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DIVISION II

NO. 38681-0-II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
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PM 7-9-09

RONALD and LANA RENFRO, a marital community; and RONALD and LANA RENFRO, in their capacities as Trustees of the Renfro Family Trust; and THE RENFRO FAMILY TRUST, a Washington Trust,

Appellants,

v.

PARAMINDER KAUR and JOHN DOE KAUR; MEHAR SINGH SANDU and JANE DOE SANDU; SUKDEV SINGH HOTHU and JANE DOE HOTHU;

Respondents,

SANTOKH RAM and JANE DOE RAM,

Defendants.

BRIEF OF APPELLANT

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INTRODUCTION

This appeal arises from a summary judgment in favor of potential purchasers of real property who purported to “rescind” the \$1,175,000 deal just two months after they signed a real estate purchase and sale agreement (REPSA). Taking the facts in the light most favorable to the sellers, the purchasers inspected the property, accepted it “as is,” expressly waived receipt of disclosure statements, insisted on a REPSA provision waiving all disclosures, and paid \$200,000 down. The purchasers intended to develop the property for up to 30 to 40 homes. The “Final Closing” was not scheduled to occur until two years after the REPSA signing.

Immediately after signing the REPSA the purchasers began haggling, attempting to reduce the price by \$300,000. When the sellers refused to reduce the price, the purchasers retained a lawyer who, shortly after the signing, asserted that the sellers had failed to provide the purchasers with the “required” residential real estate disclosures that they had expressly waived, and purported to “rescind” the contract – an anticipatory breach.

Yet the trial court ultimately granted summary judgment to the purchasers because disclosures were not made. This Court should reverse and remand for trial.

ASSIGNMENTS OF ERROR

1. The trial court erred in granting summary judgment on September 26, 2008, and in entering its judgment.
2. The trial court erred in refusing to briefly delay the summary judgment hearing to consider the purchasers' depositions, which were taken one week prior to the summary judgment hearing, and which raised genuine issues of material fact.
3. The trial court erred in denying reconsideration.
4. The trial court erred in granting over \$68,000 in attorney fees to the purchasers.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where, as here, the meaning of a specific contract term waiving statutory real estate disclosures turns on extrinsic evidence that the purchasers expressly waived all disclosures, does this genuine issue of material fact preclude summary judgment?
2. Where, as here, the trial court grants a CR 56(f) order specifically to permit taking parties' depositions, the taking party does so within three weeks of the order, but is too late to obtain the actual transcripts for the hearing, may the trial court properly refuse to consider the deposition transcripts, even on reconsideration?
3. Are the Renfros entitled to appellate fees under the REPSA?

STATEMENT OF THE CASE¹

Respondents Sukdev Singh Hothi, Mehar Singh Sandhu and Parminder Kaur (collectively, “purchasers”) agreed to buy real estate from Appellant Renfro Family Trust, Ronald R. and Lona L. Renfro, Trustees (collectively, “the Renfros”) under a Real Estate Purchase and Sale Agreement (REPSA) dated September 5, 2006. CP 8-19 (Attached as Appendix A).

A. The purchasers approached the Renfros to purchase their property and expressly waived receipt of a disclosure statement while inspecting the property.

The Renfros did not market their property for sale. CP 249, 366, 369. Rather, at least six months prior to signing the REPSA on September 5, 2006, the purchasers approached the Renfros, who were resistant to selling, placing numerous limitations on any possible sale. *Id.* These limits included the price (\$1,175,000); payment of substantial deposits in the first six months after signing the agreement (\$250,000); and a contingency that the property would not change hands for two years after the REPSA was signed. *Id.*; CP 8-10 (¶¶ 1(a) & (b) & 6). “Closing” was to occur upon signing the document (September 5, 2006) while “Final

¹ As further discussed below, in this *de novo* review of a summary judgment, all facts and reasonable inferences are taken in the light most favorable to the non-moving parties – the Renfros.

Closing” would occur on the second anniversary of that signing, September 5, 2008, when the final \$925,000 payment was due. CP 9 (¶¶ 1(b) & 2), 10 (¶ 4).

When the purchasers first inspected the property, they told the Renfros that they did not need or want any disclosure statements and that they were willing to accept the property “as is.” CP 249, 369. The purchasers said that they had viewed the legal description of the property at Pierce County Records. *Id.* The Renfros insisted that the purchasers seek independent legal counsel, which they refused to do. *Id.* Rather, the purchasers insisted on adding language to the REPSA (further discussed below) waiving all disclosure documents otherwise required for this transaction. *Id.*

B. The parties signed the REPSA on September 5, 2006, waving all disclosure documents per the purchasers’ insistence.

Consistent with the Renfros’ understandings of the purchasers’ requirements noted above, the REPSA provides that the purchasers had ten days from the date they signed the REPSA to inspect the property at their own expense and to notify the Renfros in writing if the purchasers did not accept the property for any reason (CP 10):

7. Condition of Property.

Purchasers shall have ten (10) days from the date of acceptance of this Agreement to inspect the Property and accept it. Failure of Purchasers to notify Seller in writing to the contrary shall be deemed an acceptance of the Property. Costs of inspection, including but not limited to lender required inspections, shall be borne by Purchasers.

The purchasers did not reject the property in writing within 10 days.

Also consistent with the Renfros' understanding of the purchasers' requirements, the REPSA disclaimed all "Other Conditions," including disclosure forms otherwise required by law:

21. Other Conditions:

This Agreement does not include such other and further documentation and disclosure forms as may be required under law for the purchase and sale of real estate in the state of Washington.

CP 13. Indeed, the parties agreed that absolutely no other agreements – verbal or written – could modify or affect the REPSA (CP 12):

15. No Other Agreements.

There are no verbal or other agreements which modify or affect this Agreement. Any and all future changes to this Agreement must be made in writing, signed by Purchasers and Seller.

C. The purchasers made \$200,000 in down payments, but then tried to haggle down the price and anticipatorily repudiated the REPSA two months after signing it.

The REPSA provides that purchasers must make three earnest money payments of \$25,000, \$175,000, and \$50,000. App. A, CP 8. At or around the time when the parties entered the REPSA on September 5, 2006, the purchasers paid the initial \$200,000 earnest money. CP 249, 369. But for two months after the closing, the purchasers attempted to renegotiate the price. CP 249, 369. The Renfros' refusal to renegotiate the price ultimately led the purchasers to breach the contract. *Id.*

On November 7, 2006 (only two months after signing the REPSA and paying \$200,000) the purchasers sent the Renfros an attorney letter purporting to "rescind the agreement" and seeking to "obtain a refund of their earnest money." CP 212. The purchasers alleged that the Renfros misrepresented the size of the property and failed to provide them with disclosures. *Id.* As noted above, the purchasers' right to reject the property had been limited to 10 days after they signed the REPSA (*i.e.*, by September 15, 2006) and they had waived all disclosures. CP 10 (¶ 7), 13 (¶ 21). Moreover, the REPSA specifically provided that if the purchasers failed to close, they forfeited the earnest money. CP 11 (¶ 10).

Even though they unequivocally stated that they were unilaterally rescinding the REPSA, the purchasers nonetheless said that they remained willing to purchase the property at a 25% discount – nearly \$300,000. CP 212.

On February 7, 2007, the purchasers purported to *again* rescind the REPSA based on the disclosures they had waived, albeit using a different lawyer. CP 148. The Renfros provided them with a disclosure statement and filed it in county records no later than February 22, 2007. CP 342. When the third earnest money payment of \$50,000 came due on March 5, 2007 (six months after the signing; see App. A, CP 8, ¶ 1(a)) the purchasers failed to make this payment. CP 420. Nor did they pay the final \$925,000 installment. CP 421.

The REPSA very clearly describes – in bold and all caps – the consequences for these failures to pay (App. A, CP 9):

FAILURE TO DELIVER ANY OF THE PAYMENTS DUE UNDER THIS AGREEMENT BY EVEN ONE DAY WILL RESULT IN COMPLETE FORFEITURE OF ALL MONIES PAID TO SELLERS AS OF THE DATE OF FAILURE AND DISCHARGE OF ANY OBLIGATION OF SELLER TO TRANSFER TITLE OF THE PROPERTY TO PURCHASERS.

Time is also of the essence to the Agreement. App. A, CP 13, ¶ 19.

D. Procedural History.

On May 14, 2007, the Renfros filed their verified Complaint against eight defendants, the purchasers and Santokh and “Jane Doe” Ram. CP 11. On May 15, 2007, six defendants (the purchasers Kaur, Sandhu and Hothi) were served. CP 70. On June 5, 2007, the purchasers answered, filing counterclaims against the Renfros and a third-party complaint against the Renfro Family Trust. CP 25-47.

On October 1, 2007, the Renfros filed their First Amended Complaint solely against the purchasers, omitting the Rams. CP 48-52. On October 19, the purchasers filed an Amended Answer, restating their counterclaims. CP 53-65.

1. The Renfros unsuccessfully attempted to obtain discovery from the purchasers.

On November 6, 2007, the Renfros served the purchasers with 16 Interrogatories (Rogs) and 16 Requests for Production (RFP), and with Requests for Admissions. CP 70-71, 120-36. The purchasers answered the Admissions on December 6, 2007. CP 71. On December 20, 2007, the purchasers’ counsel (Carmen Rowe) assured the Renfros’ counsel (Bruce Clark) that answers to the Rogs and RFP would be forthcoming “within one week.” CP 71.

On January 15, 2008, the Renfros moved to compel the purchasers to answer the Rogs and RFP. CP 66-69. Purchasers' attorney Rowe asked for more time, up to and including February 15, 2008, which attorney Clark granted. CP 73. The purchasers apparently produced an "answer" on or about February 15, but it proffers a litany of boilerplate objections, asserts that there are too many Rogs (under the local rules), and unilaterally refuses to specifically answer any of the Rogs in substance. CP 113-19. In a February 19, 2009 letter to Clark, Rowe claimed to have sent documents responsive to the RFP, but her clients continued to refuse to specifically answer any Rogs. CP 137-39.

Also on February 19, 2008, the Renfros filed a second motion to compel answers to their Rogs, which were now more than two months overdue. CP 72-73; see CR 33(a) (Rog answers are due in 30 days). Attorney Clark also filed an affidavit noting that the purchasers still had not answered the Rogs. CP 71. On March 5, 2008, the purchasers responded to the second motion to compel, admitting that their responses were late due to unspecified difficulties and attorney Rowe's February 2008 flu, but asserting that the Renfros had now received "answers." CP 103-09. But the purchasers had provided no further Rog answers.

2. The purchasers scheduled their summary judgment motion during a time when the Renfros' counsel had notified them he would be out of town.

On June 5, 2008, attorney Clark filed a Notice of Unavailability for July 7 through 25, 2008, and August 4 through 15, 2008. CP 142-43. On June 13, 2008, the Renfros filed their Second Amended Complaint, adding (by leave of court) the defendants Ram back into the action. CP 161-63. Also on this date, the purchasers filed a motion for summary judgment, noting it for hearing on July 11, 2007, when the Renfros' attorney Clark would be out of town. CP 144-160 (particularly CP 157, n.2).

On June 27, 2008, the Renfros served four *subpoenas duces tecum* on the named defendants. CP 176-87. They also set the defendants' depositions on August 25 and 26, 2008. CP 166.

The court rescheduled the July 11 hearing to July 18 due to a court recess, still within attorney Clark's unavailable dates. CP 167; 7/18 RP 4.² On July 18, 2007, the trial court held an *ex parte* hearing at which only purchasers' counsel Rowe appeared and argued. 7/18 RP 2-10. After hearing extensive argument from her,

² The VRP for this case consists of three transcripts of the July 18, August 29, and September 26, 2008 hearings, each of which is independently numbered. They are cited here as 7/18 RP __, 8/29 RP __, and 9/26 RP __, respectively.

the trial court noted that, “in the time I’ve been on the bench, I’ve learned one thing. That is, there’s always two sides to every story.” 7/18 RP 7. The court therefore entered an order continuing the purchasers’ motion for summary judgment until August 29, 2008. CP 164. At this point, trial was not scheduled to begin until November 17, 2008, fully four months away. 7/18 RP 7.

3. During a court hearing at which only the purchasers were represented, the trial court stayed any depositions of the purchasers until after the summary judgment hearing.

Yet even though attorney Clark was not present per his properly filed Notice of Unavailability (of which the trial court took specific notice, 7/18 RP 3) and even though the Renfros were unrepresented at this hearing, the trial court nonetheless granted attorney Rowe’s request to stay her clients’ depositions, ordering “that depositions for Ms. Rowe’s clients (defendants Kaur, Sandhu and Hothi) shall be stayed pending determination on [purchasers’ summary judgment] motion absent an appropriate motion and showing from Mr. Clark.” CP 164. The trial court so ordered even while querying Ms. Rowe, “Isn’t he [Mr. Clark] just going to come before me on the 29th saying he was unable to conduct discovery?” 7/18 RP 9.

The trial court also noted that the Renfros were unlikely to obtain this discovery, even upon a proper motion, because the purchasers were unlikely to be available prior to August 29th:

THE COURT: This is what I'm going to do. I'm going to set the motion for summary judgment on August 29th. I'll stay the depositions of your clients currently set until after the motion for summary judgment, unless Mr. Clark comes before the court and gets a motion. I don't think anybody will be available. I'm not sure he'll have the opportunity to do that.

7/18 RP 10. The trial court also reserved any ruling on attorney fees, "in both directions." 7/18 RP 11.

On July 25, 2008, the Renfros brought a motion for reconsideration of the trial court's July 18th stay order. CP 165-90. They noted that this order had the effect of quashing four subpoenas, albeit without a proper motion under CR 26(c). CP 166-67. As will be further discussed *infra*, the Renfros also explained that these depositions were reasonably calculated to lead to the discovery of admissible evidence vital for responding to the purchasers' pending summary judgment motion. CP 168-69. Finally, the Renfros noted that the relief granted at the July 18th *ex parte* hearing was illegal, invalid and improper. CP 169.

At the August 29, 2008 hearing, the Renfros sought to continue the summary judgment hearing until they had an

opportunity to obtain discovery from the defendants. 8/29 RP 4-5. The Renfros explained that they had never received any discovery responses from the purchasers. *Id.* at 5, 14. The Renfros acknowledged that they had received some inadequate discovery from Ram, whom attorney Rowe asserted was acting as “attorney in fact” for the purchasers in answering the discovery. *Id.* at 4-5, 10-11. The Renfros also had not yet obtained the depositions of any of the defendants. *Id.* at 5. As further discussed below, the Renfros explained in detail why these depositions were critical to the subject matter of the summary judgment. *Id.* at 5-8, 14.

4. The trial court reconsidered its stay order, but ultimately refused to consider the purchasers’ depositions before granting summary judgment.

The trial court noted that neither side had scheduled a court-required settlement conference and that the Renfros should have “an opportunity to investigate some issues in case there would be some questions that would require the court to look at parole [*sic*] evidence.” 8/29 RP 16. The trial court treated the Renfros’ motion for reconsideration as a CR 56(f) motion to continue the summary judgment, granted the motion to continue, and ordered the parties to agree on dates for the defendants’ depositions. 8/29 RP 16-17; CP 260. After a recess, the court continued the summary judgment

hearing to September 26, 2008, noting that the parties had agreed to schedule the defendants' depositions within the next two weeks. 8/29 RP 18; CP 260.

On September 12, 2008, the Renfros brought a motion to compel either attorney Rowe or defendant Ram's new counsel, J. Michael Morgan, to accept service of the Amended Complaint for Ram, or for a further continuance of the summary judgment motion. CP 261. In the process of trying to serve Ram, the Renfros had discovered that Ram lists various addresses as his current residence with various state agencies, yet does not appear to live at any of them. CP 268. They also discovered that defendant Ram has been married to purchaser Kaur since September 2007. CP 262, 265, 276. The defendants had never disclosed their relationship, even though Ram had been acting as "attorney in fact" for the purchasers for months. *Id.*; 8/29 RP 10-11.

Attorney Rowe – Kaur's counsel who provided *Ram's* discovery responses – had never revealed his marriage to Kaur, and maintained that she did not represent Ram. CP 262. On September 9, 2008, Rowe finally disclosed that another attorney represented Ram. *Id.*; CP 280. Morgan, in turn, confirmed this on September 10, but refused to recognize the *subpoena duces tecum*

or to accept service. CP 262, 284. All of the defendants resisted the Renfros' motion to serve Ram (CP 285-303, 330-31) and the trial court denied the motion. CP 371.

The parties filed numerous and extensive pleadings on the defendants' summary judgment motion, including a motion to strike. CP 144-60, 191-219, 231-58, 340-70, 372-86. At oral argument on September 26, 2008, the Renfros explained that they had not been able to schedule the purchasers' depositions until a week prior to this summary judgment hearing, and the court reporter had not provided a final transcript as yet. 9/26 RP 7-8. They asked the court to continue the hearing for two weeks so that the court and counsel could evaluate the depositions. *Id.* at 8. The trial court refused, but agreed to consider the summary of testimony set forth in the Renfros' supplemental responses to the summary judgment motion, denying the purchasers' motion to strike. *Id.* at 10; CP 390.

The Renfros' summary of the deposition testimony indicated that the purchasers were sophisticated business people with significant experience in real estate transactions. CP 345. The purchasers admitted to receiving a draft of the REPSA as early as July 2006, six weeks before the signing on September 5, 2006. CP 342-44. They read and understood the terms of the REPSA. *Id.*

Most importantly, they read and understood the terms of the waiver provision in the REPSA. *Id.*

The trial court nonetheless granted summary judgment. CP 387-89. The trial court awarded the purchasers over \$68,000 in attorney fees. CP 633. It ordered the Renfros to return the earnest money, pay an additional \$6,500 in costs, and pay 12% interest running from February 17, 2007. *Id.*

5. Evidence adduced in the purchasers' depositions that the trial court did not consider before granting summary judgment raised genuine issues of material fact, but the trial court denied reconsideration anyway.

On motion for reconsideration, the Renfros submitted purchasers' depositions. CP 391-473. As the Renfros had argued on summary judgment, these depositions raise genuine issues of material fact precluding summary judgment.

The purchasers are experienced business people. For instance, Hothi owns or has owned, in partnerships or through various corporations, at least seven business ventures, including several taxis and an interest in a partnership that attempted to purchase property in Kent, Washington, to subdivide and develop. CP 402-11. As here, Hothi and his partners backed out of that deal and sued to get their earnest money back. CP 410-11. Sandhu is

a builder in Vancouver, B.C. CP 423. Kaur solely owns Sam's Taqueria in Puyallup through her corporation, Bindi, Inc. CP 449, 451-52. She began working there in about 1997, when her ex-husband Santokh "Sam" Ram hired her (he then owned the business). CP 450. Kaur purchased Sam's Food Mart from Ram's corporation (Radha, Inc.) in 2004, renamed it Sam's Taqueria, ran it for a while, leased it to others from 2005 until 2007, and then began running it again in 2008. CP 449-51, 453. Kaur divorced her second husband in 2007, and remarried Sam Ram on December 27, 2007. CP 444-45. Sam Ram sometimes still helps out around the business. CP 450.

Kaur also started Bright Star Home and Development, Inc. in 2005, intending to buy and sell property with two men, a real estate agent and an insurance salesman. CP 454. That endeavor apparently has gone nowhere. *Id.*

Consistent with their other business ventures, the purchasers intended to subdivide the Renfros' property for sale as 30 or 40 residential lots. CP 29, 423-24. Although purchaser "Dave" Hothi admitted under oath that the Renfros did not approach him about selling their property to him (CP 418), he later testified contrary to this (and to the Renfros' testimony) that the Renfros

approached him to sell him their property. CP 425. While Hothi initially denied ever having seen a draft of the REPSA before September 2006, he later admitted that he was given a draft of it in July 2006. CP 426-27.

Hothi repeatedly claimed under oath that he could not read English well. *E.g.*, 404, 415. Yet he was able to read the terms of the REPSA into the record during his deposition. CP 419-22. Although he has lived in the United States since 1979, and has signed many, many documents, including contracts, he claimed not to know what the word “forfeiture” meant in Remedies paragraph of the REPSA (CP 11, para. 10); CP 421. He admitted, however, that this paragraph means, “if it’s not paid, maybe it’s in default or something.” CP 421. Hothi also claimed that he did not understand what “essence” meant, as in “**TIME IS OF THE ESSENCE OF THIS AGREEMENT,**” though he has signed other contracts containing this language. CP 13, 422.

Importantly, Hothi admitted that the “Condition of Property” paragraph in the REPSA means that the purchasers had to inspect the property within 10 days after the signing. CP 10, 422. He also admitted that the purchasers provided no writing to the Renfros rejecting the property within in this time frame. CP 422.

Most importantly, Hothi also read the “Other Conditions” provision before signing the REPSA, understanding it to mean as follows: “This mean[s] there’s no need [for] any other papers.” CP 422. More simply, “This mean[s] both parties accept this agreement.” *Id.* Even more simply, “This mean[s] Washington State law you don’t need any other document.” CP 423.

Kaur too admitted that she saw a draft of the REPSA in July 2006. CP 459. Although she repeatedly said that she could not read English and did not read the REPSA, she was able to read terms of the REPSA into the record during her deposition and (contrary to her other testimony) also admitted that she did read the REPSA before she signed it. CP 454, 458, 460. She has read numerous business documents, such as purchase and sale agreements for her two rental homes and tax returns for her business. CP 460-61.

ARGUMENT

A. This Court reviews summary judgments *de novo*, and where (as here) contract interpretation turns on genuine issues of material fact and reasonable inferences therefrom, summary judgment is inappropriate.

This Court reviews this summary judgment *de novo*, taking all facts and reasonable inferences in the light most favorable to the Renfros. See, e.g., *Biggers v. City of Bainbridge Island*, 162

Wn.2d 683, 693, 169 P.3d 14 (2007). Interpretation of a fully integrated contract may be a question of law, reviewed *de novo*. **Berg v. Hudesman**, 115 Wn.2d 657, 668, 801 P.2d 222 (1990); see also, **Tanner Elec. Coop v. Puget Sound Power & Light**, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996).

But where, as here, contract interpretation turns on the credibility of extrinsic evidence and on choices among reasonable inferences from such evidence, interpreting even an integrated agreement is a question of fact, barring summary judgment. **Berg**, 115 Wn.2d at 668 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 212 (1981)); **Tanner**, 128 Wn.2d at 674 (“Interpretation of a contract provision is a question of law only when (1) the interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from extrinsic evidence” (citing **Scott Galvanizing, Inc. v. Nw. EnviroServices, Inc.**, 120 Wn.2d 573, 582, 844 P.2d 428 (1993))).

Washington follows the objective manifestation theory of contract interpretation. **Hearst Communications, Inc. v. Seattle Times Co.**, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Under this theory, courts determine the parties’ intent based on objective manifestations in the contract, rather than on subjective intentions

unexpressed in the contract. *Id.* Washington also follows the context rule, viewing the parties' intentions in the context of the circumstances surrounding execution of the contract. *Id.* at 502 (discussing *Berg, supra*). Context evidence may be used to determine the meaning of specific contract terms, but not to show intentions independent of the contract language, or to vary, contradict or modify those terms. *Id.* at 503 (quoting *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999)).

B. Genuine issues of material fact preclude summary judgment here because the Renfros testified that the purchasers expressly waived all disclosures and the purchasers admitted that they read and understood the waiver provision.

The central issue in this summary judgment is whether the purchasers' oral disclaimers, together with the "Other Conditions" provision in the REPSA, constitute an express waiver of residential real property disclosures required under RCW 64.06, *et seq.* The Legislature has made it abundantly clear that the requirements of this chapter simply do not apply to transfers in which "the buyer has expressly waived the receipt of the seller disclosure statement." RCW 64.06.010(7). Thus, in "a transaction for the sale of improved residential real property, the seller shall, ***unless the buyer has expressly waived the right to receive the disclosure statement***

under RCW 64.06.010, . . . deliver to the buyer a completed seller disclosure statement.” RCW 64.06.020(1) (emphasis added). And again, “***Unless the buyer has expressly waived the right to receive the disclosure statement***, not later than five business days or as otherwise agreed to, after mutual acceptance of a written agreement between a buyer and a seller for the purchase and sale of residential real property, the seller shall deliver to the buyer a completed, signed, and dated real property transfer disclosure statement.” RCW 64.06.030.

Plainly, whether the purchasers expressly waived their right to a disclosure statement is a material fact, one on which the outcome of this litigation depends. See, e.g., ***Balise v. Underwood***, 62 Wn.2d 195, 381 P.2d 966 (1963). It is also a genuine issue for several reasons. First, the Renfros unequivocally testified that the purchasers expressly waived any right to disclosures (e.g., CP 369):

Defendants verbally told me, while physically inspecting the property, that they would not need a disclosure statement, that they were willing to take the property “as is” Defendants insisted on including language in the agreement waiving any and all disclosure documents for the closing of this transaction.

This evidence alone is sufficient to raise a genuine issue as to whether the purchasers expressly waived all disclosures.

Second, purchaser Hothi testified that he read and understood the “Other Conditions” provision as a waiver (CP 422):

Q. ... Would you read paragraph 21 [of the REPSA] on page 6.

A. “Other Conditions. This agreement does not include such other and further documentation and disclosure forms as may be required under law [for] the purchase and sale of real estate in . . . Washington.”

Q. Then the next part of it?

A. “By executing this agreement purchaser and the seller accept all of its terms and conditions.”

Q. . . .

What did that last paragraph mean to you?

A. Okay. This means there’s no need any other papers.

Q. No need for any other papers?

A. . . . This means both parties accept this agreement.

Hothi’s understanding is consistent with all of the language of the REPSA, including that in ¶ 15 (CP 12), expressly disclaiming all other agreements:

15. **No Other Agreements.**

There are no verbal or other agreements which modify or affect this Agreement. Any and all future changes to this Agreement must be made in writing, signed by Purchasers and Seller.

Purchaser Kaur repeatedly testified that she relied on Hothi when signing this contract. CP 458, 460, 462.

Whether the purchasers expressly waived the disclosures thus is a genuine issue of material fact precluding summary judgment. In their summary judgment motion, however, the purchasers argued that the REPSA waiver provision “*specifically states* that it does *not* affect or negate the sellers’ disclosure obligations under Washington law.” CP 156 (citing and quoting the “Other Conditions” waiver provision: “This Agreement **does not include such other and further documentation and disclosure forms as may be required under law . . .**”) (all emphases added by purchasers). The contract language contradicts the purchasers’ reading: it does not say that the REPSA will not “affect or negate” disclosure requirements; but rather, the parties’ agreement “does not include . . . disclosure forms” At best, the purchasers’ arguments create genuine issues of material fact.

In subsequent pleadings, the purchasers argued that this is purely a question of law – interpretation of the waiver language. See, e.g., CP 238-39. This is simply incorrect. As noted above, where the question is interpretation of the parties’ intent in placing specific language into the contract (such as the waiver provision at

issue here) our courts look to the context in which the contract is signed, and determine the contracts' meaning as a matter of law only if but "one reasonable inference can be drawn from extrinsic evidence." *Tanner*, 128 Wn.2d at 674. Since the Renfros testified that the purchasers insisted on putting their waiver into the REPSA, and even purchaser Hothi admitted that the waiver provision means "there's no need [for] any other papers" in this transaction, a genuine issue of material fact remains for trial.

Purchasers also argued that their behavior was inconsistent with the waiver provision because they repeatedly asked for disclosures after the 10-day acceptance period in the REPSA had expired. *See, e.g.*, CP 239-40. The Renfros assert that the purchasers wanted to force a lower price so they went to a lawyer who came up with this disclosure argument. *See, e.g.*, CP 212. This in no way counters their insistence on waiving disclosures at the time they entered into the REPSA.

Finally, the purchasers argued that, "[a]t a *minimum*, we have an ambiguous contract," so it must be construed against the Renfros, whose attorney drafted the REPSA, so their waiver is not "unequivocal." CP 240. Again, this is simply wrong analysis. The only thing that renders this waiver provision "ambiguous" is the

purchasers' after-the-fact decisions to renege on buying the property "as is" and to deny that they expressly waived all disclosures in both face-to-face discussions with the Renfros and in the REPSA itself. The statute does not require an "unequivocal" or even a written waiver, but simply that the purchasers "expressly waived the receipt of the seller disclosure statement." RCW 64.06.010(7). The Renfros unequivocally averred that the purchasers expressly waived the disclosure statement, as the waiver and "No Other Agreements" provisions in the REPSA confirm. This Court should reverse and remand for trial.

C. The trial court erred in refusing to consider the purchasers' depositions.

As noted above, the trial court refused to delay the summary judgment hearing briefly to permit the court reporter time to finalize the purchasers' depositions, and denied a motion for reconsideration bringing those depositions before the court. This was surprising, in that the trial court had granted the Renfros a CR 56(f) order for more time specifically to obtain those depositions, albeit while recognizing that the purchasers likely would not be available for depositions within the time allotted. *See supra*, Fact

§§ D. 3&4. A brief additional delay simply to obtain the deposition transcripts could not outweigh the Renfros' right to a fair trial.

This Court reviews evidentiary rulings on summary judgment *de novo*. See, e.g., **Folsom v. Burger King**, 135 Wn.2d 658, 663, 958 P.2d 301 (1998); **Momah v. Bharti**, 144 Wn. App. 731, 749, 182 P.3d 455 (2008), *rev. granted*, 165 Wn.2d 1020 (2009). Where, as here, the trial court had granted the Renfros a CR 56(f) order specifically to obtain these depositions, there was no reason to deny them the actual fruit of their discovery. The Renfros explained that they scheduled the depositions at the earliest date available to all concerned, roughly three weeks after the court first ordered them taken. CP 341 (court order August 29, and depositions taken September 17 & 18, 2008). The purchasers admitted that they were unavailable at an earlier time offered by the Renfros. CP 477. Where, as here, the trial court had already noted that it would be difficult, if not impossible, for the Renfros to obtain these depositions in the time allotted (during the hearing at which the Renfros were unrepresented) it should have permitted them time to submit the actual transcripts.

D. The trial court erred in awarding attorney fees to the purchasers, but the Renfros are entitled to fees here.

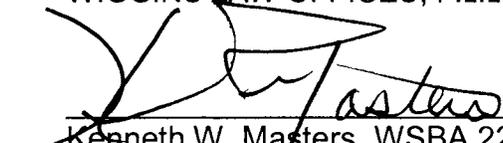
The trial court awarded over \$68,000 in attorney fees to the purchasers under REPSA ¶ 10, CP 11. CP 663. Since they should not have prevailed, they are not entitled to those fees. But under the same provision, if the Renfros are successful here, this Court should award them fees on appeal. See, e.g., RAP 18.1; *Singleton v. Frost*, 108 Wn.2d 723, 742 P.2d 1224 (1987).

CONCLUSION

For the reasons stated above, this Court should reverse and remand for trial.

RESPECTFULLY SUBMITTED this 9th day of July, 2009.

WIGGINS LAW OFFICES, P.L.L.C.


Kenneth W. Masters, WSBA 22278
241 Madison Avenue North
Bainbridge Is, WA 98110
(206) 780-5033

CERTIFICATE OF SERVICE BY MAIL

I certify that I mailed, or caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANT** postage prepaid, via U.S. mail on the 9th day of July 2009, to the following counsel of record at the following addresses:

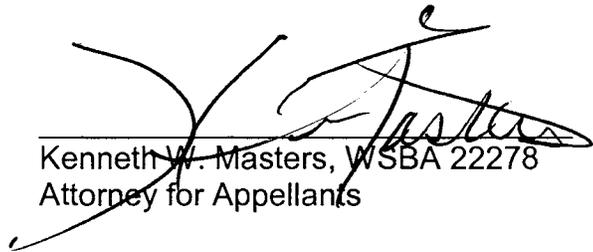
Co-counsel for Appellants

Bruce T. Clark
Attorney at Law
3645 N. Pearl Street
Tacoma, WA 98407

Counsel for Respondents

Carmen R. Rowe
1800 Cooper Point Road SW
Suite 8
Olympia, WA 98502-1179

FILED
COURT OF APPEALS
DIVISION II
09 JUL 10 PM 12:15
STATE OF WASHINGTON
BY _____
DEPUTY


Kenneth W. Masters, WSBA 22278
Attorney for Appellants

APPENDICES

Real Estate Purchase and Sale Agreement	Appendix A
RCW 64.06.010	Appendix B1
RCW 64.06.020	Appendix B2-B15
RCW 64.06.030	Appendix B16

200705140078 13 PGS
05/14/2007 9:05am \$44.00
PIERCE COUNTY, WASHINGTON

ORIGINAL

REAL ESTATE PURCHASE AND SALE AGREEMENT
This Contract Controls The Terms Of Sale Of The Property
Read Carefully Before Signing

Tacoma, Washington
September 5, 2006

THIS AGREEMENT is entered into between **SUKDEV SINGH HOTH, MEHAR SINGH SANDHU and PARMINDER KAUR** (hereinafter collectively, "Purchasers") and **RONALD R. and LANA L. RENFRO, Trustees of the RENFRO FAMILY TRUST**, dated April 1999, (hereinafter called "Seller"). Purchasers agree to buy, and Seller agrees to sell, the following described real property located at **9514 204th St. E., Graham, Pierce County, Washington 98338**:

LEGAL DESCRIPTION INCLUDED IN EXHIBIT "A" TO THIS DOCUMENT

Comprising tax parcel no. **0418048025**

The purchase and sale of this property shall be on the following terms and conditions:

1. **Purchase Price.**

The total purchase price is **ONE MILLION ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$1,175,000.00)**, to be paid under the terms described below. Purchase is contingent upon the express conditions as specified in Addendum "A" of this Agreement, herein referenced as if fully stated.

a. **Earnest Money.** As earnest money, Purchasers shall deliver to Seller the following amounts at specified milestones: **TWENTY FIVE THOUSAND DOLLARS (\$25,000.00)** upon signing of this document; **ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$175,000.00)** no later than thirty (30) days after signing this document; and **FIFTY THOUSAND DOLLARS (\$50,000.00)** on or before six (6) months after the signing of this document. . **THIS EARNEST MONEY IS NON-REFUNDABLE.**

EXCISE TAX EXEMPT DATE 5-14-07
Pierce County

By _____ Auth. Sig

REAL ESTATE PURCHASE
AND SALE AGREEMENT

Initials: SS MS PK RC LR

b. **Payments / Due Dates:** Purchasers shall deliver to Seller the remaining balance of Nine Hundred Twenty Five Thousand Dollars (\$925,000.00) in ONE installment payment, due on the second anniversary date of the closing of this transaction (September 5, 2008).

FAILURE TO DELIVER ANY OF THE PAYMENTS DUE UNDER THIS AGREEMENT BY EVEN ONE DAY WILL RESULT IN COMPLETE FORFEITURE OF ALL MONIES PAID TO SELLERS AS OF THE DATE OF FAILURE AND DISCHARGE OF ANY OBLIGATION OF SELLERS TO TRANSFER TITLE OF THE PROPERTY TO PURCHASERS.

c. **Interest:** No interest shall be calculated as part of this transaction.

2. **Conveyance and Title.**

At Final Closing (defined in paragraph 4, below), Seller shall convey the Property to Purchasers by a Statutory Warranty Deed. Title of Seller is to be free of encumbrances or defects except those acceptable to Purchasers. Rights reserved in federal patents, state deeds, or building or use restrictions general to the district, existing easements not inconsistent with Purchaser's intended use, and building or zoning regulations or provisions shall not be deemed encumbrances or defects. Encumbrances to be discharged by Seller may be paid out of the purchase money at closing.

3. **Title Insurance.**

Seller shall furnish to Purchasers a standard owner's policy of title insurance, issued by Commonwealth Title Insurance Company, with homeowners additional protection and inflation protection endorsements, if applicable and available at no additional charge. If available at no additional cost, the title insurance policy shall include coverage for post-policy forgery, post-policy encroachment, post-policy cloud on title, post-policy adverse possession, post-policy easement by proscription, expanded access coverage, building permit and zoning violation coverage, subdivision violation coverage, encroachment by boundary walls and fences coverage, restrictive covenant violations, and automatic inflation policy limit increase; and if such expanded coverage is only available for an additional fee, then Purchasers shall be permitted to elect such additional coverage at Purchaser's cost. Seller shall pay sufficient funds for title insurance cancellation fees. Any endorsements in addition to those provided in the standard

REAL ESTATE PURCHASE
AND SALE AGREEMENT

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Initials: SH / MS / P.K. / RE / EA

form policy shall be at Purchaser's expense. Seller authorizes closing agent to apply as soon as practical for a preliminary commitment for title insurance from the above designated Title Insurance Company. Delivery of such title report to the closing agent named herein shall constitute delivery to Purchasers. The title policy to be issued shall contain no exceptions other than those provided for in said standard form or allowed under paragraph 3. If title is not so insurable as above provided and cannot be made so insurable by the closing date set forth in paragraph 4 hereof, the earnest money shall be refunded and all rights of Purchasers will be terminated; provided, however, that Purchasers may waive defects and elect to purchase. The cost of the title insurance policy shall be born one-half by the Purchasers and one-half by the Seller.

4. **Time and Place of Closing.**

Closing shall take place at the Law Offices of Bruce T. Clark, L.L.C., 3645 N. Pearl St., Tacoma, WA 98407, on the date this Agreement is signed by all parties. "Final Closing" shall mean the date on which title shall transfer to Purchasers, and recorded in the Pierce County Auditor's Office, which shall occur once the final payment is made in accordance with paragraph 1(b) above.

5. **Deposits With Closing Agent/Payment of Closing Costs.**

At or prior to the date of Final Closing, each party shall deposit with the closing agent all instruments and monies necessary to complete this transaction in accordance with the terms of this Agreement. Seller shall pay the real estate excise tax and conveyance taxes associated with this transaction, and shall ensure all real estate taxes are paid to date of Final Closing. Seller shall also pay fees for recording the Statutory Warranty Deed. Purchasers shall pay fees for recording any Deed of Trust. Seller and Purchasers shall each pay one-half of the closing agent's (attorney's) fees.

6. **Possession.**

Sellers shall retain possession of the property until the receipt of ALL payments due from Sellers under this Agreement, paragraphs 1(a) and 1(b), above.

7. **Condition of Property.**

Purchasers shall have ten (10) days from the date of acceptance of this Agreement to inspect the Property and accept it. Failure of Purchasers to notify Seller in writing to the contrary shall be deemed an acceptance of the Property. Costs of inspection, including but not limited to lender required inspections, shall be borne by Purchasers.

REAL ESTATE PURCHASE
AND SALE AGREEMENT

3

Initials:

SH MS P.K. Vella 

8. **Seller Representations.**

Seller warrants the following:

- a. Seller is, and will continue to be, on the date of closing, the owner of the Property, and Seller will convey the Property free and clear of all liens, encumbrances and defects, except for those permitted herein.
- b. Seller has disclosed to Purchaser all material defects in the property of which Seller has knowledge.

9. **Notice.**

Any notice related to, required or authorized under the terms of this Agreement shall be given to the Seller or to the Purchasers at the address indicated below the signature of the Seller or Purchasers. Delivery shall be deemed to have occurred upon delivery to the Seller or Purchasers in person or date of postmark when mailing notice to the Seller or Purchasers at the address indicated herein.

10. **Remedies.**

If Purchasers fail or refuse to close this transaction on the date specified, it is agreed that the earnest money shall be forfeited to the Seller as the sole and exclusive remedy for such failure. If Seller fails or refuses to close this transaction on the date specified, the Purchasers shall have the right to specifically enforce this Agreement, or, at their election, to seek damages for the breach of this Agreement. In any action brought to enforce this Agreement or for damages resulting from a breach thereof, the prevailing party shall be entitled to their reasonable attorneys' fees.

11. **Broker's Agreement.**

Seller represents to Purchasers that it has not engaged any agent or broker in connection with this transaction, and Seller shall indemnify and hold harmless Purchasers against any claims arising out of a breach of this representation.

12. **Hazardous Waste.**

- a. Seller represents and warrants to Purchasers that to the best of Seller's knowledge after due and diligent inquiry, no toxic waste or substances are being stored on the Property or any adjacent property nor have any such waste or substances been stored or used on the Property or any adjacent property prior to Seller's ownership, possession or control of the Property. Seller agrees to provide written notice to Purchasers immediately upon Seller becoming aware that the Property or any adjacent

REAL ESTATE PURCHASE
AND SALE AGREEMENT

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Initials:

SH | MS | P. B. | K. H. | 

property is being or has been contaminated with hazardous or toxic waste or substances. The term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.

b. Seller will indemnify and hold Purchasers harmless from and against any and all claims, demands, damages, costs, expenses, losses, liens, liabilities, penalties, fines and lawsuits and other proceedings, (including attorneys' fees) arising directly or indirectly from or out of, or in any way connected with the inaccuracy of the certifications contained herein, or on the Property during Seller's ownership, possession or control of the Property which directly or indirectly result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances.

13. **Casualty/Loss.**

If, prior to closing, the property or improvements on the property are destroyed or materially damaged by fire or other casualty, Purchasers may elect to terminate this Agreement, and the earnest money shall be refunded to Purchasers.

14. **Professional Advice.**

Purchasers and Seller each acknowledge that it may be advisable to have the terms and conditions of this Agreement reviewed by independent legal counsel. By signature below, each party hereby waives this right.

15. **No Other Agreements.**

There are no verbal or other agreements which modify or affect this Agreement. Any and all future changes to this Agreement must be made in writing, signed by Purchasers and Seller.

16. **Venue/Applicable Law.**

This Agreement shall be interpreted and construed according to the laws of the State of Washington; venue shall be in Pierce County, Washington.

17. **Survival.**

Any terms, which by their nature should survive the closing of the sale, shall survive the closing of the sale. These terms shall include, but not be limited to, representations and warranties, attorneys' fees and costs, disclaimers, repairs, rents and utilities, etc.

REAL ESTATE PURCHASE
AND SALE AGREEMENT

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Initials:

SA | MS | PK | ML | 

ORIGINAL

18. **Severability.**

In the event any portion of this Agreement is found unenforceable by a court of law, all other provisions of this Agreement shall remain in full force and effect.

19. **TIME IS OF THE ESSENCE OF THIS AGREEMENT.**

20. **Personal Property.**

All personal property attached to said real property shall be included in this sale, including, but not limited to, a house located on the property.

21. **Other Conditions:**

This Agreement does not include such other and further documentation and disclosure forms as may be required under law for the purchase and sale of real estate in the state of Washington.

By executing this Agreement, Purchasers and Seller accept all of its terms and conditions.

22. **Signatures:**

PURCHASERS:

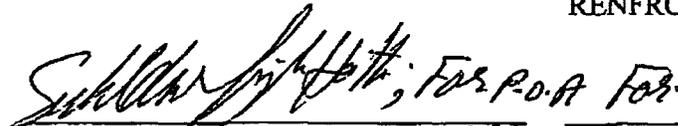
SELLER:



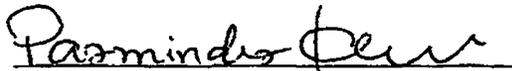
SUKDEV SINGH HOTH



RONALD L. RENFRO, Trustee of the
RENFRO FAMILY TRUST, dated April 1999

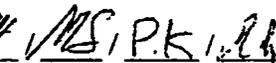


MEHAR SINGH SANDHU *For P.O.A For* 
MEHARS SANDHU LANA Y. RENFRO, Trustee of the
RENFRO FAMILY TRUST, dated April 1999



PARMINDER KAUR

REAL ESTATE PURCHASE
AND SALE AGREEMENT

Initials    

Date: Sept 5, 2006

Date: SEPT 5, 2006

Address:

SUKHDEV-S. HATHI
27902-36 AVE So
AUBURN, WA 98001

Address:

RONI LANA REALFRO
9514 204th ST E
GRAHAM, WA 98338

Address:

MEHAR-S. SANDHU
27902-36 AVE So
AUBURN WA 98001

Address:

PARMINDER KAUR
13421 48th Ave S.
Tukwila WA 98168

REAL ESTATE PURCHASE
AND SALE AGREEMENT

7

Initials SA MB P.B. AG R

ORIGINAL

ACKNOWLEDGMENT

STATE OF WASHINGTON

County of Pierce

On Sept. 5, 2006, before me, the undersigned Notary Public, personally appeared SUKDEV SINGH HOTHI,

_____ personally known to me

proved to me on the basis of satisfactory evidence

to be the persons whose names were subscribed to the within instrument, and acknowledged to me that they executed the same in their capacity, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Bruce T. Clark

Bruce T Clark

Printed Name

Notary Public in and for the State of Washington, residing in Pierce County.

My commission expires: 8-6-09



REAL ESTATE PURCHASE AND SALE AGREEMENT

8

Initials: SSM MS P. S. / J. G. / [Signature]

ORIGINAL

ACKNOWLEDGMENT

STATE OF WASHINGTON

County of Pierce

On _____, 2006, before me, the undersigned Notary Public, personally appeared MEHAR SINGH SANDHU,

_____ personally known to me

_____ proved to me on the basis of satisfactory evidence

to be the persons whose names were subscribed to the within instrument, and acknowledged to me that they executed the same in their capacity, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Printed Name
Notary Public in and for the State of
Washington, residing in _____ County.
My commission expires: _____

REAL ESTATE PURCHASE
AND SALE AGREEMENT

9

Initials MS, MS, P. G. 

ORIGINAL

ACKNOWLEDGMENT

STATE OF WASHINGTON

County of Pierce

On Sept 5, 2006, before me, the undersigned Notary Public, personally appeared PARMINDER KAUR,

_____ personally known to me

X proved to me on the basis of satisfactory evidence

to be the persons whose names were subscribed to the within instrument, and acknowledged to me that they executed the same in their capacity, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Bruce T Clark

Bruce T Clark

Printed Name

Notary Public in and for the State of Washington, residing in Pierce County.

My commission expires: 8-6-09



REAL ESTATE PURCHASE AND SALE AGREEMENT

10

Initials SK MS IPA / [Signature]

ORIGINAL

ACKNOWLEDGMENT

STATE OF WASHINGTON

County of Pierce

On Sept 5, 2006, before me, the undersigned Notary Public, personally appeared RONALD L. and LANA Y. RENFRO,

✓ personally known to me

 proved to me on the basis of satisfactory evidence

to be the persons whose names were subscribed to the within instrument, and acknowledged to me that they executed the same in their capacity, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Bruce T. Clark

Bruce T. Clark

Printed Name

Notary Public in and for the State of Washington, residing in Pierce County.

My commission expires: 8-6-09



REAL ESTATE PURCHASE AND SALE AGREEMENT

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Initials: RLR / LAR

Exhibit "A"
Real Estate Purchase and Sale Agreement

Legal Description

PARCEL A: Lot 1, Pierce County Short Plat No. 8805160522, according to Short Plat recorded May 16, 1988, records of Pierce County Auditor.

Situate in County of Pierce, State of Washington

PARCEL B: That portion of Lot 2, of Pierce County Short Plat No. 8805160422, according to Short Plat recorded May 16, 1988, records of Pierce County Auditor, described as follows:

Beginning at the Northeast corner of Lot 1 of said Short Plat; THENCE South along the East line of said Lot 1 to the Southeast corner thereof; THENCE East on an Easterly extension of the South line of said Lot 1 to the East line of Lot 2; THENCE North along the East line of said Lot 2 to the Northeast corner thereof; THENCE West along the North line of said Lot 2 to the point of beginning, in Pierce County, Washington.

REAL ESTATE PURCHASE
AND SALE AGREEMENT

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Initials:

SM *MS* *P.K.* *[Signature]* *[Signature]*

CP 19

Appendix A

RCW 64.06.010

Application — Exceptions for certain transfers of residential real property.

This chapter does not apply to the following transfers of residential real property:

- (1) A foreclosure or deed-in-lieu of foreclosure;
- (2) A gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor;
- (3) A transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership;
- (4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;
- (5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter;
- (6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and
- (7) A transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement.

[2008 c 6 § 632; 2007 c 107 § 3; 1994 c 200 § 2.]

RCW 64.06.020

Improved residential real property — Seller's duty — Format of disclosure statement — Minimum information.

(1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT

("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS

INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- 1. TITLE
 - Yes No Don't know A. Do you have legal authority to sell the property? If no, please explain.
 - Yes No Don't know *B. Is title to the property subject to any of the following?
 - (1) First right of refusal
 - (2) Option
 - (3) Lease or rental agreement
 - (4) Life estate?
 - Yes No Don't know *C. Are there any encroachments, boundary agreements, or boundary disputes?
 - Yes No Don't *D. Is there a private road or

- | | | |
|---|------------|--|
| | know | easement agreement for access to the property? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| <input type="checkbox"/> | No | <input type="checkbox"/> |
| <input type="checkbox"/> | Don't know | <input type="checkbox"/> |
| *E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property? | | |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| <input type="checkbox"/> | No | <input type="checkbox"/> |
| <input type="checkbox"/> | Don't know | <input type="checkbox"/> |
| *F. Are there any written agreements for joint maintenance of an easement or right-of-way? | | |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| <input type="checkbox"/> | No | <input type="checkbox"/> |
| <input type="checkbox"/> | Don't know | <input type="checkbox"/> |
| *G. Is there any study, survey project, or notice that would adversely affect the property? | | |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| <input type="checkbox"/> | No | <input type="checkbox"/> |
| <input type="checkbox"/> | Don't know | <input type="checkbox"/> |
| *H. Are there any pending or existing assessments against the property? | | |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| <input type="checkbox"/> | No | <input type="checkbox"/> |
| <input type="checkbox"/> | Don't know | <input type="checkbox"/> |
| *I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling? | | |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| <input type="checkbox"/> | No | <input type="checkbox"/> |
| <input type="checkbox"/> | Don't know | <input type="checkbox"/> |
| *J. Is there a boundary survey for the property? | | |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| <input type="checkbox"/> | No | <input type="checkbox"/> |
| <input type="checkbox"/> | Don't know | <input type="checkbox"/> |
| *K. Are there any covenants, conditions, or restrictions which affect the property? | | |

2. WATER

A. Household Water

(1) The source of water for the property is:

Private or publicly owned water system

Private well serving only the subject property

.....

* Other water system

- Yes No Don't know *If shared, are there any written agreements?
- Yes No Don't know *(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
- Yes No Don't know *(3) Are there any known problems or repairs needed?
- Yes No Don't know (4) During your ownership, has the source provided an adequate year-round supply of potable water? If no, please explain.
- Yes No Don't know *(5) Are there any water treatment systems for the property? If yes, are they Leased Owned
- Yes No Don't know *(6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim?
- Yes No Don't know (a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
- Yes No Don't know (b) If yes, has all or any portion of the water right not been used for five or more successive years? (If yes, please explain.)

.....

B. Irrigation Water

- Yes No Don't know (1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim?
- Yes No Don't know *(a) If yes, has all or any

- know
- portion of the water right not been used for five or more successive years?
- Yes No Don't know
- * (b) If so, is the certificate available? (If yes, please attach a copy.)
- Yes No Don't know
- (c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed? If so, explain:
-
- Yes No Don't know
- (2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property:
-
- C. Outdoor Sprinkler System
- Yes No Don't know
- (1) Is there an outdoor sprinkler system for the property?
- Yes No Don't know
- (2) If yes, are there any defects in the system? . . .
-
- Yes No Don't know
- * (3) If yes, is the sprinkler system connected to irrigation water?

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:

Public sewer system,

On-site sewage system (including pipes, tanks,

drainfields, and all other component parts)

Other disposal system, please describe:

.....

Yes No Don't know

B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.

.....

Yes No Don't know

C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

D. If the property is connected to an on-site sewage system:

Yes No Don't know

*(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?

(2) When was it last pumped:

.....

Yes No Don't know

*(3) Are there any defects in the operation of the on-site sewage system?

Don't know

(4) When was it last inspected?

.....

By whom:

.

Don't know

(5) For how many bedrooms was the on-site sewage system

approved?

..... bedrooms

Yes No Don't know

E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

Yes No Don't know

*F. Have there been any changes or repairs to the on-site sewage system?

Yes No Don't know

G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

Yes No Don't know

H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain.

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

Yes No Don't know

*A. Has the roof leaked?

Yes No Don't know

*B. Has the basement flooded or leaked?

Yes No Don't know

*C. Have there been any conversions, additions, or remodeling?

Yes No Don't know

*(1) If yes, were all building permits

- obtained?
 Yes No Don't know
 * (2) If yes, were all final inspections obtained?
- Yes No Don't know
 D. Do you know the age of the house? If yes, year of original construction:

- Yes No Don't know
 *E. Has there been any settling, slippage, or sliding of the property or its improvements?
- Yes No Don't know
 *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- | | | |
|--|---|---|
| <input type="checkbox"/> Foundations | <input type="checkbox"/> Decks | <input type="checkbox"/> Exterior Walls |
| <input type="checkbox"/> Chimneys | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Fire Alarm |
| <input type="checkbox"/> Doors | <input type="checkbox"/> Windows | <input type="checkbox"/> Patio |
| <input type="checkbox"/> Ceilings | <input type="checkbox"/> Slab Floors | <input type="checkbox"/> Driveways |
| <input type="checkbox"/> Pools | <input type="checkbox"/> Hot Tub | <input type="checkbox"/> Sauna |
| <input type="checkbox"/> Sidewalks | <input type="checkbox"/> Outbuildings | <input type="checkbox"/> Fireplaces |
| <input type="checkbox"/> Garage Floors | <input type="checkbox"/> Walkways | <input type="checkbox"/> Siding |
| <input type="checkbox"/> Other | <input type="checkbox"/> Wood Stoves | |

- Yes No Don't know
 *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?
- Yes No Don't know
 H. During your ownership, has the property had any wood destroying organism or pest infestation?
- Yes No Don't know
 I. Is the attic insulated?
- Yes No Don't know
 J. Is the basement insulated?

**5. SYSTEMS AND
FIXTURES**

***A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.**

- | | |
|--|---|
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Electrical system, including wiring, switches, outlets, and service |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Plumbing system, including pipes, faucets, fixtures, and toilets |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Hot water tank |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Garbage disposal |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Appliances |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Sump pump |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Heating and cooling systems |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Security system |
| | <input type="checkbox"/> Owned <input type="checkbox"/> Leased |
| | Other |

***B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)**

- | | |
|--|-----------------------|
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Security system |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Tanks (type): |
| <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know | Satellite dish |
| | Other: |

6. HOMEOWNERS'

ASSOCIATION/COMMON INTERESTS

Yes No Don't know

A. Is there a Homeowners' Association? Name of Association

.....

Yes No Don't know

B. Are there regular periodic assessments:

\$. . . per Month Year

Other

Yes No Don't know

*C. Are there any pending special assessments?

Yes No Don't know

*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. ENVIRONMENTAL

Yes No Don't know

*A. Have there been any drainage problems on the property?

Yes No Don't know

*B. Does the property contain fill material?

Yes No Don't know

*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

Yes No Don't know

D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

Yes No Don't know

*E. Are there any substances, materials, or products on the property that may be environmental

- concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
- Yes No Don't know *F. Has the property been used for commercial or industrial purposes?
- Yes No Don't know *G. Is there any soil or groundwater contamination?
- Yes No Don't know *H. Are there transmission poles, transformers, or other utility equipment installed, maintained, or buried on the property?
- Yes No Don't know *I. Has the property been used as a legal or illegal dumping site?
- Yes No Don't know *J. Has the property been used as an illegal drug manufacturing site?
- Yes No Don't know *K. Are there any radio towers in the area that may cause interference with telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

- Yes No Don't know *A. Did you make any alterations to the home? If yes, please describe the alterations:
- Yes No Don't know *B. Did any previous owner make any alterations to the home? If yes, please describe the alterations:
- Yes No Don't know *C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

Yes No Don't know

*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER
.....

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY

BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.

- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee

involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

[2007 c 107 § 4; 2004 c 114 § 1; 2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

RCW 64.06.030

Delivery of disclosure statement — Buyer's options — Time frame.

Unless the buyer has expressly waived the right to receive the disclosure statement, not later than five business days or as otherwise agreed to, after mutual acceptance of a written agreement between a buyer and a seller for the purchase and sale of residential real property, the seller shall deliver to the buyer a completed, signed, and dated real property transfer disclosure statement. Within three business days, or as otherwise agreed to, of receipt of the real property transfer disclosure statement, the buyer shall have the right to exercise one of the following two options: (1) Approving and accepting the real property transfer disclosure statement; or (2) rescinding the agreement for the purchase and sale of the property, which decision may be made by the buyer in the buyer's sole discretion. If the buyer elects to rescind the agreement, the buyer must deliver written notice of rescission to the seller within the three-business-day period, or as otherwise agreed to, and upon delivery of the written rescission notice the buyer shall be entitled to immediate return of all deposits and other considerations less any agreed disbursements paid to the seller, or to the seller's agent or an escrow agent for the seller's account, and the agreement for purchase and sale shall be void. If the buyer does not deliver a written rescission notice to [the] seller within the three-business-day period, or as otherwise agreed to, the real property transfer disclosure statement will be deemed approved and accepted by the buyer.

[1996 c 301 § 3; 1994 c 200 § 4.]