which may subsequently result in a claim against Buyer. Seller has not received notice from any governmental authority that there are any LIDs, MIDs, or SIDs to be formed, that the Property is not in full compliance with all applicable local, municipal, regional, state or federal laws and requirements.
  - e) Legal Action - There is no action, suit, proceeding or investigation pending, or to Seller's knowledge threatened, before any agency, court or other governmental authority which relates to the Property or Buyer's intended use thereof.
  - f) Foreign Person or Entity - Seller is not a foreign person, non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are

5/2/02  
ORFmchd dot

defined in the Internal Revenue Code and the Income Tax Regulations promulgated thereunder. At closing, Seller shall deliver to Escrow a certificate of non-foreign status in the form required by Income Tax Regulations and reasonably acceptable to Buyer. In the event Seller shall not deliver such certificate to Escrow at closing, Escrow shall withhold the amount required pursuant to Section 1415 of the Internal Revenue Code and submit such withholding to the Internal Revenue Service.

- g) Legal Lot - Each lot conveyed at closing shall be a legal lot in compliance with state statutes and local ordinances.
- h) No Artifacts or Protected Species - Seller warrants, to the best of its knowledge, that the Property is free of historical or archaeological artifacts and/or protected species.
- i) Utilities - Seller warrants that the Property is presently served by a public water main, public sewer main, gas main, and electric distribution line. The term "served by" means that a main or line capable of adequately serving the entire property abuts or adjoins the Property at some point.

10. SELLER'S OBLIGATIONS PENDING CLOSING - During the term of this Agreement until termination as herein provided, Seller covenants and agrees to perform the following obligations:

- a) Property Documents - Seller shall provide Buyer with copies of all documents pertaining to the Property which shall include but not be limited to the preliminary plat approval containing conditions required for final plat approval, the recorded plat if recorded, any and all engineering and other consulting studies, soils reports, surveys, environmental reports, development plans and specifications, as-built topography plans for each lot, permit applications, governmental licenses, permits and approvals, warranties from third parties, utility rights and agreements (collectively "Intangible Property"). In addition, Seller shall provide Buyer with all governmental communications, unrecorded covenants, restrictions, easements, and/or other potential encumbrances pertaining to the Property. Any additional documents received by Seller subsequent to the date of Mutual Acceptance, including but not limited to copies of any bonds posted by the Seller, shall be promptly forwarded to Buyer. Purchaser is aware that Seller may be utilizing borrowed funds to complete the site improvements. Purchase Agreement Memorandum recorded by Buyer if necessary will be subordinated "on demand" by seller to allow Seller to acquire site improvement loan.
- b) Sell or Encumber Property - Seller shall not sell, assign, or convey any right, title or interest whatsoever in or to the Property to any third party, or create or permit to

exist any lien, encumbrance or charge thereon which will not be paid in full at closing. ALSO REFER TO EXHIBIT A, ATTACHED HERETO.

- c) Representations and Warranties - Seller shall not take any action, or omit to take any action, that would have the effect of violating any of its representations, warranties, covenants, and agreements contained herein.
  - d) Existing Financing - Seller shall continue to make all payments required under the terms of any existing financing on the Property and shall not suffer a default or permit a default to arise thereunder.
  - e) Memorandum of Agreement - Seller shall, upon request by Buyer, execute a memorandum of this Agreement which Buyer may record.
  - f) Record Subdivision - Seller shall take any and all actions to record the subdivision and create the Finished Lots in a timely manner and shall inform the Buyer of any material changes to the proposed lots as shown on Exhibit A, e.g. the number of lots, the dimension of lots. Seller shall provide Buyer with copies of the subdivision guaranty and the proposed plat for Buyer's review and approval prior to submitting for final plat approval.
11. TITLE INSURANCE - As soon as possible after the date of the Mutual Acceptance, Seller shall, at its sole cost and expense, cause Chicago Title (the "Title Company") to issue a commitment for an ALTA Owners Extended Coverage Title Policy (including copies of all exception documents referenced in said commitment) in an amount equal to the Purchase Price, which commitment shall provide for the issuance of a final title policy as of the Closing Date, subject to no liens or encumbrances and include such endorsements, affirmative coverage, and other modifications required by Buyer and Buyer's lender. The Title Company shall issue the Title Policy to Buyer as soon as possible after Closing. Purchaser shall pay the additional cost for the extended coverage endorsement.
12. FINISHED LOTS - The lots shall be deemed to be "Finished Lots" when all of the following conditions have been completed:
- a) All lot corners have been staked and pinned or plugged.
  - b) All power has been activated. All utilities shall be unconditionally 100% complete and ready for hook-up, permits and use. Utilities are defined as public drinking water, storm sewer, public sanitary sewer, natural gas, telephone, cable television and underground power. Water, sanitary sewer, storm sewer and power have been

located with a stake or obvious means of location on each lot. Buyer has been provided with as-built drawings showing the actual location of storm and sanitary sewer stubs. Sanitary sewer and storm sewer stub outs have been extended into the lot to a point that is beyond the dry utilities. Seller will provide all utilities to each lot, Purchaser will provide utility extensions to the proposed residential home. Those fees associated with the connecting home to the sewer including a "step-sewer system", water meter, gas, tv, and power will be the responsibility of the Purchaser and/or contractor if other than Purchaser.

- c) The Fire district has approved the water system and the system has been turned over to the water district.
- d) All utilities and subdivision improvements have been completed and accepted by the local government jurisdiction.
- e) The plat has been recorded with all punch list items completed.
- f) The lots have been cleared of all construction debris, stock piled material, chip piles and junk trees, that are not being used to benefit the subdivision.
- g) Lots do not contain more than 12 inches of non-structural fill or uncompacted soil within the lot. All structural fill that has been placed on the site has been compacted to current U.B.C. standards and local building code standards (95% compaction typically) and certified by a licensed geotechnical engineer as suitable for construction of single family residences on normal spread footings. Storm and sanitary sewer systems gravity flow from the building pad of each lot.
- b) Building permits are available and Seller has completed all necessary subdivision improvements so that Buyer will obtain final certificates of occupancy, unless the failure to obtain such certificates of occupancy is a result of Buyer's construction deficiencies.
- i) Street lights have been installed and activated, and roads have been completed and paved, and street signs and mailboxes have been installed. Sidewalks installed per approved subdivision plans, such as ADA and City required for plat recordation. Driveway aprons and side-walks for home construction are the responsibility of Purchaser.
- j) The Architectural Control Committee has issued written approval of Buyer's architectural plans.

- k) Buyer has inspected the lots with a representative of the Seller for the purpose of locating utilities, corner stakes, and identifying any defects in the concrete work. Any defects noted at the inspection have been repaired by Seller prior to closing. Buyer will not be "unreasonable" as to any repairs made or completed by Seller.
- l) Seller will pay all impact fees and fees associated with completing subdivision improvements and to record the plat. Buyer will pay for all impacts and/or fees associated with obtaining a lot or lots building permits. During feasibility period, Seller to deliver to Buyer a list of all current fees and mitigation associated with subdividing, recording the plat and those required to obtain building permit and Certificate of Occupancy.
- m) Seller shall develop the finished lots with a finished grade of no more than eight (8') feet or slope across the building pad area in any direction.

13. CONDITION OF PROPERTY AT CLOSING

- a) Condition of Property - Between the date of Mutual Acceptance and the date of closing, there shall be no material adverse change(s) in the condition of the Property.
- b) Casualty or Condemnation - If prior to closing, there is a loss of the Property by condemnation, Buyer shall have the option to: 1) accept title to the Property without any adjustment of the purchase price, in which event at the closing all of the condemnation awards shall be assigned by Seller to Buyer and all moneys received by Seller in connection with such loss shall be paid over to Buyer; or 2) terminate this Agreement, in which event all earnest money deposits, whether refundable or not, shall be returned to Buyer and this Agreement shall then be null and void.
- c) Moratorium - As of the closing date there shall be no actions imposed, pending, or contemplated by any utility supplier or other authority having jurisdiction over the Property that would result in restricting, reducing, delaying, or denying permits necessary for the development, construction, use or occupancy of the Property as a residential development.

14. CONDITIONS PRECEDENT TO CLOSING - If any of Seller's obligations contained herein have not been completed, then Buyer shall have the right to extend the closing date until the date which is 15 business days after Seller completed the condition or may terminate this Agreement and have all Earnest Money refunded to Buyer.

15. DEFAULT PROVISIONS

3/2/07  
ORF\rdshd.doc

- a) Buyer's Remedies - In the event of Seller's breach of this Agreement, Buyer shall have the right to enforce this Agreement by specific performance or by any other remedy available in law or equity. Buyer, at its option, may elect to waive the performance of any condition, contingency or provision in Buyer's favor set forth in this Agreement.
- b) Seller's Remedies - In the event Buyer fails, without legal excuse, to complete the purchase of the Property, any Earnest Money deposit(s) paid to Seller shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure. This limitation shall include any claims for attorneys' fees, interest and actual or consequential damages. It is agreed that the Earnest Money shall represent the reasonable estimate by the parties of the amount of damages that Seller would suffer by reason of Buyer's default under this Agreement. Seller hereby waives any other remedy it may have. In the event Seller fails to receive any payment or notice required herein, Seller shall so notify Buyer and Buyer shall then have ten (10) days to cure performance.

16. NOTICES - All notices shall (i) be in writing; (ii) be sent by mail, courier service, or facsimile transmission; and (iii) be effective on the date it is officially recorded as delivered. The addresses to be used in this Agreement are:

- a) Buyer's Address: Geonrico, Inc.  
 Attn: Bill Wagoner  
 15455 Greenbrier Pkwy, Suite 140  
 Beaverton, OR 97006  
 phone (503) 645-0986  
 fax (503) 6902942
- b) Seller's Address: GRAND SUDGE LLC  
JEFF DULGICH  
P.O. Box 1416 - CLATSOP, OR 97015  
 phone (503) 777-4863  
 fax (503) 777-9949

17. OPEN SPACE / AGRICULTURAL TAXATION PENALTIES - Seller shall pay all applicable "back" or "roll-back" real estate taxes, interest and/or penalties to bring the subject Property out of any open space designation, green belt, farm, forest, other property deferral, current use taxation program or similar restrictive designation. Such back taxes, interest or penalties shall be paid by Seller before closing. If Seller is unable to complete this obligation prior to closing, Buyer shall have the option of delaying closing until the county tax assessor has cleared the matter, or proceeding to close with an escrow hold-back in the amount of one hundred fifty percent (150%) of the estimated back taxes and penalties.

3/2/02  
 ORP\indred.doc

18. COVENANTS CONDITIONS & RESTRICTIONS - Seller to provide copy of CC&R's upon mutual acceptance.
19. REAL ESTATE COMMISSION - Each party represents and warrants to the other that it has not used the services of any real estate agent, broker or finder with respect to the transaction contemplated hereby except for See Exhibit "B" who is the Seller's listing agent. Seller shall pay the agent in accordance with a separate listing agreement. Each party agrees to indemnify and hold harmless the other against, and from any inaccuracy in such party's representation under this Paragraph.
20. STATUTORY LAND USE DISCLAIMER - THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM AND FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE, AND WHICH LIMITS LAWSUITS AGAINST FARMING OR FOREST PRACTICE, AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND THE EXISTENCE OF FIRES PROTECTION FOR STRUCTURES.
21. MISCELLANEOUS
- a) Entire Agreement - No Oral Modifications - This Agreement, and any exhibits hereto, constitute the final and complete Agreement, and supersede all prior correspondence or agreements between the parties relating to the subject matter hereof. This Agreement cannot be changed or modified other than by a written agreement executed by both parties.
- b) Successors Bound - The provisions of this Agreement shall extend to, bind and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.
- c) Governing Law - This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- d) Severability - If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by the law.

- c) Construction - Seller and Buyer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement (including exhibits) or any amendments thereto, and that the Agreement shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.
- f) Survival of Terms - The terms and provisions of this Agreement shall survive the closing and shall not be merged into the deed or extinguished thereby, but shall remain in full force and effect thereafter.
- g) Time Periods - All time periods set forth in this Agreement shall be measured from the date of Buyer's receipt of a Seller signed original of this Agreement, which date shall be considered to be the "date" of this Agreement and is set forth below. If the date of any performance under the terms of this Agreement falls on a weekend or holiday, the time for performance shall be extended to the next business day.
- b) Time of the Essence - Time is of the essence, and shall apply to all terms and conditions of this Agreement.
- i) Counterparts - This Agreement may be executed in counterpart, each of which shall be deemed to be an original, and together shall constitute one and the same Agreement.
- j) Facsimile Transmission - Facsimile transmission of any signed or gual document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or Escrow, the parties will confirm facsimile transmitted signatures by signing an original document.
- k) Multiple Parties - In the event Seller is composed of more than one party, obligations arising from this Agreement are and shall be joint and several as to each such party. Each person executing this Agreement does so in his or her individual capacity and on behalf of his or her marital community.
- l) Assignment of Agreement - Buyer shall have the right to assign this Agreement and its rights hereunder and to be relieved of any future liability under this Agreement, provided that the assignee shall assume all of the obligations of Buyer hereunder.

- m) Financing Extension of Closing Date - Seller agrees that the closing date may be extended up to fifteen business days, if necessary, to permit Buyer's lender to prepare financing documents.
- n) 1031 Exchange - Buyer agrees to cooperate with Seller if Seller decides to participate in a 1031 exchange of properties, provided that such exchange shall be at no expense to Buyer and shall not delay closing, and provided further that Buyer shall not be required to take title to any property other than the Property.
- o) No Waiver - No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless excused in writing by the party making the waiver.
- p) Further Acts - Each party shall, at the request of the other, execute, acknowledge (if appropriate) and deliver whatever additional documents, and do such other acts as may be reasonably required in order to accomplish the intent and purposes of this Agreement.
- q) Attorneys Fees - In the event that either party here to brings an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, or for an alleged breach or default of this Agreement, or any other action arising out of this Agreement or the transactions contemplated hereby, the prevailing party in any such action shall be entitled to an award of reasonable attorneys fees and court costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.
- i) No Partnerships - Nothing in this Agreement shall be deemed in any way to create between the parties any relationship of partnership, joint venture or association, and the parties disclaim the existence thereof.

22. BUYER'S OFFER - The undersigned Buyer, on this 30 day of May, 2002, hereby offers this Agreement to Seller to purchase the Property described herein pursuant to the terms and conditions contained herein.

30/02  
DRP/mbk/d/llx

BUYER: Geoneto, Inc.

By: [Signature]  
Name: BILL WAGONS Land Acquisitions

23. TIME FOR ACCEPTANCE - Buyer's offer is made subject to the acceptance of Seller, on or before twelve o'clock midnight of JUNE 19, 2002. If Seller does not accept this Agreement within the time specified, the Earnest Money note shall be returned to Buyer, and this Agreement shall be null and void.

24. SELLER'S ACCEPTANCE - The undersigned Seller on this 13 day of JUNE, 2002, hereby accepts and approves the above agreement, and agrees to carry out all of the terms thereof, AND CONDITIONS PER ADDENDUM A ATTACHED

SELLER:  
[Signature]  
Name: JONI PERLINA  
Title: PROJECT MANAGER

[Signature]  
[Signature]  
HERE TO.

25. BUYER'S RECEIPT - Buyer hereby acknowledges receipt of a Seller signed copy of this Agreement, on JUNE 13, 2002.

BUYER: Riverside Homes, Inc.

By: [Signature]  
Name: [Signature] Land Acquisitions

EXHIBIT "A"

6-13-2002

This is an Addendum to Real Estate Purchase and Sale Agreement, between parties, Grand Ridge LLC, "Seller" and Geonerco, Inc. "Buyer", offer dated May 30, 2002, Sellers acceptance June 13, 2002. Acceptance by Seller subject to the following modifications to subject agreement:

Agreement Item #3. "Earnest Money Receipt"

- a.) Initial Earnest Money provided as stated in Agreement. These funds to be credited to the initial closing of 11 lots between parties.
- b.) Addition, Upon Seller's notification to Buyer that project has approved conditions and site engineering that will allow Seller to commence all site improvements and utility installations, Buyer will with-in (14) days of written notice, deposit an additional earnest money of of \$22,000. with escrow holder. Upon the start of site improvements, without further instructions from either party, escrow to release earnest money to Seller. These funds to be credited to the second closing purchase price for the remaining 11 lots.

Agreement Item #5. "Closing"

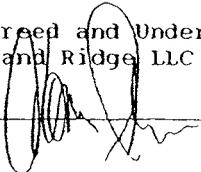
- b.) Buyer and Seller to mutually select the initial 11 lots to be purchased at closing, Neither party to be unreasonable with their selection.

Agreement Item #19. "Real Estate Commissions"

Real Estate Commission to be paid by Seller, subject to memo identified and attached hereto, from Seller to Remax Equity Group, dated April 1, 2002.

All other terms and conditions per "Agreement" mutually acknowledged by parties, to remain in full force and effect.

Agreed and Understood:  
Grand Ridge LLC

  
6/13/2002

Geonerco, Inc.



EXHIBIT "B"

April 1, 2002

Memo to : Peter McWilliams  
From : Tony Plescia  
RE: : Grand Ridge LLC  
Commission Authorization

Pending a separate real estate agreement, this memo will acknowledge that a Real Estate Commission will be paid to the Broker (REMAX Equity Group) by Seller, for the services of Peter McWilliams in the sale of the Grand Ridge Parcel No. "C" North to Generco, Inc.

Commission will be earned only if the sale escrow to Generco, Inc. closes, with a transfer of title from Grand Ridge Parcel No. "C" North to Generco, Inc.

Commission will be earned and paid from Sellers proceeds by escrow holder concurrent with the escrow closing on a specific lot or lot(s). Such as, if the initial take down and transfer of 11 lots from the Seller to Generco, Inc., commission will be paid on 11 lots. If Generco, Inc. proceed to close the 2nd. take down of 11 lots, commissions are then earned and payable to Broker.

Broker is aware that site is presently raw land, and that Sellers will be obtaining City and County entitlements to develop site into a residential subdivision, and then to complete subdivision improvements and utilities per engineering as approved by Clark County and City of Camas, these activities are required prior to an escrow closing with Purchaser/Generco, Inc.

If for any reason Seller and Generco, Inc. do not complete the subject transaction, no commission has been earned by the Broker.

Commission to be paid is not a percentage of the selling price but a fixed amount per lot or lots as follows:

Commission to be paid Broker on 1 lot \$ 1,650.00

Commission to be paid Broker on 11 lots \$18,150.00

Commission to be paid Broker on 22 lots \$36,300.00

 6/15/2002



### ADDENDUM TO REAL ESTATE SALE AGREEMENT

The Oregon Real Estate Agency has reviewed this form and found it to be in compliance with the applicable provisions of ORS 99B.005 and 99B.010.

This is an Addendum to:  Real Estate Sale Agreement  Seller's Counter Offer  Buyer's Counter Offer

Re: Real Estate Sale Agreement No. \_\_\_\_\_ dated July 3, 2002 Addendum No. \_\_\_\_\_

Buyer: Chadwick Inc.

Seller: Grand Ridge, LLC

The real property described as: 226 lot Grand Ridge Phase IV

SELLER AND BUYER HEREBY AGREE THE FOLLOWING SHALL BE A PART OF THE REAL ESTATE SALE AGREEMENT REFERENCED ABOVE.

Buyer and Seller hereby agree to extend the  
closing date to July 11, 2002.

Buyer Signature \_\_\_\_\_ Date 7/10/02 A.M. P.M.

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_ A.M. P.M.

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_ A.M. P.M.

Seller Signature \_\_\_\_\_ Date 7/10/02 A.M. P.M.

Listing Licensee \_\_\_\_\_ Selling Licensee \_\_\_\_\_  
Listing Firm Broker Initials/Date \_\_\_\_\_ Selling Firm Broker Initials/Date \_\_\_\_\_

© 2002. No portion may be reproduced without written permission of Oregon Real Estate Firm, LLC, a wholly owned subsidiary of the Eugene, Oregon Metropolitan Area Chamber of Commerce. Addendum Page \_\_\_\_\_ of \_\_\_\_\_ Pages.

9-27-2002

ADDENDUM 1

The following is an Addendum to the Real Estate Purchase and Sales Agreement executed June 17, 2002, Addendum July 10, 2002 and replaces Addendum of August 1, 2002 by and between ("Buyer") Geonarco, Inc. a Washington Corporation, and / assigns and ("Seller") for Finished Lots (collectively the "Agreement").

This Addendum 1 contains additional terms and conditions of sale. In the event of a conflict between the terms of sale set forth in the Agreement, the provisions contained in this Addendum 1 shall govern.

Buyer and Seller acknowledge that the feasibility contingency period expired on July 17, 2002. Buyer and Seller agree to remove feasibility contingency contained in paragraph 4 of the Real Estate Purchase and Sale Agreement subject to Seller's agreement to the following:

1. The description of the Property in Paragraph 1 of the Agreement is hereby deleted and replace with the following:

Twenty-One (21) finished lots in the proposed Plat of Grand Ridge Terrace Phase 4. Seller warrants that the Property to be conveyed is contained with the boundaries of the property described in schedule A of the commitment for title insurance by Chicago Title Insurance Company Order Number X12B398 with the effective date June 28, 2002 attached hereto as ~~Exh. "C"~~ **EXHIBIT C**.

2. **PURCHASE PRICE:** The purchase price shall be One Million Two Hundred and Seventeen Thousand Dollars (\$1,217,000.00). The purchase price shall be paid in cash at the time of the closing, less any earnest money previously paid by Buyer. The purchase price herein is based on a lot yield of 21 finished Lots at Fifty Seven Thousand Dollars (\$57,000.00) per lot for the first 11 closed and (\$39,000.00) for the second 10 closed. In the event the lot yield is less than 21 finished lots, the purchase price herein shall be reduced by (\$50,000.00) per finished lot less than 21.

3. Paragraph 3 of Sales Agreement shall be deleted and replaced with the following:

**EARNEST MONEY RECEIPT:** Upon the date buyer acknowledges receipt of a fully-executed copy of this Addendum 1, Buyer shall deliver and deposit with Chicago Title Insurance Co. ("Escrow") Two Earnest Money Promissory Notes payable to Escrow each in the amount of Twenty-One Thousand Dollars (\$21,000.00). Within five (5) business days of Buyer's receipt of a fully-executed copy of this Addendum 1, Buyer shall convert the first Earnest Money Promissory Note to cash and release its proceeds to Escrow in an interest

AND BUYER AND SELLER HAVE APPROVED THE GRADING PLAN AS PROVIDED FOR IN ADDENDUM 2 PARAGRAPH 5

Escrow account. Within 2 business days after Seller has provided buyer with updated title report showing Seller in In Title to the Property, Buyer shall instruct Escrow to release Twenty-One Thousand Dollars (\$21,000.00) of the Earnest money to Seller. This First Earnest Money deposit shall apply to the purchase price at the Phase I closing.

BW  
X JF

within Twenty (20) business days after Seller has provided Buyer with a copy of approved conditions of preliminary plat approval, approved engineering plans and written notice that Seller commenced grading of the Property, Buyer shall convert the Second Earnest Money Promissory Note to cash and shall instruct Escrow to immediately release the Twenty One Thousand Dollars (\$21,000.00) to the Seller. This Second Earnest Money deposit shall apply to the purchase price at the Phase II closing.

4. Exhibit "A" and Exhibit "B" to the Agreement are hereby deleted in their entirety.

FE  
X WDM  
12

5. The number "five (5)" in Paragraph 5.1 of the Agreement is hereby deleted and replaced with the number "two (2)".

BW  
X JF

6. Paragraph 7.c. of the Agreement is hereby deleted in its entirety.

7. The following shall be added to Paragraph 9.a. of Agreement:

Seller shall also pay at or prior to closing all fees required from local improvement districts, intercomer fees and reimbursement contracts related to the Property. ~~Specifically show fees associated with the subdividing of the subject Property.~~ Buyer shall pay the cost of recording the deed, one-half of the Escrow Fee, property tax pro-rations and all other customary closing costs for Buyer.

BW  
X JF

8. The handwritten words "also refer to Exhibit A, attached hereto" are hereby deleted in their entirety from Paragraph 10.b. of the Agreement.

9. The word "Exhibit A" are hereby deleted from Paragraph 10.f. of the Agreement and replaced with "Exhibit D".

10. The following is hereby Added to Paragraph 11 of Agreement.

Buyer is in receipt of Chicago Title Insurance Company commitment for title insurance Order Number X128398 with effective date June 26, 2002.

11. Paragraph 12.1 of the Agreement is hereby deleted and replaced with the following:

Buyer shall pay for all fees normally associated with obtaining building permit for the houses on the lots including but

not limited to fees identified for park, traffic, school and plan check review and permit fees. The Buyer will pay all fees associated with connecting the houses to the utilities including sewer system, water water, sewer permit, gas, television, and power. The seller shall pay for all mitigation fees, and capacity or facility charges and fees associated or required to complete the development of the subdivision plat whether or not these fees and charges are actually collected with plat final approval or at building permit issuance. If Buyer takes out a building permit prior to closing and is charged a fee that is the responsibility of the Seller, the purchase price of the lot(s) to be reduced by the amount paid by Buyer.

12. Paragraph 12.b. of the Agreement the following paragraph to be added.

SEE  
DEPENDENT  
#2

Buyer has provided Seller with footprints of houses proposed for the finished lots. Specifically requiring a surface building foundation area of 40 feet wide and 50 feet in depth. In the event that lot(s) slope or grade will not allow these houses to be constructed on the finish lot, Buyer at their sole discretion shall have the option to not purchase such lot or lot(s). It is further understood that buyer and seller will communicate during the course of engineering and grading of the subject lots and that Buyer will not be unreasonable about the buildable status of the finished lots.

BW  
+ JK

13. Paragraph 12.n. added to the Agreement as follows:

Should Seller be required to plant trees as a Condition of Approval or Approved Engineering, Seller will have completed planting or provide necessary bonding to the responsible Clark County Department having jurisdiction prior to close of purchase escrow.

14. Paragraph 13, the written insert "See Exhibit B" is hereby deleted from the Agreement and replaced with the words "REMAX EQUITY GROUP".

15. Paragraph 24, reference to "Exhibit A" is hereby deleted from the Agreement.

All other terms and conditions of the Agreement shall remain in full force and effect.

Sellers:  
Grand Ridge LLC  
A Washington LLC

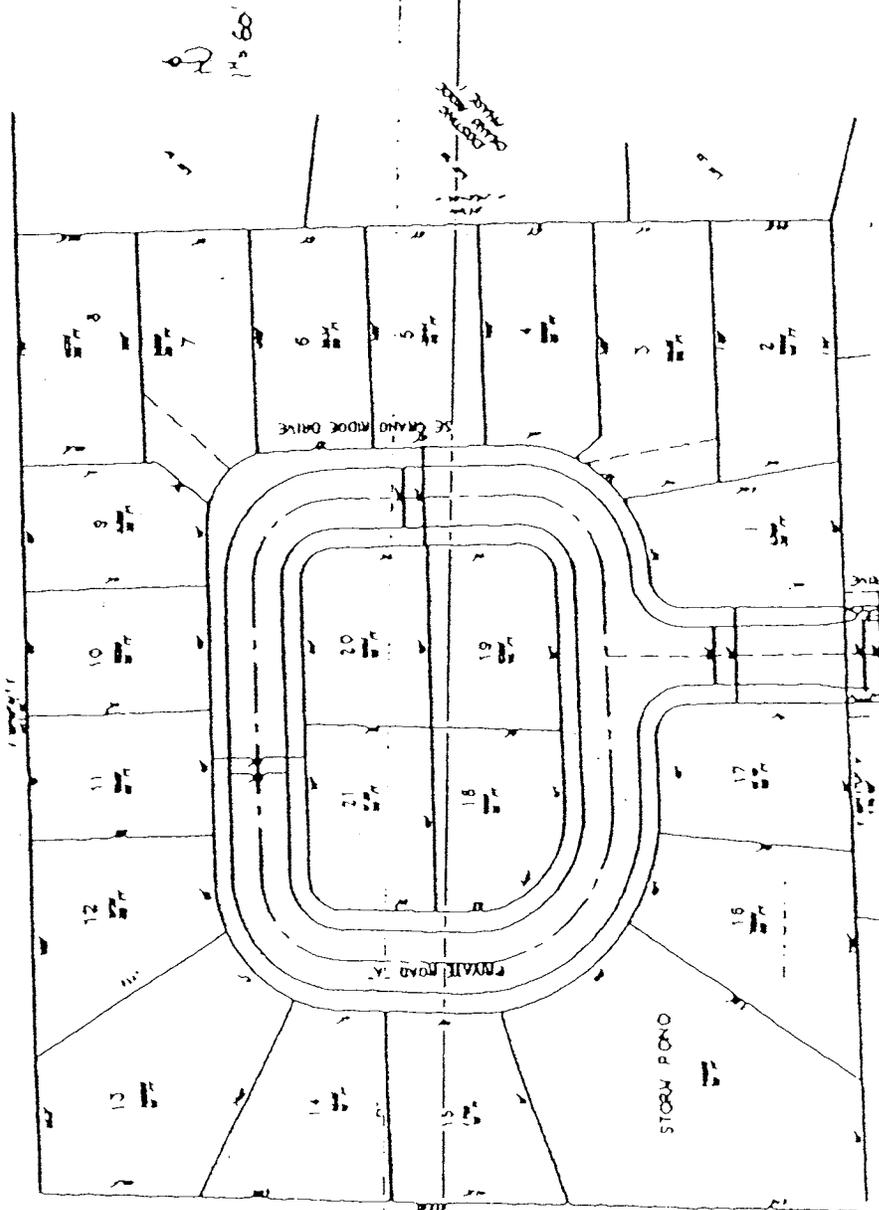
Buyer:  
Econeroo, Inc.  
A Washington Corporation

by: *[Signature]* 9/27/10  
Jeff Dyer date

by: *[Signature]* 10/2/10  
Bill Waggoner date

BW 10-2-02

EXHIBIT C



11-01-2002

ADDENDUM 2

The following is an Addendum to the Real Estate Purchase and Sales Agreement executed June 13, 2002, Addendum July 10, 2002, Addendum 1 of 9-27-2002 and Replaces Addendum of 10-2-2002 that was prepared by ("Buyer"), between Geonarco, Inc. a Washington Corporation, and / assigns and ("Seller") for Finished Lots (collectively the "Agreement").

This Addendum 2 contains additional terms and conditions of sale. In the event of a conflict between the Terms of sale set forth in the Agreement, the provisions contained in this Addendum 2 shall govern.

Now Therefore, Buyer and Seller hereby agree to the following:

1. Paragraph 5.a. of the Agreement is hereby deleted in its entirety and replaced with the following:

a) This transaction shall close in (2) Phases according to the schedule set for below:

Phase	Closing Date	Lot Quantity	Total Price
I.	Forty Five (45) Days after Lots are "Finished" according to the definition of Finished Lots herein.	11	\$627,000
II.	One Hundred (100) days after the Closing of phase I or Thirty (30) days after the lots are finished, whichever is later.	10	\$690,000

2. The following is hereby added to Paragraph 11 of Agreement:

The Title Policy to be issued at closing will resolve those Special Exception Items identified in the Preliminary Title Report (identified as Order No: 128378, dated June 26, 2002), AS FOLLOWS: Seller will execute all documents, affidavits and indemnities required by the Title Company, so that the Title Company will delete the Schedule B General Exceptions as follows:

B-1. This item will be resolved in escrow, by parties providing any current or advance property tax payments assumed already paid by Seller as a requirement of recording the subject property's "lot" platting.

B-2. This item will be resolved in escrow, by Seller paying for any unpaid assessments or charges, but not those assessments that may not be due or collectable at that time by the QUANDRICK "MOH" and intended to be paid by future property owner(s) over the future period of property ownership.

*Be 114<sup>02</sup>  
X 115<sup>02</sup>*

- B-3. Seller to pay development latecomer fee prior to close of escrow.
- B-4. Seller to pay Excise Tax at Sale Escrow Closing(s).
- B-5. Seller will cause this easement to be released or modified to reflect new location(s) that may result by utilities installations per subdivision engineering in cooperation the local Public Utility District(s). Seller will direct that the new location(s) do not materially affect the subdivision building pads.
- B-6. Temporary Turnaround will be removed as a function of new public streets per subdivision plat layout and eliminated by the recorded plat.
- B-7. CCR's that have been recorded for the Grand Ridge Project including those that are specific to the subject property will continue to apply to the subject property.
- B-8. Seller to provide survey or Chicago Title Company to accept recorded plat and Title Company inspection in lieu of a survey.
3. The following is hereby added to Paragraph 12.j. of the Agreement:

Seller, on behalf of proposed subdivision, themselves and Buyer, will obtain the necessary approvals and variances from the Grand Ridge HOA/ACC to establish and complete the subdivision, and all the activities necessary for Buyer to complete their intended home construction, marketing and sales programs in the Grand Ridge Project's, "Phase No 4".

4. Paragraph 12.n of the Agreement is hereby Deleted.
5. The following is hereby added to the Agreement.

Within (14) days after mutual agreement of this Addendum 2, Seller shall provide a "tentative" grading plan to Buyer for Buyer's review and approval. Within (14) days after Buyer's receipt of the grading plan Buyer will provide comments on such grading to Seller. Neither party to be unreasonable and shall work together on revisions to the grading plan. If within (60) days from the date of mutual acceptance of this addendum 2, Buyer and Seller have not reach agreement on the grading plan, Buyer shall have the right to terminate this Agreement by providing Seller written notice of termination in which case Seller to return all earnest money to Buyer, the Agreement shall be then null and void and the Buyer and Seller shall have not further obligation to each other.

If Buyer and Seller agree on the "tentative" grading, Seller will work in good faith and use best efforts to complete the lots, in substantial compliance with the "tentative" grading plan approved by Buyer and Seller. Both parties realize that "tentative" grading shall be subject to final grading plan to be developed by project engineer and requirements of Clark County Planning and Engineering Departments.

During the course of site grading and construction Seller to provide Buyer with copies of the licensed geotechnical engineers reports certifying compaction acceptable to site engineers and Clark County Engineering and Construction Departments to allow the construction of Buyer's intended residential homes. When lots are graded to County Standards per approved engineering, Buyer shall have (10) days from County approval to inspect and determine that the lots were graded in substantial compliance to the initial "tentative" plan approved by Buyer and Seller. To the extent the Agreement is not terminated by Buyer within (10) days of inspection by Buyer of the graded lots, all objections to grading shall be deemed waived. Should Buyer elect to terminate this agreement by not accepting the graded lots, earnest monies paid to Seller to be returned to Buyer, this agreement then null and void and parties shall have no further obligation to each other.

All other terms and conditions of the Agreement shall remain the same and continue in full force and effect.

Seller:  
Grand Ridge LLC  
A Washington LLC

by: Jeff Dulcich 11/1/02  
Jeff Dulcich date

Buyer:  
Geonerco, Inc.  
A Washington Corporation

by: Bill Wagoner 11/4/02  
Bill Wagoner date

ADDENDUM 3

The following is an Addendum to the Real Estate Purchase and Sale Agreement executed June 13, 2001 and Addendum to Real Estate Sale Agreement executed July 10, 2002 as amended by Addendum 1 dated September 27, 2002 and Addendum 2 executed November 5, 2002 by and between Geonisco, Inc., a Washington corporation, and/or assigns ("Buyer") and Grand Ridge LLC ("Seller") for Finished Lots (collectively the "Agreement").

This Addendum 3 contains additional terms and conditions of sale. In the event of a conflict between the terms of sale set forth in the Agreement, the provisions contained in this Addendum 3 shall govern.

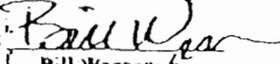
Buyer and Seller hereby agree to the following:

1. The Parties agree that there is not any "County Approval" of grading. Therefore, the second sentence of the third paragraph of Paragraph 3 of Addendum 2 is hereby deleted and replaced with the following:

When the lots are graded pursuant to the approved engineering plan, Seller shall notify Buyer and Buyer shall have ten (10) business days to inspect and determine that the lots were graded in compliance with the initial "tentative" plan approved by Buyer and Seller.

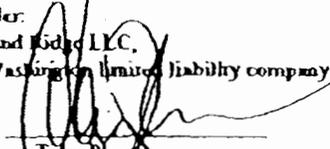
All other terms and conditions of the Agreement shall remain the same and continue in full force and effect.

Buyer:  
Geonisco, Inc.  
a Washington corporation

By:   
Bill Wagone  
Land Acquisitions

Date: 12/2/02

Seller:  
Grand Ridge LLC,  
a Washington limited liability company

By:   
Tony Plesch  
Project Manager

Date: 12/3/02

ADDENDUM 4

The following is an Addendum to the Real Estate Purchase and Sale Agreement executed June 13, 2001 and Addendum to Real Estate Sale Agreement executed July 10, 2002 as amended by Addendum 1 dated September 27, 2002, Addendum 2 executed November 5, 2002 and Addendum 3 executed December 3, 2002 by and between Grondoco, Inc. and/or assigns, now known as Harbour Homes, Inc., a Washington corporation ("Buyer") and Grand Ridge LLC ("Seller") for Finished Lots (collectively the "Agreement").

This Addendum 4 contains additional terms and conditions of sale. In the event of a conflict between the terms of sale set forth in the Agreement, the provisions contained in this Addendum 4 shall govern.

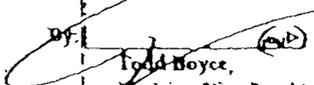
Buyer and Seller hereby agree to the following:

1) The first paragraph in Paragraph 5 of Addendum 2 is hereby deleted and replaced with the following:

The Parties acknowledge that Buyer received the tentative grading plan on December 17, 2002 and agree that Buyer shall have until January 7, 2003 to provide Seller with comments on the received grading plan. Neither party to be unreasonable and shall work together on revisions to the grading plan. If by February 7, 2003, the Buyer and Seller have not reached agreement on the grading plan, Buyer shall have the right to terminate this Agreement by providing Seller written notice of termination in which case Seller will return all Earnest Money to the Buyer, the Agreement shall be null and void and the Buyer and Seller shall have no further obligations to each other.

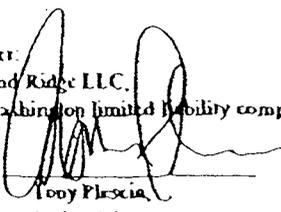
All other terms and conditions of the Agreement shall remain the same and continue in full force and effect.

Buyer:  
Harbour Homes, Inc.  
a Washington corporation

By:  (EB)  
Todd Boyce,  
Division Vice President

Date: 1/03/03

Seller:  
Grand Ridge LLC,  
a Washington limited liability company

By:   
Tony Plescia,  
Project Manager

Date: 1/03/03

ADDENDUM 5

The following is an Addendum to the Real Estate Purchase and Sale Agreement executed June 13, 2001 and Addendum to Real Estate Sale Agreement executed July 10, 2002 as amended by Addendum 1 dated September 27, 2002, Addendum 2 executed November 5, 2002, Addendum 3 executed December 3, 2002 and Addendum 4 executed January 2, 2003 by and between Geonico, Inc. and/or assigns, now known as Riverside Homes, Inc., an Oregon corporation dba Riverside Homes Vancouver ("Buyer") and Grand Ridge LLC ("Seller") for Finished Lots (collectively the "Agreement").

This Addendum 5 contains additional terms and conditions of sale. In the event of a conflict between the terms of sale set forth in the Agreement, the provisions contained in this Addendum 5 shall govern.

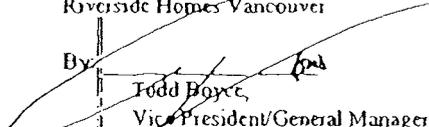
Buyer and Seller hereby agree to the following:

1) The third sentence of Paragraph 1 of Addendum 4 is hereby deleted and replaced with the following:

If by March 7, 2003, the Buyer and Seller have not reached agreement on the grading plan, Buyer shall have the right to terminate this Agreement by providing Seller written notice of termination in which case Seller will return all Earnest Money to the Buyer; the Agreement shall be null and void and the Buyer and Seller shall have no further obligations to each other.

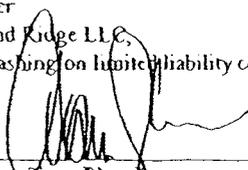
All other terms and conditions of the Agreement shall remain the same and continue in full force and effect.

Buyer:  
Riverside Homes, Inc.  
an Oregon corporation dba  
Riverside Homes Vancouver

By:   
Todd Boyce,  
Vice President/General Manager

Date: 2/06/03

Seller  
Grand Ridge LLC,  
a Washington limited liability company

By:   
Tony Plestra,  
Project Manager

Date: 2/4/03

ADDENDUM 5

The following is an Addendum to the Real Estate Purchase and Sale Agreement executed June 13, 2001 and Addendum to Real Estate Sale Agreement executed July 10, 2002 as amended by Addendum 1 dated September 27, 2002, Addendum 2 executed November 3, 2002, Addendum 3 executed December 3, 2002 and Addendum 4 executed January 2, 2003 by and between Geoparco, Inc. and/or assigns, now known as Riverside Homes, Inc., an Oregon corporation dba Riverside Homes Vancouver ("Buyer") and Grand Ridge LLC ("Seller") for Finished Lots (collectively the "Agreement")

This Addendum 5 contains additional terms and conditions of sale. In the event of a conflict between the terms of sale set forth in the Agreement, the provisions contained in this Addendum 5 shall govern.

Buyer and Seller hereby agree to the following:

1) The third sentence of Paragraph 1 of Addendum 4 is hereby deleted and replaced with the following:

TB

If by March <sup>21,</sup> 2003, the Buyer and Seller have not reached agreement on the grading plan, Buyer shall have the right to terminate this Agreement by providing Seller written notice of termination in which case Seller will return all Earnest Money to the Buyer, the Agreement shall be null and void and the Buyer and Seller shall have no further obligations to each other.

All other terms and conditions of the Agreement shall remain the same and continue in full force and effect.

Buyer:  
Riverside Homes, Inc  
an Oregon corporation dba  
Riverside Homes Vancouver

By: Todd Boyce  
Todd Boyce,  
Vice President/General Manager

Date: 3-6-03

Seller:  
Grand Ridge LLC,  
a Washington limited liability company

By: Tony Plescia  
Tony Plescia  
Project Manager

Date: 3-6-03

Phillip - Addendum 5 ~~is~~ executed  
3/6/03 is thereafter referred to  
as "Addendum 6" in the recitals  
of Addendums 7 & 8.

*James*

REVISED 3-1-03  
ADDENDUM 7

RB  
3/21/03

The following is an Addendum to the Real Estate Purchase and Sale Agreement executed June 13, 2001 and Addendum to Real Estate Sale Agreement executed July 10, 2002 as amended by Addendum 1 dated September 27, 2002, Addendum 2 executed November 5, 2002, Addendum 3 executed December 3, 2002, Addendum 4 executed January 2, 2003, Addendum 5 executed February 6, 2003 and Addendum 6 executed March 6, 2003 (hereinafter referred to as "Addendum 6") by and between Concrete, Inc. and/or assigns, now known as Riverside Homes, Inc., an Oregon corporation dba Riverside Homes Vancouver ("Buyer") and Grand Ridge LLC ("Seller") for Finished Lots (collectively the "Agreement").

This Addendum 7 contains additional terms and conditions of sale. In the event of a conflict between the terms of sale set forth in the Agreement, the provisions contained in this Addendum 7 shall govern.

The "Proposed Grading Plan" by Harlow Engineering dated November 2002 Job 01-674 is the "tentative grading plan" referred to in Paragraph 3 of Addendum 2 as amended by Paragraph 1 of Addendum 4, Paragraph 1 of Addendum 5 and Paragraph 1 of Addendum 6. Subject to Paragraph 3 below, the tentative grading plan is hereby approved and Buyer and Seller hereby agree to the following:

1. Paragraph 2 of Addendum 1 is hereby deleted in its entirety and replaced with the following:

<sup>\$1,240,000</sup>  
Purchase Price: The purchase price shall be One Million Two Hundred and Fifty Nine Thousand Dollars (~~\$1,237,000~~). The purchase price shall be paid in cash at the time of the closing less any earnest money previously paid by Buyer. The purchase price herein is based on a lot yield of Twenty-One (21) finished lots at Fifty Nine Thousand Dollars (~~\$59,000~~) per lot for the first Eleven (11) closed and Sixty-One Thousand Dollars (~~\$61,000~~) per lot for the second Ten (10) closed. In the event the lot yield is less than Twenty-One (21) finished lots, the purchase price herein shall be reduced by (~~\$60,000~~) per finished lot less than Twenty-One (21).  
<sup>\$60,000</sup>  
<sup>\$61,000</sup>

2. The column entitled "Total Price" in Paragraph 1.a. of Addendum 2 is hereby deleted and replaced with the following:

<sup>\$660,000</sup>  
The Total Price for the Phase I lots is Six Hundred Forty-Nine Thousand Dollars (~~\$649,000~~).  
The Total Price for the Phase II lots is Six Hundred Ten Thousand Dollars (~~\$610,000~~).  
<sup>\$620,000</sup>

3. The following is hereby added to the Agreement at Paragraph 12.b.

Seller shall make the following changes to the tentative grading plan and cause the lots to be constructed as follows:

- i) Seller will cause the pad elevations of lot numbers 7 through 8 to be lowered to enable a 20 foot long driveway to be constructed with a maximum of 10% slope for the first 20 feet back of and on both SIDE OF STREET CURB.

Todd Boyce  
3/21/03

(P/S) 3/21/03

ii) Beginning on lot #3, Seller shall construct a 4 foot high retaining wall on the east property line continuing north through lot #8. The wall Seller constructs shall rise to 6 feet high on lot #4, 8 feet high on lot #5, and 10 feet high on lots #6 through #8 in order to accommodate the lowering of the pad elevations. Additionally, along the north property line of lot #8, Seller shall construct a 10 foot high retaining wall stepping it down to 6 feet as it moves west to the northeast corner of lot #9.

iii) Seller shall construct an 8 foot high retaining wall on the common property line between lots #20 and #21 and also on the common property line between lots #19 and #18.

iv) Seller shall construct a 6 foot high retaining wall on the common property line between lots #20 and #19 and also on the common property line between lots #18 and #21.

v) All retaining walls constructed by Seller shall have <sup>SIGNATURE</sup> rock/natural face ~~and shall not be~~ constructed of ~~block~~ ~~concrete~~ 2'x2'x5' CONCRETE RETAINING WALL UNITS.

TB 3/21/03

All other terms and conditions of the Agreement shall remain the same and continue in full force and effect.

Buyer:  
Riverside Homes, Inc.  
an Oregon corporation dba  
Riverside Homes Vancouver

Seller:  
Grand Ridge LLC  
a Washington limited liability company

By: Todd Boyce  
Todd Boyce  
Vice President/General Manager

By: [Signature]  
Tony Pilsua  
Project Manager

Date: 3-11-03

Date: 3-21-03

Cl: With n. unit. = 340-286-6554

Todd Boyce  
3/21/03

ADDENDUM 8

106.10

The following is an Addendum to the Real Estate Purchase and Sale Agreement executed June 13, 2001 and Addendum to Real Estate Sale Agreement executed July 10, 2002 as amended by Addendum 1 dated September 27, 2002, Addendum 2 executed November 5, 2002, Addendum 3 executed December 3, 2002, Addendum 4 executed January 2, 2003, Addendum 5 executed February 6, 2003 and Addendum 6 executed March 6, 2003 (hereinafter referred to as "Addendum 6") and Addendum 7 executed March 21, 2003 by and between Occorco, Inc. and/or assigns, now known as Riverside Homes, Inc., an Oregon corporation dba Riverside Homes Vancouver ("Buyer") and Grand Ridge LLC ("Seller") for Finished Lots (collectively the "Agreement").

This Addendum 8 contains additional terms and conditions of sale. In the event of a conflict between the terms of sale set forth in the Agreement, the provisions contained in this Addendum 8 shall govern.

1. The Agreement was signed by Grand Ridge, LLC. Per Chicago Title Insurance Company Title Commitment Order Number K128398 with effective date July 21, 2004, Grand Ridge Properties IV, LLC, an Oregon limited liability company is now in title to the Property. Grand Ridge Properties IV, LLC agrees to assume and perform all of the obligations under the Agreement and to be a party to the Agreement. The term "Seller" in the Agreement shall mean Grand Ridge Properties IV, LLC.

All other terms and conditions of the Agreement shall remain the same and continue in full force and effect.

Buyer:  
 Riverside Homes, Inc.  
 an Oregon corporation dba  
 Riverside Homes Vancouver

By: Todd Boyce  
 Todd Boyce,  
 Vice President/General Manager

Seller:  
 Grand Ridge Properties IV, LLC,  
 an Oregon limited liability company

By: [Signature]  
 Tony Plecia,  
 Project Manager

Date: 9/8/04

Date: 9/8/04

**CERTIFICATE OF FILING**

I hereby certify that on the 7<sup>th</sup> day of November 2007, I caused to  
be filed the original and one copy of the foregoing APPELLANT'S  
OPENING BRIEF with the State Court Administrator at this address:

David Ponzoha, Clerk/Administrator  
Court of Appeals, Division II  
950 Broadway  
Suite 300 MS TB-06  
Tacoma, WA 98402-4454

by First Class Mail.



---

Bradley W. Andersen, WSBA #20640  
Phillip J. Haberthur, WSBA #38038  
Attorneys for Appellant

STATE OF WASHINGTON  
SUPERIOR COURT  
COUNTY OF KING  
STATE BAR OF WASHINGTON  
DEPUTY

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of November 2007, I served one correct copy of the foregoing APPELLANT'S OPENING BRIEF by First

Class Mail to:

Bradley Alan Maxa, Esq.  
Gordon Thomas Honeywell  
P.O. Box 1157  
Tacoma, WA 98401-1157  
(Attorney for Respondent)



---

Bradley W. Andersen, WSBA #20640  
Phillip J. Haberthur, WSBA #38038  
Attorneys for Appellant