

**FILED**

MAY 18 2017

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 344436  
COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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CONSOLIDATED CASES

MARY ALICE CARLSON, Respondent, Cross-Appellant

v.

HUGH DAVID CARLSON, Appellant, Cross-Respondent

AND \_\_\_\_\_

HMD LIMITED PARTNERSHIP, Appellant

v.

MARY ALICE CARLSON and SOUTH 80 ORCHARDS LP,  
Respondents

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**BRIEF OF APPELLANT  
HMD LIMITED PARTNERSHIP**

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R. Bruce Johnston, WSBA #4646  
JOHNSTON JACOBOWITZ & ARNOLD, PC  
2701 First Ave, Suite 200  
Seattle, WA 98121  
(206) 866-3230  
(206) 866-3234 (Fax)  
bruce@rbrucejohnston.com  
*Counsel for Appellant HMD Limited  
Partnership*

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## I. INTRODUCTION

Appellant HMD Limited Partnership (“HMD”) was an intervenor plaintiff below in Yakima County Superior Court Cause #13-2-04263-0 (the “Commercial Case”). HMD was *not* a member of the marital community in the consolidated dissolution proceeding below, *In re the Marriage of: Mary A. Carlson and Hugh David Carlson*, Cause #13-3-00578-9 (the “Domestic Case”).

The issues related to HMD are simple and clear. They can be and should be separated from the complexities which the consolidation of the two cases below—one domestic, one commercial—introduced into this litigation.<sup>1</sup> HMD therefore filed a separate Notice of Appeal from that of Domestic Case appellant H. David Carlson (“David Carlson”), and here files a separate brief.

To focus in on HMD’s claims requires a bit of procedural history. The Domestic Case was filed by Mary Carlson on June 7, 2013. CP 1. The couple’s assets, with the notable exception of their respective interests in HMD (and a small asset not relevant here), were community property, which consisted primarily of a family farming enterprise. The couple’s assets exceeded \$4 million and were subject to little debt, with the notable

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<sup>1</sup> The Trial Court severely criticized itself over-complicating the proceedings by consolidating the commercial and domestic actions. CP 286:7-287:18 and 310:19-22.

exception of the community's debt to HMD. Thus, the Carlson's marital community (the "Community") had ample assets to pay its liabilities to HMD, an entity to which both husband and wife were fiduciaries.

In December 2013, as a litigation tactic in the Domestic Case, Mary Carlson caused a separate action, the Commercial Case, to be filed against H. David Carlson by South 80 Orchards Limited Partnership ("South 80"). CP 1601. HMD intervened in that action to recover debts, and impleaded Mary Carlson as third-party defendant. The cases were consolidated for trial.

All of the claims of South 80 were eventually dismissed with prejudice. CP 1329 ¶ 3; CP 288:5-9. South 80 has not appealed. The trial court pierced the corporate veil, holding that South 80 was "an empty shell" and that all of its assets were commingled with and a part of the community's farming business. CP 310:13-22; *and see* CP 289:5-290:15.

No such finding was made as to HMD, nor could it have been. HMD, a partnership formed by Mr. Carlson's father in 1999, had several partners other than the Carlsons. App. 113. And HMD had made loans to the Community, which it fully proved at trial. The trial court, however, erroneously denied recovery of several loans, based solely on statute of limitation. The trial court also denied recovery of interest on certain funds

of HMD which were undisputedly sequestered at Ms. Carlson's demand for several years.

## II. ASSIGNMENTS OF ERROR

HMD Limited Partnership assigns the following errors and raises the following corresponding issues of law on appeal:

1. *The trial court erred by denying HMD recovery from loans to its General Partners' marital community, in the total principal amount of \$\$318,400.00, based solely on the application of a three-year statute of limitations, despite the General Partners' failure to disclose to other partners and their reaffirmation of the debt.*

**Issue:** Was the application of the statute of limitations correct? *No.*

2. *The trial court erred by denying an award of interest against Mary Carlson on money removed from the HMD account by Mary Carlson, and denied to HMD from January 7, 2014 until September 25, 2015.*

**Issue:** Was the interest statute correctly applied? *No.*

3. *Alternatively, the trial court erred by valuing Mary Carlson's 6.5 percent interest in HMD at \$65,000, because the only evidence presented was that that value would be \$65,000 only if the HMD loans from 2003 through 2009 were included in its valuation.*

**Issue:** If HMD is not entitled to recover the \$318,400, plus interest, loaned to the Community, was the \$65,000 valuation correct? *No.*

## III. STATEMENT OF THE CASE

1. *HMD is an Entity Separate from David or Mary Carlson.*

HMD brought claims in the Commercial Case against Ms. Carlson for conversion, breach of fiduciary duty, and breach of the partnership agreement, and against her company South 80 for breach of contract on several loans. After consolidating the case with the Domestic Case, the trial court held that the Carlsons, during their marriage, blurred the lines between their marital community and its wholly-owned entities—the Community, South 80, and Carlson Agribusiness, LLC, the court held, were effectively run as a single entity or at least as a tightly-intertwined enterprise. CP 289:5-290:15. Thus, the family farming working capital used by South 80 were held to be community property, and HMD’s claim against South 80 was treated by the trial court as community debt. CP 310:13-22; CP 1314 ¶¶ 2, 6; CP 1315 ¶¶ 2, 6.

Unlike those entities, HMD was not held to be community property. CP 1315 ¶ 1.<sup>2</sup> This was correct, because HMD had several partners outside the Community. HMD is a partnership formed in 1999 by David Carlson and his father, Hugh A. Carlson, as General Partners, and

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<sup>2</sup> The trial court found somewhat awkwardly that “the remainder of ownership of HMD LP” was Mr. Carlson’s separate property. *Id.* This clearly referred to the **Carlsons’** ownership interests in HMD, not to **all** ownership interests in HMD. HMD’s Limited Partners’ and its other General Partners’ interests in HMD were never put in doubt, those persons were not parties to either action below, and there was no claim to divest them of ownership. Indeed, one of the other partners is a decedent’s estate which is still open in a case pending in another court entirely.

Marla Contini, Nicholas Carlson, Anthony Contini, and Carla Tanya Contini (collectively herein “the “Continis”) as Limited Partners. In 2000, after Hugh A. Carlson’s death, the surviving partners admitted Marla Contini and the Estate of Hugh A. Carlson as General Partners, and David Carlson transferred his personal partnership interest to Mary Carlson as separate property. Exh. P.1.12. David Carlson remained an agent of the partnership, as manager, and also as the Personal Representative of Hugh A. Carlson’s Estate. An addendum in July 2008 purported to transfer Mary Carlson’s General Partnership interest back to David Carlson, but disputes were raised about its validity, and the parties stipulated to treating her as still being a General Partner. So at all material times, David Carlson and Mary Carlson had fiduciary roles with respect to HMD and the Continis—David as a General Partner and/or the manager of HMD and the representative of a General Partner, and Mary as a General Partner. Mary Carlson also kept the books for HMD.<sup>3</sup> App. 3, p. 157:5–158:2.

***2. HMD Lent to Community for Farming Working Capital***

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<sup>3</sup> This is established by the excerpts of the Deposition of Mary Carlson of April 4, 2014 submitted at trial, attached hereto as Appendix 3. This will be included in a Supplemental Designation of Clerks Papers.

Several times before April 2007, the Community's farming business ran short of operating funds, and HMD made loans to it in the following amounts:<sup>4</sup>

Check #1001, 6/03/2003	\$60,000
Check #1002, 6/18/2003	\$45,000
Check #1003, 7/22/2003	\$10,000
Check #1005, 7/30/2003	\$ 1,400
Check #1007, 10/8/2003	\$12,000
<u>Check #1026, 3/2/2007</u>	<u>\$25,000</u>
Total through 2007	\$153,400.

Those funds were badly needed to avoid a complete loss of the farming operations of the Community. RP 554:6-24. The checks were written by Mary Carlson as General Partner. RP 296-98. Those funds were never repaid to HMD. RP 566:14-16.<sup>5</sup>

### ***3. The Community Borrowed More from HMD in 2009.***

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<sup>4</sup> Trial Exhibits (RE) 137, admitted at RP 552:17; testimony of David Carlson, RP 553:14-554:5; *and see* RP 296:21-297:18. As testified, there were probably more loans which are no longer traceable. *Id.*

<sup>5</sup> Ms. Carlson argued that the 2003 payments belonged to South 80 in the first place, but had produced no supporting documentation and no such finding was made; the trial court treated these as loans to the Community, *see infra*. RP 299:10-11. She admitted that there was no repayment of these loans. RP 296:6-14; RP 371:14-17. Her argument did, however, establish that there was a continuing open account. RP 296:5; RP 372:7-10.

Later, on or about April 13, 2009, property owned by HMD was sold, with net proceeds of \$184,863.14. RP 563:4-8; RP 293:8-10; RE 132 & 133.<sup>6</sup> Mary Carlson, as bookkeeper for HMD, recorded that amount as a land sale in the HMD “Transaction Detail by Account.” RE-130.<sup>7</sup> Mary Carlson then deposited the entire property sale proceeds into Yakima Federal Savings & Loan savings account #01-30019240. RP 563:11-12; and RE 132 and 133.<sup>8</sup> From that account Mary Carlson paid a total of \$165,000 to South 80 for the Community’s farming business in three installments:<sup>9</sup>

July 14, 2009	\$100,000.
August 5, 2009	\$ 55,000.
<u>September 2, 2009</u>	<u>\$ 10,000.</u>
TOTAL	\$165,000.

Mary Carlson caused each of these three payments to be recorded on HMD’s books as “N/P S-80,” *i.e.*, as a Note Payable by South 80. RE 130. Each amount was received in the South 80 Bank Account at Yakima Federal Savings & Loan and applied as working capital for the family farm. RP 563:1–2. These loans were not repaid. RP 563:16–19.

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<sup>6</sup> Admitted RP 563:25; *and see* RP 294:10–11.

<sup>7</sup> Admitted RP 372:17.

<sup>8</sup> *See also* RP 29

<sup>9</sup> RP 290:11–14; *and see* RP 294:12–17.

The trial court dismissed the claims as to all of the above loans based on the three-year statute of limitations. CP 1314 ¶¶ 4–5; CP 1315 ¶¶ 4–5. The court ruled orally that it would not find Ms. Carlson to have breached her fiduciary duty for purposes of the statute of limitations, because she and David Carlson were both fully aware of all the money transfers, they had both used HMD as a “piggy bank,” and “[i]t’s his family. It’s essentially his corporation.” CP 293:22–295:9.

#### ***4. The Community Borrowed Again from HMD in 2012–2013***

From August 28, 2012 to January 15, 2013, HMD loaned \$400,000 to David Carlson for the community farming operations. RP 565:3–16. HMD’s bank statements established the issuance of checks totaling \$400,000. Following Mary Carlson’s treatment of the loans as notes, David Carlson caused promissory notes to be signed and issued accordingly in the total amount of \$400,000. RP 565:8–25. Copies of the Promissory Notes are trial Exhibit 106.<sup>10</sup> As the trial court found, interest accrued on those loans in the amount of \$38,504. CP 293:12–13. A partial repayment was made in the amount of \$221,850, leaving a balance due of \$216,654. CP 293:11–21.<sup>11</sup> Ms. Carlson testified that she had no objection to that \$221,500 repayment. RP 302:9–10. As to these loans,

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<sup>10</sup> Admitted RP 649:22.

<sup>11</sup> See also RP 565:14–566:2.

the trial court held that the six year statute of limitations applied, and that the debt was valid. *Id.* The trial court ratified the partial repayment of \$221,850 from the community working capital. CP 293:14–21.

**5. *Interest on the Loan and Distrained Amounts.***

The trial court was presented with interest calculations in respect of the earlier loans, but it did not reach that issue due to its ruling on the statutes of limitation. Updated interest calculations, including per diem on the principal amounts, are attached hereto as Appendix 1. Attached as Appendix 2 is an interest calculation regarding the funds held in the Registry of the Court during the proceedings below at Ms. Carlson's insistence.

**6. *Community Admitted the Debts to HMD were Due and Payable.***

On the witness stand, Mr. Carlson acknowledged that the amounts loaned by HMD to the Community farming business had not been repaid, and were due and owing:

Q We've looked at the checks that we were arguing over which are now, based on your testimony, not \$160,400, but \$153,400, correct?

A Correct.

Q And then we have the \$165,000 in 2009, correct?

A Correct.

Q And we have some \$180,000, just talking principal, all of which has come out of HMD into the family working capital, correct?

A Correct.

**Q Now as you sit here today, chief executive of Carlson Agribusiness, you acknowledge that those amounts are still owing to HMD.**

**A Correct.**<sup>12</sup>

It is also important to note that the Carlson's non-Community partners in HMD, the Continis, were never given a full explanation of the loans—not by either Mr. Carlson or Ms. Carlson. RP 653:24-654:5.

***7. HMD's Claims for Recovery of Loans were Dismissed Solely Based on Statutes of Limitation.***

The claims of HMD to recover the pre-2012 loans, in the respective principal amounts of \$153,400 and \$165,000, were dismissed solely based on the court's mistaken application of a three-year statute of limitations, from the dates of the loan advances. CP 1329 ¶¶ 4-5; CP 1314 ¶¶ 4-5; CP 292:1-21.

***8. Mary Carlson Wrongfully Withdrew and Sequestered \$226,485.05 from HMD.***

In or about June 2012, HMD sold another piece of real property. The proceeds, in the amount of \$730,798.39, were deposited on June 29, 2012 to HMD's account at Yakima Federal Savings & Loan. RP 317:11-

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<sup>12</sup> RP 566:6-16 (emphasis added).

14. The only deposits made to that HMD Account afterwards were interest accruals, and two small deposits totaling \$3,931.31.<sup>13</sup> Between the June 29, 2012 deposit and November 19, 2013, some funds were withdrawn, including the \$400,000 in loans to the Community farming business discussed above. RP 317:25–318:4. Ms. Carlson drew out all the remaining money in the HMD account, \$226,485.05, on November 19, 2013, and closed the account. RP 318:12-20.

Mary Carlson admitted to being a fiduciary to HMD. CP 1722 ¶ 25 (“Admitted”) *responding to* CP 1645 ¶ 25 (“Mary has a fiduciary duty to HMD and her other partners pursuant to the HMD partnership agreements and RCW 25.05.165.”) Nevertheless, she took those funds and failed to disclose the conversion, which was only discovered on or about December 13, 2013, when checks written on the account by David Carlson were returned stamped, “Account Closed.” RP 634:22–635:3. Mrs. Carlson was held in contempt for her acts, which violated a standing order of the court. App. 046:16-18. As an immediate response to these wrongful acts, the trial court, on January 7, 2014, ordered Mrs. Carlson to pay the full \$226,485.05 into the registry of the court. CP 290:22–23. Despite the clearly wrongful nature of this act, and its tactical character, and despite repeated requests, Mrs. Carlson refused to consent to those

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<sup>13</sup> RE 105; See, RP 317:7-10.

funds being removed from the registry of the court and returned to HMD during the duration of the case. RP 291:13–15. She succeeded in denying HMD the use of those funds for the entire period from December 19, 2014 through September 25, 2015. RP 619:25–620:5.

The trial court, in its oral ruling on September 25, 2015, correctly directed the \$226,485.05 to be returned to HMD. RP 291:13–15. The trial court also awarded interest at the statutory rate of 12 percent,<sup>14</sup> but only for the period December 19, 2014 through January 7, 2015, the date on which the funds were deposited by Ms. Carlson in the Registry of the court. CP 291:15–22

The trial court explained its interest determination as follows:

That allows the remaining question about the interest that should be earned, and interest would be earned at 12%, but I'm finding that the interest would only be applicable for the, period November 19 to January 7. After that it was a Court-ordered sequestration, I guess, of the monies. It was certainly denied to HMD. It was denied to everyone's access for - in order to preserve the status quo.

*Id.* In fact, though, the *status quo ante* was that the funds were in the HMD account, and the Court had already rejected all arguments by Ms. Carlson in defense of her conversion of the funds. An interest calculation

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<sup>14</sup> RCW 19.52.010(1).

for the period January 8, 2014 to September 25, 2015 is attached as Appendix 2.

**9. *The \$65,000 valuation of Mary Carlson's 6 ½% interest in HMD was valid only if the Loans made by HMD from 2003 through 2009 were collectible assets of HMD.***

Other than bits and pieces scattered in the record, the only real testimony about the value of HMD is found in the testimony of David Carlson:

MR. JOHNSTON: Well, I was just asking him if he knows what HMD is worth. I mean, is it worth 500,000, a million?

A Approximately between 3 and 400,000.

Q And if it has receivables that are awarded by the Court, that would increase that, right?

A Correct.

Q It could go as high as a million dollars, right?

A Correct.

Q And if it was a million dollars that would mean that Mary Carlson's interest would be 65,000 dollars, correct?

A Correct.<sup>15</sup>

The trial court granted this exact figure of \$65,000 and valued Mrs. Carlson's interest in HMD at that exact figure, but did not award the "receivables" that were a predicate of that value. CP 288:1-2. If on appeal

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<sup>15</sup> RP 605:14-24.

the “receivables” are allowed, David Carlson has no objection to the \$65,000 valuation, and prior payment to Mary Carlson. However, if they are not, that valuation is without substantial support in the record, and should be reversed and remanded.

#### IV. ARGUMENT

***1. The Court’s Standard of Review is De Novo, and Statutes of Limitation are Strictly Construed.***

Whether a statute of limitation applies to bar a claim is a question of law that this Court reviews *de novo*. *Rekhter v. State, Dep’t of Soc. & Health Servs.*, 180 Wn.2d 102, 150, 323 P.3d 1036, 1059 (2014). Whether a marital community is liable for the intentional tort of one of its members is a mixed question of law and fact, reviewed *de novo*. *Clayton v. Wilson*, 168 Wn.2d 57, 62, 227 P.3d 278, 280 (2010). While a statute of limitation defense is “not unconscionable,” it is “not such a meritorious defense that either the law or the facts should be strained in aid of it.” *Guy F. Atkinson Co. v. State*, 66 Wn.2d 570, 573, 403 P.2d 880, 882 (1965).

The application of a pre-judgment interest statute to undisputed facts is likewise reviewed *de novo*. *Sintra, Inc. v. City of Seattle*, 96 Wn. App. 757, 761, 980 P.2d 796, 798 (1999).

***2. Mary Carlson and the Community are Liable and the Statute of Limitations Did Not Run Against Any of the Debt.***

**1. The Three Year Limitation Does Not Apply to a Claim against a Fiduciary without Full Disclosure to the Beneficiaries.**

It is axiomatic as well as statutory that a general partner is a fiduciary to her limited partners. RCW 25.10.441. Mary Carlson formally admitted she was a fiduciary to HMD. CP 1722:2 ¶25. She did so, at least in part, to try to justify her secretly taking \$226,485.05 from the HMD account on November 19, 2013 and closing the account.<sup>16</sup> There is *no* evidence in the record that Mary Carlson was other than a fiduciary to HMD and its limited partners, the Continis, and any finding to the contrary would be (is) an abuse of discretion; she was a fiduciary as a matter of law, given her admitted status as a general partner (and her handling and control over the books and records of HMD).

The fiduciary duty of a general partner includes the duty:

**(a) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property...**

And,

(b) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a

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<sup>16</sup> Appendix 3, 161:2-5.

party having an interest adverse to the limited partnership;

RCW 25.10.441(2)(a). Furthermore, the general partner “shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.” RCW 25.10.441(4). That is because, “[o]nce the limited partner has joined the partnership he has no effective voice in the decision-making process. He must, then, be able to rely on the highest standard of conduct from the general partner. Any deviation from this must be clearly stated in terms that would give the limited partner the option of deciding whether or not, in the first instance, to join the partnership.” *Bassan v. Inv. Exch. Corp.*, 83 Wn.2d 922, 927–28, 524 P.2d 233, 238 (1974) (citing *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545 (1928)).

Based on these fundamental principles of partnership law, it was a breach of Ms. Carlson’s fiduciary duty to use HMD’s money for her own profit without disclosure to the Continis. And her failure to disclose prevented the statute of limitations from accruing on HMD’s claims against her.

The very fact that Mary Carlson asserted the statute of limitations defense demonstrates why “[t]he acts of partners serving in dual

relationships where their private motives may color their actions in their partnership capacity, must be closely scrutinized for possible breach of the fiduciary duty of partners.” *In re Wilson's Estate*, 50 Wn. 2d 840, 847, 315 P.2d 287 (1957). Mary Carlson transferred the money out of HMD into the Community farming business. Other than the checks and check registers themselves, she did not make even the most rudimentary entries or evidences of the transfers of the first \$153,400 from HMD; she booked the later \$165,000 in transfers as a payable note, but failed to create any actual note; The trial court observed: “The only notations that were provided were N/P S-80.” CP 216:16-17. There was *no* evidence that she or anybody else reported any of these transactions to the other partners, the Continis.

The general partner holds the property of the partnership “as trustee” for the partnership. RCW 25.10.441(2). It is blackletter law that “statutes of limitations do not begin to run as between trustees and cestuis so long as the trust relationship continues.” *Robbins v. Wilson Creek State Bank*, 5 Wn. 2d 584, 596-97, 105 P.2d 1107 (1940). The limitations period begins only “when the trustee repudiates the trust and notice of such repudiation is brought home to the beneficiary.” *Arneman v.*

*Arneman*, 43 Wn.2d 787, 797, 264 P.2d 256, 262 (1953).<sup>17</sup> Mary Carlson’s trust relationship with HMD continued throughout until her forced disassociation from HMD by the trial court’s order of September 25, 2015; “Mrs. Carlson’s interest is terminated.” CP 288:1-2. Again, there is *no* evidence in the record that the Continis received any notice of Ms. Carlson’s betrayal of trust before the Complaint in Intervention was filed in this case.

Put another way, the Community enterprise, once HMD funds were transferred to it, took on the Carlsons’ individual obligations, because “[o]ne who takes or purchases trust property with knowledge of the trust stands in the place of his grantor and is himself chargeable with the trust or, as sometimes expressed, is accountable as a trustee *ex maleficio*.” *Goodwin v. Am. Sur. Co. of New York*, 190 Wash. 457, 478, 68 P.2d 619 (1937). The Supreme Court eloquently explained why the cestui que trust is not time-barred as to such a transferee:

This is upon the principle that the title of the cestui que trust has not been affected by the transfer. [citations omitted] If the exception to the general rule were not effectual, then a trustee, **by his failure to bring suit to set aside his own wrongful act, participated in by a third party, could wreck an estate** and prevent a minor, or one suffering under

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<sup>17</sup> As to express trusts, this rule was codified at RCW 11.96A.070, under which, in the absence of a detailed written accounting to the trust beneficiaries, the statute begins to run only upon termination of the express trust.

some legal disability, from ever recovering, no matter how strong the justification. This would not be equity and, we think, should not be the law.

*Id.* at 478-79 (emphasis added).

Mary Carlson's failure to disclose was especially egregious given that Marla Contini was a general partner as well as a limited partner of HMD. Mary Carlson was therefore required to keep Marla Contini informed of significant transactions such as these loans.

**Each general partner** and the limited partnership **shall** furnish to a general partner:

- (a) **Without demand**, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter.

RCW 25.10.431(2) (emphasis added).

The trial court's decision to assign the debt to David Carlson rather than Mary Carlson because HMD was "his family," irrespective of the merits of that decision, missed the point for statute of limitations purposes. A "spouse is **always** separately liable for his own tort." *Brown v. Spokane Cty. Fire Prot. Dist. No. 1*, 21 Wn. App. 886, 888, 586 P.2d 1207, 1210 (1978) (emphasis added). And it is black-letter law that the Community was also responsible for either Carlson's breaches of fiduciary duty, which were committed for the Community's benefit in the course of prosecuting the Community's farming enterprise. *Clayton v. Wilson*, 168 Wn.2d 57,

63, 227 P.3d 278, 280–81 (2010). Indeed, the trial court expressly rejected Mary Carlson’s argument that although she knew about the transfers of money, she had been overawed by her husband: “the reality is...that throughout, she was a key part of the program.... [S]he had the ability to resist the movement of assets from South 80” to the rest of the Community enterprise (including the funds loaned by HMD). RP 297:21–298:16. Her breach of duty, regardless of which Carlson was ultimately assigned the debt in their dissolution, prevented the running of the statute of limitations.

**2. Alternatively, David Carlson’s Testimony Nullified or Revived the Statutory Period.**

Even if the statute of limitations had ever begun to run before the Commercial Case began, which it did not, the debt would have been revived by David Carlson’s unambiguous admission of the debt to the Community. As noted above, he clearly intended to have the loans paid back—unlike Mary Carlson, he even executed promissory notes for at least the latest ones. And on the witness stand, he told the truth, that the loans—specifically including the loans made from 2003 to 2009—were “still owing to HMD.” RP 566:15. As a member of the Community, as representative and manager of its community-property companies, the

borrower South 80 Orchards LP and Carlson Agribusiness LLC, he affirmed the debt.

Washington recognizes the equitable principle that: “if, after a wrongful withholding of property, the holder recognizes the equity of the wronged person and in substance asserts that he holds legal title in trust for the injured person, the statute of limitation does not operate against the beneficiary.” *Arneman*, 43 Wn. 2d at 799-800. Mary Carlson admitted (indeed, she insisted) that she was a general partner of HMD. David Carlson testified that he was the representative of the Estate of Hugh Carlson, a general partner of HMD. Hence, as discussed above, they admitted they were trustees for all of its property and for any profits or property gained from the conduct of the business of HMD. RCW 25.10.441(2). And David Carlson acknowledged the debt. RP 566:14-16. Thus, the statute of limitations does not operate.

Indeed, even had there not been a trust relationship, which there was, David Carlson’s testimony was also sufficient to satisfy RCW 4.16.280. That statute provides for revival of the statute of limitations upon a written and signed acknowledgement of the debt. RCW 4.16.280. That statute “is in the nature of a statute of frauds.” *J. A. Campbell Co. v. Holsum Baking Co.*, 15 Wn.2d 239, 256, 130 P.2d 333, 340 (1942) (contract waiving statute of limitations need not also acknowledge the

debt, as it provides sufficient certainty to satisfy the purpose of the revival statute). Division 1 of the Court of Appeals has held that “the testimony of [the defendant] in open court as to the details of the oral lease with option to purchase constitutes sufficient ‘memoranda’ or ‘writings’ to satisfy the statute of frauds, for we view recorded court testimony as equivalent to signed depositions.” *Powers v. Hastings*, 20 Wn. App. 837, 846, 582 P.2d 897 (1978) *aff’d*, 93 Wn. 2d 709, 612 P.2d 371 (1980). The same rule should apply here.

**3. Even If the Debts to HMD Lapsed Due to Mary Carlson’s Refusal to Act, She is Personally Liable.**

Mary Carlson, as general partner, had a statutory duty of loyalty and care to HMD and its limited partners at all material times. RCW 25.10.441. She had a duty not to deal with HMD in the conduct of its activities as or on behalf of a party with adverse interests. RCW 25.10.441(2)(b). While acting in her own interest does not *per se* violate that duty, RCW 25.10.441(5), she clearly acted adversely to HMD for herself and the Community if she let the debt lapse, and by asserting that defense. Her duty of care required her to avoid gross negligence, recklessness, or intentional misconduct—such as hiding the debt from the Limited Partners until it lapsed. RCW 25.10.441(3). Assuming, *arguendo*, that the statute of limitations barred collection of the loans from

HMD on her watch, it is clear, indeed axiomatic, that she violated those duties. Mary Carlson could have easily saved HMD's interests by simply acknowledging or reaffirming the debt to revive the statute of limitations. RCW 4.16.280. Instead, she did the exact opposite: while still General Partner, she asserted the statute of limitations defense under which HMD's loan claims were dismissed.

By engineering the dismissal of HMD's claims while still a General Partner, she intentionally acted adversely to HMD, and so became personally liable for breach of fiduciary duty. That the acts constituting her breach of duty continued throughout trial is no bar to recovery; quite the contrary. CR 15(c) ("When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.") The damages for her breach are the full amount that her failure cost HMD, which is the principal amounts of the pre-2012 loans, \$318,400, and, in the absence of an agreed interest rate, interest thereon from the date of each advance at the statutory rate of twelve percent. RCW 19.52.010.

#### **4. The Trial Court Confused the Issues Between the Two Cases.**

One is compelled to ask: Why did the learned trial court ignore the black letter law? As discussed above, the court found that South 80,

Carlson Agribusiness, and other entities, **all owned entirely by the Carlsons**, were commingled, with money transferring back and forth as if they were part of a single entity, and correctly held that all those entities and their assets were nothing more than community property to be divided in the Domestic Case. Unfortunately, the trial court—although recognizing that HMD was **not** community property—effectively treated it as if it were just another of the Carlsons’ 100-percent-owned entities. And unfortunately, the trial court treated HMD’s claims in the Commercial Case as if they were part of David Carlson’s arguments on property distribution in the Domestic Case. Consolidation for trial, of course, is a matter of judicial efficiency only—it cannot strip the parties of their individual identities or change any of their substantive rights. *Rash v. Providence Health & Servs.*, 183 Wn. App. 612, 626, 334 P.3d 1154, 1162 (Div. 3 2014). Yet in effect, that is just what happened.

Treating HMD as just another part of the community’s property was not consistent with the trial court’s own findings of fact, and not supported by the evidence in the record. Unlike the 100% percent-owned entities, money did not go into and come out of HMD “in a very cavalier and frivolous way, moving money back and forth”<sup>18</sup>—instead, money went one way: out of HMD to the Community. HMD had separate

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<sup>18</sup> CP 294:5-7.

property contributed by the late Hugh Carlson, and the proceeds of the sale of that property were traceable and kept in separate accounts, not commingled, until after they were loaned.<sup>19</sup>

The trial court may have been correct that the Carlsons, when they directed HMD to make a series of loans, used HMD as their personal “piggy bank,”<sup>20</sup> but the significance of that finding in the civil, corporate context was apparently lost amidst the evidence in the domestic context about the companies owned entirely by the Carlsons. For general partners to use limited partnership funds as a “piggy bank” without the limited partners’ knowledge is the very definition of a breach of fiduciary duty. The trial court’s factual finding that HMD’s funds were used as a piggy bank by the Carlsons required the court to reject, not to honor, any statute of limitations defense.

***3. Interest is Due to HMD from Mary Carlson for the Sequestered Funds for the Period of Sequestration.***

The trial court correctly returned the \$226,485.05 which Mary Carlson had taken from HMD, and correctly applied the statutory twelve percent interest rate, but erred in not applying that rate for the period while the money was in the registry of the court. Mary Carlson insisted on the money remaining in the court Registry until trial, and not in the possession

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<sup>19</sup> See, e.g. RE 130, 132, 133, 137 and 106.

<sup>20</sup> CP 294:4-5.

of HMD, even though it clearly belonged to HMD. RP 317:11-14, *et seq.* She created a period of forced forbearance by HMD—to which the prejudgment interest statute also applies. See, *Kahl v. Ablan*, 160 Wash. 201, 205–06, 294 P. 1010, 1012 (1931) (“the refusal of the appellants to pay the money on demand, which the commencement of the suit amounted to, was in the nature of the conversion for which the legal rate of interest, as the value of the use of money, was chargeable.”) HMD demanded the funds in its Complaint in Intervention. CP 1641-49.<sup>21</sup> Mary Carlson had in her power, every day from the time she took the funds on November 19, 2013 until the Court ordered them returned on September 25, 2015, to simply ask the court to release them. She elected not to do so, denying HMD the use of its funds for the whole period. Therefore, Ms. Carlson is liable for statutory interest upon the forced forbearance and inability to use the funds of HMD.

## V. CONCLUSION

For the reasons and upon the authorities set forth above, HMD should be awarded additional judgment principal amounts of \$153,400 and 165,000, jointly and severally, together with pre-judgment and post-judgment interest at the statutory rate, against Mr. and Ms. Carlson, and an

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<sup>21</sup> Specifically, without limitation, ¶¶ 11-14, 18-22, 24-27, 29-30, 32-34, and Prayer for Relief ¶ 2.

appropriate percentage of that judgment should be allocated to each of Mr. and Ms. Carlson. Additionally, HMD should have judgment in the amount of \$46,538.02, as interest on the distrained funds for the period January 8, 2014 to September 25, 2015, entered in the same manner.

Alternatively, the matter should be remanded to the trial court for further proceedings and directing entry of judgments as requested in the immediately preceding paragraph.

DATED this 8th day of May, 2017.

          /s/ R. Bruce Johnston            
R. Bruce Johnston, WSBA #4646  
Johnston Jacobowitz & Arnold, PC  
2701 First Ave, Suite 200  
Seattle, WA 98121  
(206) 866-3230  
(206) 866-3234 (Fax)  
bruce@rbrucejohnston.com  
*Counsel for Appellants*

**PROOF OF SERVICE**

The undersigned declares under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-entitled action.

On May 8, 2017, I served or caused to be served a copy of the foregoing document upon counsel for Respondents by hand and email at

John A. Maxwell  
230 S. Second St. #101  
Yakima, WA 98901  
*Counsel for Mary Carlson*

Sean Russel  
Stokes Lawrence Velikanje Moore & Shore  
120 N. Naches Ave  
Yakima, WA 98901  
*Counsel for Mary Carlson and South 80*

SIGNED this 8th day of May, 2017,

/s/ Emanuel Jacobowitz  
Emanuel Jacobowitz, WSBA #39991

No. 344436  
COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

---

CONSOLIDATED CASES

MARY ALICE CARLSON, Respondent, Cross-Appellant

v.

HUGH DAVID CARLSON, Appellant, Cross-Respondent

AND

HMD LIMITED PARTNERSHIP, Appellant

v.

MARY ALICE CARLSON and SOUTH 80 ORCHARDS LP,  
Respondents

---

**APPENDIX TO  
BRIEFS OF APPELLANTS  
HMD LIMITED PARTNERSHIP  
AND  
HUGH DAVID CARLSON**

---

R. Bruce Johnston, WSBA #4646  
JOHNSTON JACOBOWITZ & ARNOLD, PC  
2701 First Ave, Suite 200  
Seattle, WA 98121  
(206) 866-3230  
(206) 866-3234 (Fax)  
bruce@rbrucejohnston.com  
*Counsel for Appellant HMD Limited  
Partnership*

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## INTRODUCTION

In drafting the Opening Briefs of HMD Limited Partnership and of Hugh David Carlson, counsel for those Appellants determined that additional documents were required from the Clerk's Papers or as mathematical computations for the benefit of the court. Time did not allow filing a supplement to the Designation of Clerks Papers before filing of the Opening Briefs, and therefore this Appendix is supplied. A Supplement to the Clerk's Papers will be filed, as contemplated by the Court Rules, prior to the filing of these Appellants, responsive briefs or replies.

DATED this eighth day of May, 2017.

/s/ R. Bruce Johnston  
R. Bruce Johnston, WSBA #4646  
JOHNSTON JACOBOWITZ & ARNOLD, PC  
2701 First Ave, Suite 200  
Seattle, WA 98121  
(206) 866-3230  
(206) 866-3234 (Fax)  
bruce@rbrucejohnston.com  
*Counsel for Appellant HMD Limited Partnership*

**PROOF OF SERVICE**

The undersigned declares under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-entitled action.

On May 8, 2017, I served or caused to be served a copy of the foregoing document upon counsel for Respondents by regular U.S. mail, postage prepaid, at:

John A. Maxwell  
230 S. Second St. #101  
Yakima, WA 98901  
*Counsel for Mary Carlson*

Sean Russel  
Stokes Lawrence Velikanje Moore & Shore  
120 N. Naches Ave  
Yakima, WA 98901  
*Counsel for Mary Carlson and South 80*

SIGNED this 8th day of May, 2017,

/s/ Emanuel Jacobowitz  
Emanuel Jacobowitz, WSBA #39991

# APPENDIX -- 1

# APPENDIX -- 1

HMD Loans  
Principal And Interest to  
May 8, 2017

Date of Loan	Interest Rate	Principal of Loan	Interest to 5/8/2017	Total of Interest and Principal
				HMD loans
7/14/2009	0.12	\$100,000.00	\$93,863.01	\$193,863.01
8/5/2009	0.12	\$55,000.00	\$51,226.85	\$106,226.85
9/2/2009	0.12	\$10,000.00	\$9,221.92	\$19,221.92
Total 2009		\$165,000.00	\$154,311.78	\$319,311.78
6/3/2003	0.12	\$60,000.00	\$100,366.03	\$160,366.03
6/18/2003	0.12	\$45,000.00	\$75,052.60	\$120,052.60
7/22/2003	0.12	\$10,000.00	\$16,566.58	\$26,566.58
7/30/2003	0.12	\$1,400.00	\$2,315.64	\$3,715.64
10/8/2003	0.12	\$12,000.00	\$19,572.16	\$31,572.16
3/2/2007	0.12	\$25,000.00	\$30,575.34	\$55,575.34
Total '03-'07		\$153,400.00	\$244,448.35	\$397,848.35
TOTAL		\$318,400.00	\$398,760.13	\$717,160.13

## APPENDIX -- 2

## APPENDIX -- 2

HMD Sequestered Funds  
Interest Calculation  
January 8, 2014 to September 25, 2015

Dates	Interest Rate	Principal	Accrued Interest	Total
Interest paid to: 1/8/2014 Paid: 9/25/2015	0.12	\$226,485.05	\$46,538.02	\$273,023.07

## APPENDIX -- 3

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## APPENDIX -- 3

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

In Re the Marriage of )  
 )  
MARY ALICE CARLSON, )  
 )  
Petitioner, )  
 )  
and )  
 )  
HUGH DAVID CARLSON, )  
 )  
Respondent. )

NO. 13-3-00578-9

DEPOSITION UPON ORAL EXAMINATION OF  
MARY ALICE CARLSON

April 4, 2014

Yakima, Washington

TAKEN AT THE INSTANCE OF THE RESPONDENT

REPORTED BY:  
DORENE BOYLE

1 APPEARANCES:

2 FOR THE PETITIONER:

3 MR. JOHN A. MAXWELL, JR.  
4 Meyer, Fluegge & Tenney  
5 Attorneys at Law  
6 230 South Second Street  
7 Yakima, Washington 98901  
8 509.575.8500

9 FOR THE RESPONDENT:

10 MS. AMY L. REMY  
11 Finney, Falk, Naught & Remy  
12 Attorneys at Law  
13 117 North Third Street, Suite 201  
14 Yakima, Washington 98901  
15 509.453.5604

16 ALSO PRESENT:

17 MS. ANGELA MARSH, Finney, Falk, Naught & Remy  
18  
19  
20  
21  
22  
23  
24  
25

4-4-14 Mary Carlson, (Page 5:14 to 5:22)

5

14 EXAMINATION

15 BY MS. REMY:

16 Q. My name is Amy Remy, and I represent David Carlson.

17 And you are Mary Carlson; is that correct?

18 A. Yes.

19 Q. Can you please state and spell your full name for the  
20 record.

21 A. Mary Carlson -- Mary Alice Carlson, M-A-R-Y,

22 A-L-I-C-E, C-A-R-L-S-O-N.

\* \* \* \* \*

4-4-14 Mary Carlson, (Page 13:18 to 13:23)

13

18 Q. And where do you currently live?

19 MR. MAXWELL: Did you say 1996?

20 THE DEPONENT: In '86 I moved to Yakima.

21 A. I live at 1214 Lila Place in Yakima.

22 Q. And do you own or do you rent?

23 A. I rent.

\* \* \* \* \*

4-4-14 Mary Carlson, (Page 44:19 to 44:21)

44

19 Q. Okay. So let's talk about that. How did you acquire

20 500,000 in savings?

21 A. Out of my wages.

\* \* \* \* \*

4-4-14 Mary Carlson, (Pages 48:24 to 49:5)

48

24 Q. Let's move forward in time to about 2012, 2013. Per

25 your petition, you are saying that the date of

49

1 separation -- Let me refer to it here so we've got it

2 exactly. Okay. You're saying that the date of

3 separation was August, 2012. Is that still your

4 position today?

5 A. It was the end of August, yes.

\* \* \* \* \*

4-4-14 Mary Carlson, (Page 66:1 to 66:5)

66

1 Q. Mary, before we went on break for lunch you said

2 something into the record that you didn't want either

3 a divorce or a legal separation. Is that your

4 position today?

5 A. Yes.

\* \* \* \* \*

- -1 Mary Carlson, Pages 68:21 to 69:1)

68

- 21 Q. Okay. Getting back to your testimony earlier, it was  
22 unclear to me when you moved out of the house. Can  
23 you tell me when that was?  
24 A. The end of August or the first of September.  
25 Q. And this was in 2000 and --?

69

- 1 A. '12.  
\* \* \* \* \*

4-4-14 Mary Carlson, (Page 71:16 to 71:24)

71

- 16 Q. Can you review this document and tell me what it is,  
17 Mary.  
18 A. It's a Financial Declaration.  
19 Q. Okay. And is that your signature there on the sixth  
20 page?  
21 A. Yes.  
22 Q. Okay. If you go to page No. 2 under 3.1, 3.1 "b" says  
23 your wages and salaries are \$435.  
24 A. That's incorrect. It should have been a week.  
\* \* \* \* \*

4-4-14 Mary Carlson, (Page 72:11 to 72:23)

72

- 11 Q. Topp Creek, okay. Then it says other income is \$1,210  
12 there under letter "g."  
13 A. That was L & I.  
14 Q. And that amount, is that per month or is that per  
15 week?  
16 A. That was every two weeks.  
17 Q. Okay, per two weeks. Okay.  
18 A. No, it wasn't. I don't -- It should be 1,600. I was  
19 getting \$1,600 a month from L & I until the end of  
20 July.  
21 Q. Okay. So that amount there in your declaration of  
22 \$1,210 is incorrect?  
23 A. Yeah. It should be 1,600.  
\* \* \* \* \*

4-4-14 Mary Carlson, (Pages 73:19 to 74:10)

73

- 19 Q. And the insurance of \$500 per month. is that still  
20 accurate?  
21 A. No.  
22 Q. How much insurance do you pay?  
23 A. I don't pay vehicle insurance. The licenses are  
24 about -- between the three vehicles at that time, one

25 was 57 and one was 87 and the motor home was I'm going  
74

1 to guess 175, but that was licenses. And it's not per  
2 month, it's per year.

3 Q. So \$500 per month is incorrect. Do you pay any  
4 insurance, vehicle insurance right now?

5 A. Vehicle, no.

6 Q. Who pays your car insurance?

7 A. The company.

8 Q. Which company?

9 A. Well, it's now Carlson Agribusiness. It was South 80  
10 Orchards, and before that it was Carlson Orchards.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 77:9 to 77:22)**

77

9 Q. So is there a balance on that American Express?

10 A. There might be a little bit on there now, but I always  
11 pay it at the end of the month. So I don't keep a  
12 balance on it, no.

13 Q. And the Discover card, when did you open that?

14 A. Mid '80s.

15 Q. Was there a balance on that last year?

16 A. No.

17 Q. So you said you had two Bank of America cards. Under  
18 5.11, does that Bank of America credit card balance of  
19 8,000 list one card or both cards?

20 A. Both.

21 Q. Okay. So you said now there's \$20,000.

22 A. Between 20 and 21.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 80:18 to 80:25)**

80

18 Q. Okay. So none of your son's stuff had been hauled off  
19 at that point; is that right?

20 A. No. I thought it had when I opened the garage and it  
21 was gone, but then apparently they had moved it back  
22 in the back.

23 Q. Okay. So all of your son's stuff was still there; is  
24 that right?

25 A. It still is.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 89:10 to 90:1)**

89

10 Q. Do you currently have a key for the marital residence?

11 A. No.

12 Q. Do you have any garage door openers?

13 A. No.  
14 Q. How about keys for any of the filing cabinets?  
15 A. No.  
16 Q. Keys for any of the safes in the house?  
17 A. There isn't any safes that I know of.  
18 Q. Why don't you have keys or garage door openers right  
19 now?  
20 A. I lost my keys clear back in 2010. And I was going to  
21 pick him up and somewhere between the house and Parker  
22 Heights I lost my keys and I've never -- just never  
23 had any since.  
24 And the house key, because on the 16th of  
25 December, when he told me I couldn't be there, then he  
90  
I changed the locks that same day.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 92:10 to 92:14)**

92

10 Q. What about a motor home?  
11 A. I don't have a motor home anymore.  
12 Q. Okay. When was that sold?  
13 A. Last summer. May, June. I don't remember. May or  
14 June.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 93:7 to 94:2)**

93

7 Q. Okay. How many secondary residences did you  
8 accumulate while you were married?  
9 A. I bought a house up at Seven Bays up in Davenport,  
10 Lake Roosevelt.  
11 Q. Is that in Idaho or is that in Washington?  
12 A. It's in Washington.  
13 Q. And how much was the house? How much did you pay for  
14 it?  
15 A. I think I paid \$49,000, maybe 59. I don't remember.  
16 Q. 59,000?  
17 A. Somewhere between 49 and 59. I do not remember.  
18 Q. How many square feet is it?  
19 A. I don't know. It's a 14 by 60 mobile home that they  
20 took one side out of and doubled the size. They  
21 built -- stick built on the other side of it.  
22 Q. And did you buy it outright?  
23 A. No. I pay payments on it.  
24 Q. And where did that money come from?  
25 A. Out of my wages.

94

1 Q. From your wages?

2 A. Yes.

\* \* \* \* \*

4-4-14 Mary Carlson, (Page 95:8 to 95:25)

95

8 Q. And where did the rest of the money go from your son's  
9 life insurance?

10 A. Well, I bought Dave a car for his birthday, Cadillac  
11 Escalade, one year.

12 Q. Okay.

13 A. That was 37,000 plus the tax and license.

14 I took everybody, paid for everybody to go to  
15 Disneyland in 2006, all the kids. We all went. And  
16 that was an expensive trip.

17 Q. Okay.

18 A. I paid for my sister, \$5,000 for her plane ticket and  
19 hotels and stuff, when she came out for Joe's funeral.

20 And I went on vacation three years. And I bought  
21 that lot, a lot up on 58th Avenue.

22 Q. How much was the lot, did the lot cost?

23 A. 70,000.

24 Q. Did you finance that or pay for it outright?

25 A. I paid for it.

\* \* \* 4-4-14 Mary Carlson, (Page 95:8 to 95:25)

95

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25 A. I paid for it.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 96:22 to 97:5)**

96

- 22 Q. Why would you want something together when you were  
23 aware of the situation and the fact he wanted  
24 everything separate? Why would you want something  
25 together with him, then?

97

- 1 A. I thought it would make him happy. And it did, I  
2 thought. For the next year everything was perfect.  
3 Q. Which year is that you're talking about?  
4 A. From 2009 until September of 2010. Or at least I  
5 thought it was perfect.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 100:9 to 102:1)**

100

- 9 Q. Now, when you went to the house at any point last  
10 year, did you ever take any documents of any kind?  
11 A. After the restraining order or before?  
12 Q. At any point last year.  
13 A. Yes, at one time I did.  
14 Q. Okay. What kind of documents did you take?  
15 A. All of my L & I documents and the folders that were my  
16 personal bills, and my legal folder and my car folder  
17 and -- or files, excuse me, that were in the drawer.  
18 And I put them in a box. And Dave went through the  
19 box before I left. He said, What are you taking? And  
20 I told him and I said, Look through it if you have a  
21 problem with it, and he went through the box.  
22 Q. Did you go on the computer and take any information

23 off of the computer?

24 A. No.

25 Q. Did you touch the computer?

101

1 A. Not after he told me to -- Not after June, no.

2 Q. You never printed anything, any documents out from  
3 that?

4 A. No.

5 Q. Did you put any information from the computer onto any  
6 sort of a removable drive like a thumb drive or  
7 something?

8 A. No.

9 Q. Did you at any time damage the computer?

10 A. No.

11 Q. Did you try and move it or pick it up or anything like  
12 that?

13 A. No.

14 Q. Okay. Did you take those checks that you were talking  
15 about right there on the desk?

16 A. My checks?

17 Q. What checks were your checks?

18 A. Are you talking about my personal checks that were in  
19 the filing cabinet drawer last May when I wanted in  
20 there?

21 Q. Tell me about those.

22 A. I used the last check in my checkbook and I needed  
23 another check and that's where they were kept.

24 Q. Okay. So we're talking about blank checks that you  
25 can write out?

102

1 A. Yes.

\*\*\*\*\*

**4-4-14 Mary Carlson, (Pages 102:10 to 103:19)**

102

10 Q. Is there as a safe deposit box or was there some sort  
11 of a safe place?

12 A. Well, there was a safety deposit box. As a matter of  
13 fact, I cleaned it out last week. I had forgotten  
14 about it and Solarity called and reminded me, but ours  
15 was left.

16 Q. There was a safe deposit box at a bank?

17 A. There was one at Solarity.

18 Q. Okay.

19 A. I'd forgotten it was there, nobody has touched it in  
20 so long.

21 Q. And you went there last week?

22 A. Yes.  
23 Q. And what was in it?  
24 A. They wanted the boxes cleaned out because they don't  
25 want them -- they're not -- they don't want them. At  
103  
1 the branch on Fifth they're not handling them anymore.  
2 Q. Okay. What was in there?  
3 A. I'm not sure what all was in there. I just threw it  
4 all in a bag and haven't gone through it all, but  
5 there's -- his dad had some old coins, and they're in  
6 there. They're not all there, but there's a few in  
7 there. The notes for when I loaned the money to the  
8 company are in there, which I was glad to see. His  
9 dad's wallet was in there. And there was some papers  
10 in there. I didn't look at them yet.  
11 Q. When last week did you go in?  
12 A. I don't remember. It must have been Monday or  
13 Wednesday last week. I'm not sure.  
14 Q. And in whose name was the safety deposit box in?  
15 A. Mine.  
16 Q. Yours alone?  
17 A. Yeah. But Dave was -- Dave could get in there. He's  
18 got a key and he could get in there too. He was  
19 authorized on there.  
\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 105:7 to 105:12)**

105

7 Q. Is it pretty safe to say Dave doesn't like to deal  
8 with technology or the banks, when it comes to money?  
9 A. He uses his credit card sometimes.  
10 Q. What about a debit card?  
11 A. I don't think he's ever had a debit card. Not that I  
12 know of.  
\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 109:21 to 110:15)**

109

21 Q. Did you get any time loss from L & I?  
22 A. Yes.  
23 Q. How much was your time loss?  
24 A. It was 65 percent of my wages. And then they  
25 increased it as the cost of living went up, I guess.

110

1 Q. Okay. And so how much was that, 65 percent of your  
2 wages in 2003?  
3 A. I don't remember what I was getting to start with, but  
4 I know it ended up I was getting 3,600.

- 5 Q. Okay. When was it you were getting 3,600?  
6 A. A couple years ago, anyway.  
7 Q. Did you ever get permanent disability or a pension?  
8 A. No.  
9 Q. And why not?  
10 A. Because I appealed their decision to close the claim.  
11 Q. Okay. When was that appeal?  
12 A. They closed it July 31st in 2013, and I think I got  
13 the appeal done in September.  
14 Q. So is the appeal pending?  
15 A. Yes. I have an attorney working on it.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 117:16 to 119:8)**

117

- 16 Q. Okay. Let's talk about the savings that you  
17 accumulated during the marriage that you spoke of  
18 earlier. Where was the savings account?  
19 A. I can't remember where I had them. I don't remember  
20 where I had a bank account first. But we switched to  
21 Yakima Valley Credit Union when they started, and I've  
22 had it there ever since.  
23 Q. Okay.  
24 A. There and Yakima Federal.  
25 Q. And where did the money come from that you put in that

118

- 1 account?  
2 A. Out of my wages.  
3 Q. Anywhere else?  
4 A. A little bit of L & I.  
5 Q. And how much money is in that account today?  
6 A. None.  
7 Q. Where did it go?  
8 A. I used it to finance the farm so we could keep  
9 farming. When I took over -- Actually I started using  
10 it before I took over down there.  
11 Q. Okay. Which farm?  
12 A. South 80 Orchards. It's the only farm we have.  
13 Q. When did you loan South 80 Orchards this money?  
14 A. Off and on over the course of four years there.  
15 Q. When did you start giving South 80 this money?  
16 A. I should have looked at those notes. It was late  
17 2004, early 2005. It was when we were pruning that  
18 crop, so it was either the end of the one year or the  
19 first of the following year.  
20 Q. So in 2004 to 2005, how much of your savings did you  
21 put into South 80?

22 A. I don't know how to answer that because if money came  
23 in and there was extra money, I would pay the loan  
24 down. And if there wasn't any money to use to farm  
25 with, then I'd end up putting more in. So I put it

119

1 back and forth. But there's a note for every one.  
2 And there's notes on it when it was paid back and what  
3 wasn't.

4 Q. Okay.

5 A. I don't know. I guess all I can do is copy the notes.

6 Q. Let's start from this way: Did you make any -- Did  
7 you pay South 80 any money from your savings account  
8 before 2004?

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 119:17 to 120:14)**

119

17 Q. Let's back up, then. When was South 80 formed?

18 A. Around '98. It could be '97, could be '99.

19 Q. Is it a corporation, a partnership, limited liability  
20 company?

21 A. It's a limited partnership.

22 Q. And who were the partners the date of formation?

23 A. Myself, Nicholas Carlson, and Sandra Bennetti. And  
24 Dave put the money and gave Nick \$1,000 to put in.  
25 Sandra Bennetti put her own money in, and I put my own

120

1 money in.

2 And Paul Larson was actually the one that set it  
3 up, and he was -- it started out with him on it until  
4 we agreed what was going to be what.

5 Q. Mary, how much money did you put in?

6 A. \$6,000.

7 Q. How much money did Ms. Bennetti put in?

8 A. There's an argument on that. I think that she put in  
9 \$3,000, and so does Dave, but her kids keep saying  
10 that she put in \$6,000, so I'm not positive on that.

11 So either three or six.

12 Q. So South 80 was formed with 10 to 13 thousand dollars  
13 back in 1998?

14 A. That was the initial start-up money.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 122:11 to 122:13)**

122

11 Q. Okay. Are you a limited or a general partner of South  
12 80?

13 A. General.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 123:3 to 123:6)**

123

- 3 Q. So what land does South 80 currently own or lease?  
4 A. It no longer owns any land.  
5 Q. Okay.  
6 A. But it still leases the four 80-acre apple orchards.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 128:3 to 128:8)**

128

- 3 Q. Who was Carlson Orchards, if it was not Dave?  
4 A. Carlson Orchards, Incorporated was his company.  
5 Q. It was Dave's company.  
6 A. Yes, it was.  
7 Q. Okay.  
8 A. One hundred percent.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 139:22 to 140:8)**

139

- 22 Q. Okay. So did you do the tax returns for South 80 in  
23 2011?  
24 A. No.  
25 Q. Who that did the tax returns then?

140

- 1 A. Bill Halsey.  
2 Q. And who signed the tax returns?  
3 A. I don't know.  
4 Q. Okay. Let's go to Exhibit No. 11.  
5 A. It's not signed. I already looked. But I can tell  
6 you I didn't sign them in 2012.  
7 Q. Okay.  
8 A. So how he got them signed, I'm not sure.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 142:6 to 142:7)**

142

- 6 Q. Did you sign the 2012 tax returns for South 80?  
7 A. No, I didn't.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 145:8 to 145:17)**

145

- 8 Q. You couldn't deal with who "him" in 2008?  
9 A. With Dave.  
10 Q. Okay. And what do you mean you backed off?  
11 A. He wanted me out of the orchards and I stayed out.  
12 Q. Okay. So who was then running the orchards after  
13 2008?

- 14 A. Nick and Dave.  
15 Q. Nick and Dave, okay. So when was the last time that  
16 you, Mary, was running the orchards?  
17 A. 2008.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 146:3 to 146:6)**

146

- 3 Q. And how was your pain level then, in 2008?  
4 A. Pretty similar to what it is these days.  
5 Q. Okay. So were you on narcotic pain relievers?  
6 A. Yes, I was.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 148:24 to 149:5)**

148

- 24 Q. So do the Campbells still have an interest in C & C?  
25 A. No.

149

- 1 Q. And when did they stop having an interest in it?  
2 A. I bought their interest in 2001. Late 2001 I think it  
3 was.  
4 Q. With what money?  
5 A. Out of my savings.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 149:25 to 150:18)**

149

- 25 Q. Okay. So how much does it cost to moor the boat?

150

- 1 A. About \$600 a month.  
2 Q. And where is the boat moored?  
3 A. At Elliott Bay. Elliott Bay Marina, Seattle.  
4 Q. And how much does it cost to insure the boat?  
5 A. I think it's about 1,400 a year, but I don't remember.  
6 I don't know.  
7 Q. When was the last time you paid the moorage fees on  
8 the boat?  
9 A. I paid them the majority of the time when he was gone,  
10 and then -- I don't know when the last time I paid a  
11 payment was.  
12 Q. Okay. What about --  
13 A. But I know it was prior to 2010.  
14 Q. What about the boat insurance, when was the last time  
15 you paid that?  
16 A. I paid it in 2000 -- up to 2008. And then 2009 it was  
17 paid through the company. 2010 it was paid through  
18 the company. And after that, I don't know.

\* \* \* \* \*

4-4-14 Mary Carlson, (Pages 151:2 to 152:6)

151

- 2 Q. Is there still a loan out? Are there still payments  
3 made on the boat?  
4 A. Yes.  
5 Q. And who's the loan through?  
6 A. Key Bank.  
7 Q. Who's paying the loan now?  
8 A. He is now.  
9 Q. When did that change?  
10 A. 2012.  
11 Q. Why did that change?  
12 A. Because of his accusations.  
13 Q. What accusations?  
14 A. Because he accused me of taking money out of the one  
15 of the companies to buy that place out there. And  
16 after that, I quit doing anything.  
17 Q. Okay. So when did he accuse you of buying that place  
18 out there?  
19 A. What?  
20 Q. When did he accuse you of buying that place out there?  
21 You said he accused you of buying that place.  
22 A. I told you he accused me of stealing money out of one  
23 of the companies to buy that place, \$200,000.  
24 Q. Okay. So when did he accuse you of stealing \$200,000?  
25 A. In December of 2011.

152

- 1 Q. So what did he say that you used that money for?  
2 A. To buy that house out there.  
3 Q. Which house?  
4 A. On Lateral B.  
5 Q. Oh, the marital residence.  
6 A. My house.

\* \* \* \* \*

4-4-14 Mary Carlson, (Pages 155:15 to 156:5)

155

- 15 Q. Okay. Let's talk about HMD. Go to Exhibit No. 7  
16 here. Now, did you help prepare this tax return for  
17 HMD?  
18 A. No.  
19 Q. Okay. Who did?  
20 A. Bill Halsey.  
21 Q. Did you give Halsey any information?  
22 A. No. Dave and Kathy Nickoloff are the only ones that  
23 are up there.  
24 Q. All right. What share is the Estate of Hugh Carlson

25 in HMD?

156

- 1 A. Hugh A. Carlson or Hugh D. Carlson?  
2 Q. Hugh A. Carlson. The Estate of Hugh A. Carlson.  
3 A. Oh, you said estate.  
4 Q. Yeah.  
5 A. Eighty percent.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 157:5 to 158:2)**

157

- 5 Q. But at any point, did you do any business for HMD?  
6 A. Yeah.  
7 Q. What did you do?  
8 A. Well, I did all the books for several years. That's  
9 about all I ever did.  
10 Q. What years did you do the books for HMD?  
11 A. I kept them up until -- All I did really was enter the  
12 stuff into the general ledger.  
13 Q. And what years did you do that?  
14 A. I did that clear through 2011. Actually I did it  
15 through May of 2000 -- No, I didn't. I only did it  
16 through 2011.  
17 Q. Okay. So what else did you do outside of enter  
18 numbers into a general ledger for HMD?  
19 A. That's about all.  
20 Q. Okay.  
21 A. I paid their bills if they had bills.  
22 Q. What sort of bills are we talking about?  
23 A. Property tax. That's it. There was nothing there to  
24 do.  
25 Q. Nothing to do.

158

- 1 A. Except when he sold property. Then that money went in  
2 and out.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Page 161:2 to 161:5)**

161

- 2 Q. Under what authority did you take the money out and  
3 close the account?  
4 A. I was one-half of the general partnership. Marla was  
5 the other.

\* \* \* \* \*

**4-4-14 Mary Carlson, (Pages 161:16 to 162:19)**

161

- 16 Q. When did it sell?  
17 A. He sold that in early 2010, spring of 2010. He did

18 give t em some.  
19 Q. Okay. What did he give them?  
20 A. I don't know exactly how much he gave them. But he  
21 did not give them all of their share. And he had  
22 already put more than half of it into his own -- into  
23 Carlson Agribusiness by the end of 2012. Maybe it was  
24 2012 when this whole thing --.

25 Q. So you weren't going to take this money to repay  
162

1 yourself the loan that you said the company owes you?  
2 A. No.  
3 Q. It was never your intention to keep this money?  
4 A. No. It belongs to the partners. And Dave has already  
5 had more than his share. Part of it does belong to  
6 me.

7 Q. What about the estate of Hugh A. Carlson?

8 A. What about it?

9 Q. Doesn't that partner, the 80 percent limited partner  
10 there, have any share of that money, that estate?

11 A. And who's the estate?

12 Q. Who is the estate?

13 A. Who is it?

14 Q. Who is it? I'm asking the questions today.

15 A. It's Marla and I.

16 Q. Oh, it is?

17 A. We're the general partners still taking care of it.

18 Q. But who's the personal representative of the estate?

19 A. Dave was.

\*\*\*\*\*

**4-4-14 Mary Carlson, (Page 164:16 to 164:20)**

164

16 Q. Okay. When did you learn that he definitely had a  
17 girlfriend?

18 A. In October.

19 Q. October of 2013?

20 A. Yes.

\*\*\*\*\*

**4-4-14 Mary Carlson, (Pages 164:21 to 165:7)**

164

21 MS. REMY: All right. I don't have any  
22 other questions at this moment.

23 MR. MAXWELL: Okay. I don't have any  
24 questions. She'll review.

25

165

1 (PETITIONER'S EXHIBIT NOS. 1-14.

2 MARKED FOR IDENTIFICATION).  
3  
4 (DEPOSITION CONCLUDED AT  
5 4:18 P.M.)  
6  
7 (SIGNATURE RESERVED.)

## APPENDIX -- 4

## APPENDIX -- 4

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

SOUTH 80 ORCHARDS LIMITED )  
PARTNERSHIP, a Washington )  
limited partnership, )

Plaintiff, )

vs. )

NO. 13-2-04263-0

H. DAVID CARLSON and CARLSON )  
AGRIBUSINESS, LLC, a )  
Washington limited liability )  
company, )

Defendants, )

vs. )

MARY A. CARLSON and SOUTH 80 )  
ORCHARDS LIMITED PARTNERSHIP, )

Third-Party Defendants. )

HMD LIMITED PARTNERSHIP, a )  
Washington limited partnership, )

Intervenor Plaintiff, )

MARY A. CARLSON and SOUTH 80 )  
ORCHARDS LIMITED PARTNERSHIP, )

Third-Party Defendants. )

DEPOSITION UPON ORAL EXAMINATION OF  
MARY ALICE CARLSON

April 9, 2014

Yakima, Washington

TAKEN AT THE INSTANCE OF THE DEFENDANTS AND  
INTERVENOR PLAINTIFF

REPORTED BY:  
DORENE BOYLE

1 APPEARANCES:

2 FOR THE PLAINTIFF and THIRD-PARTY DEFENDANTS:

3 MR. SEAN RUSSEL  
4 MR. ANDRE M. PENALVER  
5 Stokes, Lawrence, Velikanje, Moore & Shore  
6 Attorneys at Law  
7 120 North Naches Avenue  
8 Yakima, Washington 98901  
9 509.853.3000  
10 Sean.russel@stokeslaw.com  
11 Andre.penalver@stokeslaw.com

12 FOR THE DEFENDANT H. DAVID CARLSON:

13 MS. AMY L. REMY  
14 Finney, Falk, Naught & Remy  
15 Attorneys at Law  
16 117 North Third Street, Suite 201  
17 Yakima, Washington 98901  
18 509.453.5604  
19 Amy@ffnrlaw.com

20 FOR THE DEFENDANT CARLSON AGRIBUSINESS, LLC and  
21 INTERVENOR PLAINTIFF HMD LIMITED PARTNERSHIP:

22 MR. R. BRUCE JOHNSTON  
23 Attorney at Law  
24 2701 First Avenue, Suite 340  
25 Seattle, Washington 98121  
206.866.3230  
Bruce@rbrucejohnston.com

4-9-14 Mary Carlson, (Page 5:14 to 5:18)

5

14 EXAMINATION

15 BY MR. JOHNSTON:

16 Q. Good morning. Would you please tell us your name and  
17 spell the last name for the reporter.

18 A. Mary A. Carlson, C-A-R-L-S-O-N.

\* \* \* \* \*

4-9-14 Mary Carlson, (Pages 10:25 to 12:16)

10

25 Q. You said there was a lease in regard to the Sno Valley

11

1 property with HMD partnership. Is that lease a lease,  
2 to the best of your recollection, between South 80 and  
3 HMD?

4 A. Yes.

5 Q. And having not seen it for over 11 years, do you have  
6 a clear recollection of what that lease provided?

7 A. Yes.

8 Q. And would you tell us, please, what it provided.

9 A. Well, I won't say I have a clear one. But it was a  
10 35-year lease from HMD to South 80 Orchards where  
11 South 80 Orchards would farm the property.

12 Q. And what was the basis of the lease payment? Was it a  
13 percentage of gross, a percentage of net, or was it a  
14 fixed per acre rental?

15 A. It was none of the above. South 80 Orchards was to  
16 farm the lease, pay the expenses, everyday farming  
17 expenses, and it would retain the returns.

18 Q. South 80 would retain the returns; is that right?

19 A. Yes.

20 Q. So that, although the property was owned by HMD, and  
21 which at that time -- Was Mr. Hugh Carlson, that is,  
22 Dave's father, alive at the time this lease was  
23 entered into?

24 A. No, he wasn't. He passed away in '99.

25 Q. And so who was it that signed the lease on behalf of

12

1 HMD?

2 A. David Carlson.

3 Q. Do you recall whether or not the signatures on that  
4 lease were notarized?

5 A. No.

6 Q. And --

7 A. I mean, no, I don't believe they were.

8 Q. Okay. And do you know whether or not there was ever

9 an amendment to that lease?  
10 A. No.  
11 Q. Are you aware of whether or not the existence of that  
12 lease has ever been discussed at a meeting of the  
13 general partners of HMD?  
14 A. No.  
15 Q. You're not aware one way or the other?  
16 A. No.  
\* \* \* \* \*

4-9-14 Mary Carlson, (Page 13:20 to 13:22)

13

20 Q. Okay. And how much was paid, to the best of your  
21 recollection, for that property? [Sno-Valley]  
22 A. I have no idea. I can't remember.  
\* \* \* \* \*

4-9-14 Mary Carlson, (Page 15:5 to 15:8)

15

5 Q. Do you have any question that Mr. David Carlson was  
6 the executor and therefore in control of HMD, which  
7 was majority owned by the Estate of Hugh Carlson?  
8 A. Yes, he was in control of it.  
\* \* \* \* \*

4-9-14 Mary Carlson, (Pages 18:5 to 20:17)

18

5 Q. And attached to that is as Exhibit D a document  
6 entitled Second Addendum to Partnership Agreement of  
7 HMD Limited Partnership, dated December 22nd, 2000.  
8 Is that the addendum that you have indicated that  
9 Mr. Beyer prepared and that was signed around that  
10 time?  
11 A. Yes.  
12 Q. And if we look at the second page of that, it provides  
13 that the general partners are the Estate of Hugh A.  
14 Carlson, at two and a half percent, Mary Carlson, as  
15 her separate estate, for two and a half percent, and  
16 Marla R. Contini for two and a half percent, correct?  
17 A. Correct.  
18 Q. So in terms of the general partnership interest, you  
19 didn't have 50 percent of the general partnership  
20 interest; you had 33 and a third percent, correct? Of  
21 the general partnership.  
22 A. I don't know. I think you're confusing me.  
23 Q. It says --  
24 A. Well, yeah, because the estate would still have some.  
25 Q. Well, doesn't it say specifically in the document that

19

1 you signed that the Estate of High A. Carlson had a  
2 general partnership interest of 2.5 percent?  
3 A. Yes.  
4 Q. And David Carlson was then the executor of the Estate  
5 of High A. Carlson, correct?  
6 A. Yes.  
7 Q. So he had the power to act as a general partner of HMD  
8 at that time, correct? Yes or no.  
9 A. When he transferred it to me and Marla, yes.  
10 Q. When he transferred what? I thought you said this was  
11 the document by which he transferred two and a half  
12 percent of the general interest to you.  
13 A. He wanted his name off of it.  
14 Q. Is there another document besides this addendum that  
15 further changed the general partnership array in HMD  
16 that you are aware of?  
17 A. No.  
18 Q. Okay. As far as you're concerned and you've  
19 testified, this is the document which you believe sets  
20 forth the general partnership control of HMD, correct?  
21 A. Correct.  
22 Q. Okay.  
23 A. This is the last one that I signed.  
24 Q. And do you know whether or not today Mr. Dave Carlson  
25 is and remains the executor of an open estate in the

20

1 Superior Court for Yakima County for the Estate of  
2 Hugh Carlson?  
3 A. It was my understanding that he and Marla were both  
4 there, but I don't know about that.  
5 Q. Have you ever checked into that?  
6 A. No.  
7 Q. Have you at any time in the last year discussed with  
8 anyone who the general partnerships of HMD are?  
9 A. Yes.  
10 Q. And who have you discussed that with?  
11 A. My attorneys.  
12 Q. Anyone else?  
13 A. Not to my knowledge.  
14 Q. You haven't discussed it with Marla Contini, correct?  
15 A. No.  
16 Q. And you haven't discussed it with Dave Carlson?  
17 A. No.

\* \* \* \* \*

4-9-14 Mary Carlson, (Pages 25:16 to 26:8)

25

16 Q. Let's go to "d," 1601 Lateral B, what is that?  
17 A. One of them is -- That one and the other one both  
18 are -- and the next one are property on Lateral B  
19 which I bought with my son's life insurance in 2009.  
20 Q. And so if we talk about "d" and "e" together, they're  
21 treated literally as one parcel or one type of parcel?  
22 A. Yes. The house is on the three acres and 17 acres has  
23 the rest.  
24 Q. And what's on the 17 acres for agricultural purposes?  
25 A. Apples.

26

1 Q. And who holds title to that? Who has the deed?  
2 A. I do. And I added Dave's name on it the last minute  
3 before I walked out the door.  
4 Q. So the answer to my question is you and David Carlson  
5 are both on title; is that correct?  
6 A. Yup.  
7 Q. And when was that property acquired under that title?  
8 A. August 29th or 30th, 2009.

\* \* \* \* \*

4-9-14 Mary Carlson, (Pages 32:3 to 33:16)

32

3 Q. Now, let's go back to item "h," the West 50.  
4 A. Yes.  
5 Q. Who is the lessee on that BIA lease?  
6 A. H. David Carlson.  
7 Q. And would you describe that property in terms of its  
8 size and production.  
9 A. It's roughly 35 acres. It had six acres of cherries  
10 on it and nectarines. The rest was in nectarines.  
11 Q. And that's its current condition?  
12 A. Right now, no. Dave has pulled out a lot of the -- He  
13 took out all the nectarines, and he now has all  
14 cherries and apples there.  
15 Q. And is there any lease or document between South 80  
16 and H. David Carlson in regard to that property?  
17 A. Yes, there is.  
18 Q. And would you describe that. Is that a written lease?  
19 A. Yes, it is. It's the same as the one with Sno Valley,  
20 it's a 35-year lease, done at the same time.  
21 Q. And who is the lawyer who did that?  
22 A. There was not a lawyer that did it, I don't think.  
23 Q. Who did draft that lease?  
24 A. I'm not positive. I think Greg Ames did. He was the  
25 accountant then.

33

1 Q. Okay. And when is the last time you saw the original  
2 or a copy of that lease?  
3 A. When they moved out of the office in 2003. End of  
4 2002, first of 2003.  
5 Q. And do you recall, was that lease notarized?  
6 A. I don't remember.  
7 Q. And what did that lease provide in terms of the  
8 compensation to the landowner by South 80? Was that a  
9 fixed per acre rent or percentage or something else?  
10 A. Something else.  
11 Q. And what was that?  
12 A. South 80 Orchards would farm it and retain the returns  
13 off of it.  
14 Q. And so, in effect, it was a lease where no money was  
15 going to be paid to the owner; is that right?  
16 A. Correct.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Pages 34:22 to 35:18)**

34

22 Q. Okay. And then for how long did you manage the  
23 business of and growing of South 80 Orchards after  
24 2006?  
25 A. I ran it from June of 2005 to September, October,

35

1 November, whenever harvest was finished, of 2008.  
2 Q. And what times in 2005 did you take that role? Was  
3 that in the fall?  
4 A. June.  
5 Q. June.  
6 A. The middle of June of 2005 is when I took over by  
7 myself.  
8 Q. So you had most of the 2005 crop, and then you had the  
9 2006, '7 and '8 crop, correct?  
10 A. Yes.  
11 Q. And during that time, I've seen an indication that you  
12 indicated that you put money that you had saved during  
13 your marriage into South 80 Orchards. Do I understand  
14 that generally correctly?  
15 A. Yes, I did. All of my savings.  
16 Q. And that was about 440 to 475 thousand, somewhere in  
17 that range?  
18 A. That's what's left that hasn't been repaid.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Pages 38:11 to 40:24)**

38

11 Q. And isn't it true that South 80 also had years where

12 it had losses --  
13 A. Yes.  
14 Q. -- during that same time period?  
15 Okay. Now, where --  
16 A. During what time period?  
17 Q. That 2000 to 2005.  
18 A. It shouldn't have, but it did.  
19 Q. Okay. And where did South 80 have any source of  
20 credit 2000 to 2005?  
21 A. We had credit with all the vendors.  
22 Q. Did you have any bank credit?  
23 A. No. That's why I used my sayings. I didn't want a  
24 bank because of what happened to him.  
25 Q. So you chose, despite the need for capital or for

39

1 working capital to farm, you chose not to borrow the  
2 funds from a bank and chose to put in your savings; is  
3 that right?  
4 A. Yes.  
5 Q. And the reason that there -- Prior to 2005, when is  
6 the last year that the South 80 was able to farm on  
7 its own funds without contribution?  
8 A. Prior to 2005?  
9 Q. Yeah.  
10 A. 2003 it did, but 2004 it did not.  
11 Q. Okay. And how about 2002, did it?  
12 A. 2002's crop paid for all of the 2003. It had all of  
13 that crop money to pay for that.  
14 Q. So 2003, the 2003 crop year; that is, from planting in  
15 2003 through the sale in mid 2004 -- we'll talk crop  
16 year -- that was a loss.  
17 A. Well, actually the crop year is -- The crop is picked  
18 in 2002, in September and October, and that should pay  
19 for the next year.  
20 Q. Okay. Well, my question is, was the crop which was  
21 harvested in 2003, on a crop year basis, was that a  
22 profit or a loss, according to your recollection?  
23 A. A profit.  
24 Q. And then 2003 was a loss; is that correct? The 2003  
25 crop was a loss year; is that right?

40

1 A. No. 2003 had a profit.  
2 Q. The 2003 calendar year or the 2003 crop year?  
3 A. The 2003 crop year was profitable.  
4 Q. And the 2002 crop year was profitable too, right?  
5 A. Yes.

6 Q. How about 2004?  
7 A. No.  
8 Q. And I take it, then, it was the first year that was  
9 not profitable when you put in the money, started  
10 putting in the money. Is that correct?  
11 A. Yes.  
12 Q. So that would be some time during the 2004 crop year,  
13 correct?  
14 A. Yes.  
15 Q. Okay. And then did you put in money -- Let me ask  
16 this: What's your recollection of the profitability  
17 of the 2005 crop year?  
18 A. 2005 didn't quite break even. When I took over --  
19 Q. Okay, you've answered my question.  
20 Now, did you put additional money in because of  
21 the shortfall on 2005?  
22 A. Yes.  
23 Q. Okay. How about 2006, was it profitable or a loss?  
24 A. 2006 I believe is where it broke even.  
\* \* \* \* \*

**4-9-14 Mary Carlson, (Pages 41:21 to 42:7)**

41

21 Q. Okay. I take it your farming duties then diminished  
22 in September or October of 2008. What duties  
23 continued after that time?  
24 A. The accounting.  
25 Q. Accounting. And does that mean sitting at the  
42

1 computer and inputting the figures?  
2 A. All the bookkeeping and --  
3 Q. Listen to my questions and answer them.  
4 A. Yes.  
5 Q. It included inputting information into the computer  
6 system.  
7 A. Yes.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Pages 57:12 to 58:16)**

57

12 Q. And who is William Halsey?  
13 A. The accountant.  
14 Q. When you say the accountant, is he the accountant for  
15 South 80 Orchards partnership?  
16 A. Yes.  
17 Q. And when did he first become the accountant for South  
18 80 Orchards partnership?  
19 A. Was when Greg Ames passed away. I think it was 2008

20 maybe.  
21 Q. Okay.  
22 A. It could have been '9.  
23 Q. And have you ever met Mr. Halsey?  
24 A. Yes.  
25 Q. Have you ever provided information to him in

58

1 connection with the preparation of any tax return for  
2 South 80 Orchards partnership?  
3 A. Yes.  
4 Q. In what years?  
5 A. 2010 and prior.  
6 Q. Okay. And is it your testimony that as to the 2011  
7 tax return for South 80 Orchards' partnership, you  
8 never saw it until last fall?  
9 A. Yes.  
10 Q. And did you ever ask Mr. Halsey for a copy of it?  
11 A. No.  
12 Q. Do you have any reason to believe that if you had  
13 asked him for copy, that he would not have given you  
14 one?  
15 A. No. When I asked him for them last fall, he gave me  
16 all of them.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Pages 65:25 to 66:2)**

65

25 Q. And isn't it true that you failed also to pay trust  
66

1 fund 943 taxes?  
2 A. I did not pay all the 943 taxes. I was out of money.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Page 67:12 to 67:21)**

67

12 Q. The timing on that was that the negotiations, if  
13 you'll call them that, with the IRS took place at  
14 about the time you stopped working in September or  
15 October of 2009; isn't that correct?

16 A. No.

17 Q. Was it before that or after?

18 A. It was 2008. We didn't get it settled until 2009.

19 Q. That's what I'm asking.

20 A. Because they assigned me Dennis Rencher, the IRS  
21 officer. It was during harvest of 2008.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Pages 84:21 to 85:8)**

84

21 Q. Let me ask this: You didn't go back and look at the  
22 historical information that was available to you from  
23 Mr. Halsey, for example, that would show how expenses  
24 were --

25 A. No. But I did get the general ledger from him.

85

1 Q. Okay. And did you examine that general ledger as to  
2 whether or not it was consistent with what your  
3 testimony was?

4 A. I don't know if it is or not because I didn't have  
5 anything to do with making that statement there. I  
6 know the one in 2012 was the accurate one, December  
7 31st of 2012, but I don't know anything about 2011,  
8 I'm sorry.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Pages 92:18 to 93:3)**

92

18 Q. And in the spring of 2009, I take it you gave that  
19 same type of information to Mr. Halsey, correct?

20 A. Yeah.

21 Q. And in 2010.

22 A. Yes. Wait a minute. Can we back up to that?

23 Q. 2010 you want to correct something?

24 A. You said 2010?

25 Q. Spring of 2010.

93

1 A. Okay. The spring of 2010 I gave him 2009's, yes.

2 Q. That's what I'm saying.

3 A. Okay.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Pages 97:16 to 98:6)**

97

16 Q. Now, in paragraph 2 of this letter it says, "Starting  
17 in approximately 2010, however, Zirkle Fruit began  
18 sending the returns for the fruit produced and  
19 delivered by South 80 Orchards to Mr. David Carlson  
20 and/or Carlson Agribusiness, L.L.C." Do you see that?

21 A. Yes.

22 Q. Now, how did you learn that that had started in  
23 approximately 2010?

24 A. It actually started in September of 2009, but --

25 Q. Okay.

98

1 A. Because I saw a check stub from Borton Fruit laying  
2 there. It was laying on the counter and it was made  
3 out to David Carlson.

4 Q. And that was when, the first time you saw a check  
5 stub?

6 A. Last fall sometime.

\* \* \* \* \*

4-9-14 Mary Carlson, (Pages 97:16 to 98:24)

97

16 Q. Now, in paragraph 2 of this letter it says, "Starting  
17 in approximately 2010, however, Zirkle Fruit began  
18 sending the returns for the fruit produced and  
19 delivered by South 80 Orchards to Mr. David Carlson  
20 and/or Carlson Agribusiness, L.L.C." Do you see that?

21 A. Yes.

22 Q. Now, how did you learn that that had started in  
23 approximately 2010?

24 A. It actually started in September of 2009, but --

25 Q. Okay.

98

1 A. Because I saw a check stub from Borton Fruit laying  
2 there. It was laying on the counter and it was made  
3 out to David Carlson.

4 Q. And that was when, the first time you saw a check  
5 stub?

6 A. Last fall sometime.

7 Q. Okay. Now, you had the personal tax returns which  
8 indicate that all of the farm income was being  
9 reported not on South 80, but on the Schedule F of  
10 your personal returns at least two years prior to  
11 this; isn't that right?

12 A. It's always been done that way.

13 Q. Okay. And did you ever make an attempt at any time  
14 between September of 2009 and the date of this letter  
15 to determine how the flow of funds from Zirkle or Tree  
16 Top had been done?

17 A. Yes, I have.

18 Q. And when did you first do that?

19 A. Last fall I started trying to do that.

20 Q. Did you ever do that in 2010 or 2009 or 2011 or 2012?

21 A. No.

22 Q. Okay.

23 A. I didn't know the checks were not in South 80  
24 Orchards' name.

\* \* \* \* \*

4-9-14 Mary Carlson, (Page 102:18 to 102:20)

102

18 Q. Okay. So you were aware there was not a Commission  
19 Merchant Agreement with South 80; isn't that right?

20 A. We have never had one.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Pages 106:9 to 107:19)**

106

9 Q. Okay. And that is the 2012 HMD Limited Partnership  
10 tax return. It's dated the same day, March 6, 2013,  
11 that your personal return and that the South 80 return  
12 that we looked at earlier was dated. Have you ever  
13 seen a copy of this return before?

14 A. Not before last fall.

15 Q. Okay. If you would look at the -- I think it's the  
16 fifth page. It's Form 8949, Part II, which has to do  
17 with long-term capital gains. Do you see that?

18 A. I'm not on the right page yet.

19 Q. It looks like this (indicating).

20 A. Okay. I saw it just a minute ago. Okay, page 2.

21 Q. Now, this has a land in Grandview sale occurring on  
22 June 29th, 201, where the proceeds were \$801,500. Are  
23 you familiar with that transaction?

24 A. Vaguely.

25 Q. When you say vaguely, what do you know about it?

107

1 A. I just know that he sold the property.

2 Q. When you say "he," you mean Dave Carlson?

3 A. Dave. Dave sold some property.

4 Q. Well, wasn't it in fact HMD that sold the property?

5 A. It should have been. Yes, I -- Yes, it was.

6 Q. Okay.

7 A. Through Dave.

8 Q. And David Carlson was a general partner, according to  
9 our discussion earlier, at that time, correct?

10 A. No, he was not.

11 Q. The Estate of Hugh Carlson was, and he was the  
12 executor and had the authority of a general partner;  
13 isn't that correct?

14 A. I don't believe that to be the case, but I'm not going  
15 to argue with it.

16 Q. Is it your position that you controlled HMD at that  
17 time and had the power to control it and David had no  
18 role or control in HMD?

19 A. Yes.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Pages 111:25 to 113:1)**

111

25 Q. Now let's look at Exhibit 18. If you would look at

112

1 No. 18, please. First of all, beginning on the second  
2 page, is that a declaration under oath that you signed  
3 in regard to the dissolution proceeding on or about  
4 February 4th of 2013?

5 A. Yes.

6 Q. Would you look at the page number in the lower  
7 left-hand corner as page 3. In this you say beginning  
8 at line 5, "No money from Respondent's father's estate  
9 went into South 80 Orchards." Then you say, "HMD  
10 Limited Partnership did loan money to South 80, which  
11 was repaid with the exception of two loans that were  
12 made in 2009 and are still carried on the books of  
13 South 80 Orchards."

14 Now, I take it -- which testimony is accurate?  
15 The testimony that you gave in the declaration or that  
16 you just gave a little bit ago that there had never  
17 been a loan from South 80?

18 MR. RUSSEL: Is that accurate, Bruce? I  
19 think --

20 MR. JOHNSTON: It is. And I don't want any  
21 speaking objections. I want an answer.

22 A. HMD did not loan money to South 80 Orchards.

23 Q. So when you said under oath HMD Limited Partnership  
24 did loan money to South 80, that was a false  
25 statement; is that right?

113

1 A. I did do that. That's not correct, no.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Pages 116:23 to 117:2)**

116

23 Q. So are you testifying that a certified public  
24 accountant, Mr. Halsey, filed a tax return on your  
25 behalf without authority to do so?

117

1 A. I signed a paper the way that -- years ago to where he  
2 could e-file everything.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Page 117:11 to 117:14)**

117

11 Q. Are you telling me that Mr. Halsey, a certified public  
12 accountant, did not provide you with copies of your  
13 own K-1 from HMD?

14 A. No, he did not provide them to me.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Pages 119:22 to 120:6)**

119

22 Q. Isn't it true that Marla and Dave are the only two  
23 beneficiaries of the Estate of Hugh Carlson?

24 A. I assume so.

25 Q. And isn't it true that we just looked at a document  
120

1 that says that that estate has an 80 percent interest  
2 in HMD?

3 A. Yeah.

4 Q. And doesn't that mean that Marla has an interest in  
5 over 40 percent of HMD?

6 A. Probably.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Page 122:2 to 122:6)**

122

2 Q. Now, isn't it true -- I mean, let me ask it this way:  
3 If Dave had simply given that 226 to Marla as part of  
4 her 40 percent, you would have no objection to that;  
5 is that right?

6 A. No.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Page 124:13 to 124:17)**

124

13 Q. Now, we've seen that it was Carlson Agribusiness that  
14 was paying the expenses for the farming on the  
15 property, among others, that is leased to South 80,  
16 correct?

17 A. Correct.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Page 125:3 to 125:6)**

125

3 Q. And if HMD put money into Carlson Agribusiness for the  
4 benefit of those farms, that has to be repaid back to  
5 HMD, doesn't it?

6 A. I would hope that it does.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Pages 125:13 to 127:10)**

125

13 Q. Now, when you withdrew in two withdrawals this  
14 \$226,000 from the HMD account, why was it that you  
15 closed the account?

16 A. Because I thought that I would -- Marla would answer  
17 my phone call and I was going to tell her what was  
18 going on and ask her to take care of it.

19 Q. Just a second. When an account doesn't have any money  
20 in it, why do you close it?

21 Weren't you just trying to get obstructive?

22 A. No, I wasn't.  
23 Q. Well, you left a business without a bank account;  
24 isn't that right?  
25 A. HMD did no business.

126

1 Q. You left a company without a bank account. You closed  
2 its bank account. Isn't that right?  
3 A. Yes, I did. It was my account.  
4 Q. Well, you were one of three general partners; isn't  
5 that correct? Isn't that correct?  
6 A. I say I'm one of two, but whatever.  
7 Q. And on what basis do you say you're one of two?  
8 A. Never mind.  
9 Q. Isn't it true that you have said under oath that the  
10 agreement that we looked at attached to your sworn  
11 statement was the agreement, and it has three general  
12 partners listed in it? Isn't that right?  
13 A. I guess. Whatever you say.  
14 Q. And so to the extent that you have acted as if you  
15 were one of two general partners, you have done so  
16 based upon an erroneous assumption; isn't that  
17 correct?  
18 A. I don't believe so.  
19 Q. So you believe you're still a 50 percent general  
20 partner?  
21 A. That was the way that it was told to me, so.  
22 Q. Who told you that?  
23 A. That's the way it was explained to me; that Marla and  
24 I in conjunction with each other would take care of  
25 it.

127

1 Q. By whom?  
2 A. By Dave.  
3 Q. And the document that you've sworn says that it is the  
4 Estate of Hugh Carlson, Marla and yourself; isn't that  
5 right?  
6 A. I see where you're coming from, yeah.  
7 Q. And isn't it true that you never discussed with either  
8 general partner the withdrawal of the funds and the  
9 closing of the bank account?  
10 A. No, I didn't.

\* \* \* \* \*

**4-9-14 Mary Carlson, (Pages 129:12 to 130:24)**

129

12 Q. Now, isn't it true that you testified in a written  
13 document that you had deposited or redeposited those

14 funds into another bank account?  
15 A. I started to. I never did it.  
16 Q. But isn't it true that you testified you did it  
17 once --  
18 A. Yeah, I did. I think I did. I went to do it, but I  
19 never did it.  
20 Q. But you testified that you did it once. And now  
21 you've testified you didn't do it. Isn't that right?  
22 A. I don't know. I went to do it, but I did not do it.  
23 Q. And how long after you got the funds out did you go to  
24 open a different account?  
25 A. I didn't.

130

1 Q. Well, I mean -- When were you going to do it?  
2 A. Right when the attorney told me to.  
3 Q. And when you say the attorney, who do you mean?  
4 A. Mr. Maxwell. Because I told him I took the money out.  
5 Q. And he told you to put it back into a new account?  
6 A. He said that probably would be better if you just put  
7 it back into a new account.  
8 Q. Okay. Did you ever try and get a written  
9 authorization from the other general partners to open  
10 another bank account?  
11 A. No, I didn't.  
12 Q. Aren't you familiar that a resolution or signature by  
13 all general partners of a partnership are required to  
14 open a bank account?  
15 A. It wasn't done before.  
16 Q. Are you sure of that?  
17 A. Yes. I opened the account myself.  
18 Q. And who were the signers besides yourself on that  
19 account?  
20 A. I was the only signer until December of 2012, and then  
21 I added Dave on.  
22 Q. So you had another signer on the account, and it was  
23 Dave Carlson, correct?  
24 A. December of 2012.  
\* \* \* \* \*

**4-9-14 Mary Carlson, (Page 137:19 to 137:25)**

137

19 Q. Is there any document that you're aware of that says  
20 that HMD is going to repay any amounts that were  
21 invested in the -- What's it called, that 35-acre  
22 parcel?  
23 A. Sno Valley.  
24 Q. Sno Valley. Any written document that says --

25 A. No, there isn't.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Page 139:16 to 139:22)**

139

16 Q. Now, at the time that you hired your current lawyers  
17 in this case, were you aware that they were also  
18 counsel for Zirkle Fruit?

19 A. No.

20 Q. When did you learn that?

21 A. Right after I called, they said that they had to check  
22 into it to see if there was any conflict.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Page 142:2 to 142:14)**

142

2 Q. And how about Borton, did you have any discussions  
3 with Borton about the status of their contracts as it  
4 may relate to South 80 or Carlson Agribusiness?

5 A. They have no contracts.

6 Q. And that's based upon an inquiry that you made of  
7 them?

8 A. Yes. I specifically asked Dave Reed if there was any  
9 Commission Merchant Agreements because South 80  
10 Orchards had never had one.

11 Q. And when did you ask Mr. Reed that?

12 A. In December.

13 Q. 2013?

14 A. Yes.

\*\*\*\*\*

**4-9-14 Mary Carlson, (Page 145:9 to 145:17)**

145

9 Q. Thank you very much, Ms. Carlson. That's all the  
10 questions I have.

11 MR. RUSSEL: I have no questions. We'll  
12 reserve signature.

13

14 (DEPOSITION CONCLUDED AT  
15 3:36 P.M.)

16

17 (SIGNATURE RESERVED.)

## APPENDIX -- 5

## APPENDIX -- 5

14 FEB 12 P 3:05

CERTIFICATE OF TRANSMITTAL

On this day, the undersigned sent to the attorneys of record for all Parties a copy of this document by US Mail, post prepaid / E-Mail / Hand Delivery Attorney Messenger Service / Process Service / Fax. I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true & correct.

SUPERIOR COURT  
YAKIMA, WA

Dated \_\_\_\_\_  
Yakima, WA

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

In re the Marriage of:  
MARY ALICE CARLSON,  
and  
HUGH DAVID CARLSON,  
Respondent.

NO. 13-3-00578-9  
ORDER ON PETITIONER'S MOTION  
FOR CONTEMPT

THIS MATTER HAVING come on regularly for hearing by the Petitioner's Motion, the court having heard the argument of counsel and reviewing the file and being otherwise fully informed in the premises, IT IS HEREBY

ORDERED that Petitioner's Motion for Contempt is granted and Respondent is held in contempt for violating the July 22, 2013, order by failing to pay January 2014 spousal maintenance on the 1<sup>st</sup> of the month, only. Petitioner's additional motions for contempt are denied.

Respondent has the opportunity to purge the contempt by paying \$500 to Mrs. Carlson's attorney under this cause number within 30 days of the entry of this order. *The obligation is cancelled by the order on Respondent's motion for contempt.*

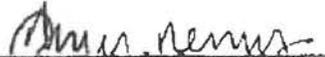
IT IS FURTHER ORDERED that, from the date of the entry of this order forward, Mr. Carlson shall pay Mrs. Carlson the previously court-ordered sum of \$3,000 exactly, no more or no less, for maintenance by the 1<sup>st</sup> day of each month, to be transferred to Mrs. Carlson through their respective attorneys, until further order of this court.

DATED this 12<sup>th</sup> day of February 2014.

*David A. Elofson*  
\_\_\_\_\_  
DAVID A. ELOFSON, JUDGE

1 Presented by:  
2 Finney, Falk, Naught & Remy, PLLP

Approved as to Form:  
Notice of Presentation Waived:  
Meyer, Fluegge & Tenney, PS

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4 AMY L. REMY, #37526  
Attorneys for Respondent

  
JOHN A. MAXWELL, # 17431  
Attorneys for Petitioner

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CERTIFICATE OF TRANSMITTAL

On this day, the undersigned sent to the attorneys of record for all Parties a copy of this document by US Mail, post prepaid / E-Mail / Hand Delivery Attorney Messenger Service / Process Service / Fax. I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true & correct.

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SUPERIOR COURT  
YAKIMA

Dated \_\_\_\_\_  
Yakima, WA

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

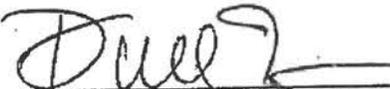
In re the Marriage of:  
MARY ALICE CARLSON,  
Petitioner,  
and  
HUGH DAVID CARLSON,  
Respondent.

NO. 13-3-00578-9  
ORDER ON RESPONDENT'S  
MOTION FOR CONTEMPT

THIS MATTER HAVING come on regularly for hearing by the Respondent's Motion, the court having heard the argument of counsel and reviewing the file and being otherwise fully informed in the premises, IT IS HEREBY

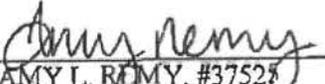
ORDERED that Respondent's Motion for Contempt is granted and Petitioner is held in contempt for violating the June 7, 2013, restraining order by taking \$226,485.05 from HMD Limited Partnership's bank account and closing that account. Respondent's additional motions for contempt are denied. Petitioner has the opportunity to purge the contempt by paying \$500 to Mr. Carlson's attorney under this cause number within 30 days of the entry of this order. *This obligation is cancelled by the order on Petitioner's motion for contempt.*

DATED this 12<sup>th</sup> day of February 2014.

  
DAVID A. ELOPSON, JUDGE

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Presented by:  
Finney, Falk, Naught & Remy, PLLP

  
AMY L. REMY, #37528  
Attorneys for Respondent

Approved as to Form:  
Notice of Presentation Waived:  
Meyer, Fluegge & Tenney, PS

  
JOHN A. MAXWELL, # 17431  
Attorneys for Petitioner

## APPENDIX -- 6

## APPENDIX -- 6

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Honorable David A. Eloffson

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APPELLANTS' OPENING BRIEF

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IN THE SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

In re: the Marriage of  
MARY ALICE CARLSON,

Petitioner,

and

HUGH DAVID CARLSON,

Respondent.

SOUTH 80 ORCHARDS LIMITED  
PARTNERSHIP, a Washington limited partnership,

Plaintiff,

v.

H. DAVID CARLSON and CARLSON  
AGRIBUSINESS, LLC, a Washington limited  
liability company,

Defendants,

v.

MARY A. CARLSON and SOUTH 80  
ORCHARDS LIMITED PARTNERSHIP,

No. 13-3-00578-9 (Lead Number)

Consolidated With

No. 13-2-04263-0

OPPOSITION OF HMD LIMITED  
PARTNERSHIP TO MOTION OF  
SOUTH 80 ORCHARDS LIMITED  
PARTNERSHIP TO DISMISS CLAIMS  
RE: LOANS.

OPPOSITION OF HMD LIMITED PARTNERSHIP TO  
MOTION OF SOUTH 80 ORCHARDS LIMITED  
PARTNERSHIP TO DISMISS CLAIMS RE: LOANS. - 1

JOHNSTON LAWYERS, P. S.  
2701 First Avenue, Suite 340  
Seattle, Washington 98121  
(206) 866-3230 Fax (206) 866-3234



1 Large sums of money were transferred from HMD to Carlson Agribusiness/South 80 in  
2 2003-2009 under the supervision and with the knowledge of David Carlson and Mary Carlson.  
3 David Carlson, speaking as the CEO of Carlson Agribusiness, which was and is the manager of  
4 South 80, testified that the intent was to treat those transfers as a loan from HMD to the family  
5 farming businesses. Mary Carlson denies this, but she failed to come up with any coherent  
6 explanation of how else she could have had any right to take the money out of HMD and give it to  
7 her marital enterprise.

8 David Carlson will testify, now that the subject has come up, that he and Mary Carlson never  
9 disclosed to the limited partners of HMD, the Continis, that the Carlsons had transferred funds out of  
10 HMD to their enterprise. That testimony is consistent with the testimony Mary Carlson gave under  
11 oath at her deposition. Like most limited partners, the Continis had no active role in the operations,  
12 management, and bookkeeping of HMD, but simply trusted the Carlsons to handle their assets with  
13 integrity and competence.

### 14 III. EVIDENCE RELIED UPON

15 The parties' testimony at trial and exhibits introduced at trial.

### 16 IV. STATEMENT OF ISSUES

- 17 A. Does the statute of limitations accrue when a fiduciary takes or borrows trust money  
18 without full disclosure?  
19 B. Even if the statute of limitations could have accrued while the loans were undisclosed, did  
20 the judicial admission of the debt at trial obviate or revive the limitations period?  
21 C. Alternatively, if the fiduciary, Mary Carlson, arranged or took the benefit of 'loans' from  
22 her principal to her enterprise, allowed them to 'lapse' and refused to revive them by  
acknowledgement, is she liable for breach of fiduciary duty, fraud, or constructive trust in  
the amount of the forfeited loans?

### V. ARGUMENT

1                   **A. The Statute of Limitations Does Not Bar a Limited Partnership from Pursuing**  
2                   **Funds Transferred in an Undisclosed Transaction by a General Partner**

3                   Mary Carlson/South 80's motion sharply illustrates the rule that "[t]he acts of partners  
4                   serving in dual relationships where their private motives may color their actions in their partnership  
5                   capacity, must be closely scrutinized for possible breach of the fiduciary duty of partners." *In re*  
6                   *Wilson's Estate*, 50 Wn. 2d 840, 847, 315 P.2d 287 (1957). The general partner of a partnership is a  
7                   fiduciary to the limited partners. RCW 25.10.441.

8                   The specific fiduciary duty of loyalty of a general partner is: "To account to the limited  
9                   partnership and hold as trustee for it any property, profit, or benefit derived by the general partner  
10                  in the conduct...of the limited partnership's activities or derived from a use by the general partner of  
11                  limited partnership property." RCW 25.10.441(2) (emphasis added).

12                  It is blackletter law that "statutes of limitations do not begin to run as between trustees and  
13                  cestuis so long as the trust relationship continues." *Robbins v. Wilson Creek State Bank*, 5 Wn. 2d  
14                  584, 596-97, 105 P.2d 1107 (1940). The discovery rule also applies, starting the limitations period  
15                  only when the cestui que receives disclosure of the betrayal of trust. *Ackerson v. Elliott*, 97 Wash.  
16                  31, 39-40, 165 P. 899 (1917).

17                  That rule applies equally to South 80, as to Mary Carlson individually, because "[o]ne who  
18                  takes or purchases trust property with knowledge of the trust stands in the place of his grantor and is  
19                  himself chargeable with the trust or, as sometimes expressed, is accountable as a trustee *ex*  
20                  *maleficio*." *Goodwin v. Am. Sur. Co. of New York*, 190 Wash. 457, 478, 68 P.2d 619 (1937). The  
21                  Supreme Court eloquently explained why the cestui que trust is not time-barred as to such a  
22                  transferee:

                  This is upon the principle that the title of the cestui que trust has not been  
                  affected by the transfer. [citations omitted] If the exception to the general rule  
                  were not effectual, then a trustee, by his failure to bring suit to set aside his  
                  own wrongful act, participated in by a third party, could wreck an estate  
                  and prevent a minor, or one suffering under some legal disability, from ever  
                  recovering, no matter how strong the justification. This would not be equity  
                  and, we think, should not be the law.

1 *Id.* at 478-79.

2 For essentially the same reasons even if Mary Carlson had not been directly responsible as a  
3 fiduciary and trustee, which she was, she would be responsible as the spouse, and therefore the  
4 principal at all material times, of David Carlson. David Carlson's failure, as manager of HMD, to  
5 diligently pursue the loans to the community farming entities, prevents the statute from running as to  
6 him—and therefore as to his then-principal, his wife, and therefore as to the transferee entities  
7 owned and controlled by either or both of them, Carlson Agribusiness and South 80.

8 Mary Carlson/South 80 may perhaps argue that Marla Contini, as a general partner, ought to  
9 have known that funds had drained out of HMD to South 80 on Mary Carlson's watch. Marla  
10 Contini personally is not a party to this case, however. Moreover, the other Continis were only  
11 limited partners, and HMD may and indeed must represent their interests whether Marla Contini  
12 lapsed or not. Moreover, Mary Carlson is estopped from such an argument, because:

13 **Each general partner** and the limited partnership shall furnish to a general  
14 partner:

15 (a) **Without demand**, any information concerning the limited partnership's  
16 activities and activities reasonably required for the proper exercise of the  
17 general partner's rights and duties under the partnership agreement or this  
18 chapter.

19 RCW 25.10.431(2) (emphasis added). Mary Carlson had an absolute duty to keep Marla Contini  
20 informed of material information such as HMD's transfer of several hundred thousand dollars to  
21 South 80/Carlson Agribusiness. She did not do so, and she cannot take advantage of her own failure  
22 to try to spread the blame to Mrs. Contini.

Equity abhors a trustee's evasion of her duties and grants her no shelter beneath the statute of  
limitations. South 80's motion should be denied.

**B. Alternatively, David Carlson's Testimony Revived The Statutory Period.**

1 If for any reason the Court were to find that the statute of limitations could have run on the  
2 loans from HMD to South 80 the period has now re-started. Washington recognizes the equitable  
3 principle that: "if, after a wrongful withholding of property, the holder recognizes the equity of the  
4 wronged person and in substance asserts that he holds legal title in trust for the injured person, the  
5 statute of limitation does not operate against the beneficiary." *Arneman v. Arneman*, 43 Wn. 2d 787,  
6 799-800, 264 P.2d 256 (1953). Mary Carlson admits (indeed, she insists) that she is a general  
7 partner of HMD. Hence, as discussed above, she admits she is a trustee for all of its property and for  
8 any profits or property she gained from the conduct of the business of HMD. And David Carlson,  
9 who was her husband and hence her agent while the money was transferred, admitted on the stand,  
10 speaking as the CEO of Carlson Agribusiness, which now holds the working capital formally held by  
11 South 80, that the money was rightfully owed to HMD. As transferee from South 80, the working  
12 capital derived from HMD is held in trust for HMD. Therefore, the statute of limitations does not  
13 apply.

14 Indeed, even had there not been a trust relationship, which there is, David Carlson's  
15 testimony should be considered as an acknowledgement of the debt sufficient to satisfy RCW  
16 4.16.280. That statute requires a written and signed reaffirmation, but in the very similar context of  
17 the statute of frauds, the Court of Appeals held that "the testimony of [the defendant] in open court  
18 as to the details of the oral lease with option to purchase constitutes sufficient "memoranda" or  
19 "writings" to satisfy the statute of frauds, for we view recorded court testimony as equivalent to  
20 signed depositions." *Powers v. Hastings*, 20 Wn. App. 837, 846, 582 P.2d 897 (1978) *aff'd*, 93 Wn.  
21 2d 709, 612 P.2d 371 (1980).

22 **C. If the Debt Lapsed Due to Mary Carlson's Refusal to Act, She is Personally Liable.**

Again, Mary Carlson as general partner had a duty of loyalty and care at all material times.  
RCW 25.10.441. She had a duty not to deal with HMD in the conduct of its activities as or on behalf  
of a party with adverse interests, and a duty to avoid gross negligence or intentional misconduct. *Id.*

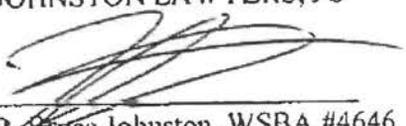
1 If the Court were to find, which it should not, that the statute of limitations ran on the loans from  
2 HMD on her watch, it would be clear that she violated those duties. The interests of a debtor and its  
3 creditor are adverse by definition. If the statute of limitations ran, it was because Mary Carlson (and  
4 perhaps her agent David Carlson) took advantage of HMD in the conduct of its business on behalf of  
5 its debtor, South 80. And even after that, Mary Carlson could have easily saved HMD's interests by  
6 simply acknowledging or reaffirming the debt, which would have re-started the statutory period.  
7 RCW 4.16.280. Instead, she and her entity South 80; under her direction, did the exact opposite:  
8 they asserted the statute of limitations defense under which they now move to dismiss HMD's loan  
9 claims. Thus, if South 80 were to succeed in this defense, Mary Carlson would be personally liable.  
10 Every final judgment "shall grant the relief to which the party in whose favor it is rendered is  
11 entitled," based on the facts brought out at trial, "even if the party has not demanded such relief in  
12 his pleadings." CR 54(c). HMD's claim against Mary Carlson, arising from her blocking of  
13 recovery from South 80, could be framed as constructive trust or unjust enrichment, as breach of  
14 fiduciary duty, or, in view of her failure to disclose material information to the Continis which she  
15 was duty-bound to disclose without being asked, *see* RCW 25.10.431(2), *supra*, as fraud. Under any  
16 theory, the damages are the full amount that her failure cost HMD.

## 17 VI. CONCLUSION

18 Because the statute of limitations has not run, or is revived, or because any lost claims  
19 against South 80 must be recoverable against Mary Carlson personally in this action, the motion to  
20 dismiss HMD's loan claims should be denied.

21 **DATED** this 19th day of June, 2015.

22 JOHNSTON LAWYERS, PS

  
R. Bruce Johnston, WSBA #4646  
Nathan J. Arnold, WSBA #45356

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2701 First Avenue, Suite 340  
Seattle, WA 98121  
(206) 866-3230  
Nathan@RBruceJohnston.com  
*Counsel for HMD Limited Partnership*

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**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-entitled action.

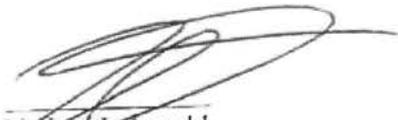
On June 19, 2015, I served or caused to be served by hand a copy of the foregoing document upon all interested parties, at the following addresses:

Amy Remy  
Finney, Falk, Naught & Remy, PLLP  
117 N. 3rd St., Ste. 201  
Yakima, WA 98901  
*Counsel for H. David Carlson*

Sean Russel  
Stokes Lawrence Velikanje Moore & Shore  
120 N. Naches Ave  
Yakima, WA 98901  
*Counsel for Mary Carlson and South 80*

John A. Maxwell  
230 S 2nd St  
Yakima, WA 98901  
*Counsel for Mary Carlson*

DATED at Yakima, Washington, this 19th day of June, 2015.

  
Nathan J. Arnold

**APPENDIX -- 7**

**APPENDIX -- 7**

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

In re the Marriage of:

NO. 13-3-00578-9

MARY ALICE CARLSON, *et al*

Petitioner,

PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

and

HUGH DAVID CARLSON, *et al*

Respondent.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) FINDINGS OF FACTS

a) **Background**

i) David Carlson was born on March 8, 1943 – he is 72 years old.

PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Page 1

**Finney, Falk & Remy, PLLP**  
117 N 3<sup>rd</sup> St Ste 201  
Yakima, WA 98901  
P: (509) 453-5604  
F: (509) 457-7764

- 1 ii) Mary Carlson was born on November 21, 1954 – she is 60 years old.  
2 iii) Mary Carlson and David Carlson were married on May 6, 1989, in Yakima,  
3 Washington.  
4 iv) The best evidence is, and the court finds, that Mary Carlson and David Carlson were  
5 separated on or about September 1, 2012.  
6 v) The parties were married for 23 years prior to the date of legal separation.  
7 vi) Mary Carlson filed the petition for legal separation, on or around June 7, 2013.  
8 vii) Immediately prior to trial, the parties stipulated to and the court ordered that the  
9 petition be converted to one for dissolution.  
10 viii) The marriage is irretrievably broken and at least 90 days have elapsed since the  
11 date the petition was filed and since the date the summons was served on H. David  
12 Carlson.

11 **b) Residency and Jurisdiction**

- 12 i) David Carlson resides in the marital residence located at 1601 Lateral B Road,  
13 Wapato, WA 98939. He has lived in the residence since 2009.  
14 ii) Mary Carlson resides at \_\_\_\_\_. Prior to that, she lived at 1216 Lila Place from  
15 September 2012 to \_\_\_\_ 2015. Prior to that, she lived at the marital residence.

16 **c) Notice and Claims**

- 17 i) David Carlson was served with the petition for legal separation and summons on or  
18 around June 10, 2013.  
19 ii) He appeared through his attorney on or around June 27, 2013.  
20 iii) He filed his response to the petition on or around July 11, 2013.  
21 iv) South 80 Orchards filed its Complaint on or about December 30, 2013.  
22 v) Carlson Agribusiness, LLC and David Carlson filed its Answer and Counterclaims on  
23 or about \_\_\_\_\_. The Reply thereto was filed on or about February 12, 2014.  
24 vi) HMD Limited Partnership filed its Complaint in Intervention on or about March 13,  
25 2014.  
26 vii) South 80 Orchards filed its Answer and Counterclaims on April 10, 2014. The Reply  
27 thereto was filed on or about April 29, 2014.

26 **d) Children**

- 27 i) The parties do not have any children together.

- 1 ii) H. David Carlson has two adult sons from a prior marriage.
- 2 iii) Mary Carlson has two adult living sons.
- 3 iv) Mary Carlson had a third son who passed away.
- 4 e) **Community Property**
- 5 i) The parties have certain real and personal community property
- 6 f) **Life Insurance**
- 7 i) Life insurance is community property.
- 8 ii) At the time of trial the parties have four (4) life insurance policies on the life of David  
9 Carlson, summaries of which are contained in Exhibit \_\_\_\_.
- 10 iii) The Face Value Death Benefits of the policies are: Pacific Life \$650,000, New York  
11 Life \*\*\*553 \$75,000; New York Life \*\*\*120 \$150,000, New York Life \*\*\*061  
12 \$25,000.
- 13 iv) The premiums to maintain these insurance police are approximately \$24,000 per year  
14 or \$2,000 per month. In the past, the best evidence is, and the court finds, that the  
15 premiums have been paid from community property, generally from the working  
16 capital of the family's farming operations.
- 17 v) Mary Carlson is the beneficiary of one half of the death benefits of each policy.
- 18 vi) The death benefits of the policies are approximately as follows:
- 19 (1) Pacific Life: \$650,000
- 20 (2) New York Life 553: \$69,350.89
- 21 (3) New York Life 120: \$170,949.53
- 22 (4) New York Life 061: \$38,668.28
- 23 vii) The court finds that continuation of the life insurance with Mary Carlson as  
24 beneficiary of one half of the death benefits is appropriate, as it provides appropriate  
25 security for her in the event of David Carlson's death while obligations under the  
26 orders of the court are outstanding.
- 27 viii) Accordingly, the court finds that it is appropriate for the ownership of the policies  
to be awarded to David Carlson, subject to the absolute requirement that they be  
maintained in force so long as Mary Carlson shall be alive, and that she remain the  
beneficiary of one half of the death benefits of all four policies until the earlier of the  
payment of the death benefits or Mary Carlson's death.

1 ix) It is further found by the court that in the event Mary Carlson shall predecease David  
2 Carlson, full ownership and rights in the insurance policies shall vest, unencumbered,  
3 in David Carlson and he shall be free to act in regard to the policies as he sees fit,  
4 including designation of beneficiaries, alteration of policies, caching and policies, and  
5 the like.

6 x) The life insurance policies are subject to policy loans in the approximate amounts as  
7 follows:

8 (1) New York Life 553: \$38,324.75

9 (2) New York Life 120: \$46,121.78

10 (3) New York Life 061: \$20,822.18

11 The total policy loans equal approximately \$105,268.71.

12 xi) The proceeds of the policy loans were used for working capital in the family farming  
13 operations, and are found to be a community obligation payable one-half  
14 (\$52,634.35) by each spouse.

15 xii) Because ownership of the insurance policies is awarded to David Carlson, he shall  
16 accept them subject to one half of the policy loans: Mary Carlson's one half of the  
17 policy loans shall be included in the equalization of distribution section of these  
18 findings below.

19 **g) Mary Carlson's Employment, Employability and Health**

20 i) Mary Carlson is currently unemployed.

21 ii) Mary Carlson suffered a serious injury after an auto accident in 2002.

22 iii) From 2002 – 2013 or later, Mary Carlson received lost time and other benefits from  
23 the Department of Labor and Industries. The precise amount of such benefits has not  
24 been adequately disclosed in the evidence, although requested by counsel for David  
25 Carlson. The best evidence is, and the court finds, that at the time of entry of these  
26 Findings and Conclusions, such benefits have been terminated.

27 iv) Mary Carlson's testimony was, and the court so finds, that she is able to work full  
time, including as a manager of such of the family farm as are awarded to her.

v) Documents from L&I, based on an IME in the summer of 2013, indicate that Mary  
Carlson is able to work full time without restrictions, and no contrary evidence was  
introduced, and the court accepts and finds that she is so able to work full-time with

1 the limitations of the residual effects of her injuries in 2002, and surgeries and  
2 physical therapy thereafter.

3 vi) The Court therefore finds that Mary Carlson is capable of maintaining full time  
4 employment either with such portion of the family farming operations as are awarded  
5 to her, or independent thereof.

6 h) Carlson's Employment, Employability and Health

7 (1) David Carlson currently works as an independent contractor as a consultant to  
8 Borton Fruit, and receives Form 1099 compensation in the amount of \$6,500 per  
9 month. That employment is not denominated as full-time, but requires 30 to 40  
10 hours per week. A substantial portion of this work is engaging with overseas  
11 customers, and is performed in the late evenings or very early mornings.

12 (2) David Carlson is also engaged, virtually full-time, as measured by a 40 hour  
13 week, in the family farming operation conducted by Carlson Agribusiness, LLC.

14 (3) Mr. Carlson has received no compensation for his work in managing the family  
15 farm after separation on September 1, 2012. The testimony presented a broad  
16 range of reasonability of salaries for farm manager of farms of about the size of  
17 the Carlson family farm. Based thereon, the court finds a salary of approximately  
18 \$85,000 per year is reasonable, and a total of \$255,000 should be awarded to  
19 David Carlson, payable from Community Property. Because 1/2 of that amount is  
20 payable by David Carlson, an amount of \$127,500 should be charged to Mary  
21 Carlson's share of Community Property in the Equalization section of these  
22 Findings below.

23 (4) Mr. Carlson's employability is reflected by his long history of employment,  
24 however, at his age it is doubtful that he can, or reasonably should be required to,  
25 continue dual employment.

26 (5) The testimony reflected, and the court finds, that it is likely that Mr. Carlson will  
27 discontinue his secondary work as a consultant for Borton Fruit within  
approximately three years, i.e. by June 30, 2018.

(6) The court further finds that Mr. Carlson's working essentially two full-time jobs  
is a matter of choice, which has been pursued to provide and/or supplement

1 working capital for family farming operations, and should not be considered in  
2 the calculation of relative income for the purpose of computing maintenance.

3 (7) The testimony supports, and the court finds that Mr. Carlson's health is average  
4 for his age of 72 years old; he has Type II diabetes, with some peripheral  
5 neuropathy associated therewith, had a mild heart attack and stint placed in the  
6 late 1990s, a condition currently under control, and that he has some progressive  
7 back problems.

8 (8) Mr. Carlson receives Social Security of approximately \$2,400 a month.

9 (9) Mr. Carlson receives a pension from the Washington Apple Commission in the  
10 approximate amount of \$1,200 per month.

11 **i) Spousal Maintenance**

12 i) The Court finds that, based upon her testimony, that Mary Carlson is able to, and  
13 there is no legitimate reason for her not to, work full time.

14 ii) The Court finds that one half David Carlson's monthly payment of \$2000 (i.e. \$1000)  
15 toward the life insurance premiums he is required to maintain are for the benefit of  
16 Mary Carlson and are appropriately considered and accounted for as a required  
17 spousal maintenance payment of \$1000 per month.

18 iii) The Court finds that given David Carlson's age, health and history of working two  
19 jobs (one without salary since September 1, 2012) to support the family farms,  
20 spousal maintenance shall be paid by David Carlson to Mary Carlson in the amount  
21 of \$1,500 per month or 50% of his monthly income from sources other than family  
22 farming, whichever is less, for a period of Three (3) years.

23 iv) The Court finds that, in light of David and Mary Carlson's significant difference in  
24 age, the lack of children involved in this divorce, the term of this second marriage,  
25 and that maintenance after retirement age is inappropriate (see *In re Marriage of*  
26 *Mathews*, 70 Wn. App. 116 (1993), spousal maintenance shall be paid by David  
27 Carlson to Mary Carlson up to and including, but not after, June 30, 2018.

**j) Interest of Mary Carlson in HMD Ltd. Partnership**

i) Under the Second Amendment to the Partnership Agreement of HMD  
dated \_\_\_\_\_, 2000 (Exhibit \_\_\_), Mary Carlson held a 2.5% General Partner  
Interest, and a 4% Limited Partner Interest in that entity.

- 1 ii) There was a significant dispute concerning whether or not an amendment to the HMD  
2 Partnership Agreement dated in 2008, was valid.
- 3 iii) At the outset of the trial, Mr. Carlson and HMD stipulated that, despite the dispute,  
4 the 2000 Second Amendment would govern, and the court accepted and accepts that  
5 stipulation.
- 6 iv) Substantial attorney time and effort was expended regarding whether or not the 2008  
7 Amendment was genuine or effective, and the issue was raised as to who as between  
8 the Mary Carlson and David Carlson prepared the said 2008 Amendment. Because the  
9 issue has been mooted by the stipulation, the court refrains from making a finding on  
10 that issue .
- 11 v) The court finds it would have been helpful if the stipulation had been offered earlier,  
12 or if the issue had been pursued for resolution by Ms. Carlson earlier. Accordingly,  
13 the court finds that each party should bear their own attorney fees in connection with  
14 that issue.
- 15 vi) Under the said Second Amendment Mary Carlson held the position of a fiduciary, and  
16 was one of three General Partners. As a minority General Partner, and as a fiduciary  
17 to HMD, Mary Carlson's authority to act was limited by the terms of the Partnership  
18 Agreement (Exhibit \_\_).
- 19 vii) On or about June 8, 2015, during the trial, a meeting was held in the evening of the  
20 HMD. At that time, HMD purported to remove Mary Carlson as a General Partner,  
21 and, under the terms of the Partnership Agreement, to relegate that interest to that of a  
22 Limited Partner.
- 23 viii) Under the said Second Amendment, David Carlson, as the duly acting and  
24 appointed Personal Representative of the estate of Hugh Carlson, an open estate in the  
25 above entitled court, had the voting power at all times from 2000 to June 8, 2015 to  
26 remove Mary Carlson as a General Partner, cause not being a requirement of the  
27 Partnership Agreement.
- ix) The stated reason for holding the meeting during the course of trial was to make any  
action of HMD at the meeting subject to veto or change by the court. The court finds  
that such actions are subject to the plenary jurisdiction of the Court in the above  
entitled dissolution case.

- 1 x) The court, however, finds that the removal of Mary Carlson as a General Partner was
- 2 within the power of HMD and its Partners, and was not inappropriate, and therefore
- 3 ratifies that action as of June 8, 2015.
- 4 xi) The court further finds that grounds for disassociation of Mary Carlson from the
- 5 HMD exist, and that Mary Carlson should be disassociated from the HMD – subject
- 6 to payment for the fair value of her 6 ½% limited partnership interest.
- 7 xii) The court finds that the net or salable value of HMD is problematic, and insufficient
- 8 evidence thereof was submitted by Mary Carlson. David Carlson indicated the value
- 9 could be as high as \$1 million, and the court accepts that value. Therefore Mary
- 10 Carlson’s interest in HMD is determined to be \$65,000, subject to set off for the
- 11 interest charge ordered in favor of HMD, below.
- 12 xiii) Because the court finds below that Mary Carlson and David Carlson (through a
- 13 community debt) is indebted to HMD, the amount of Mary Carlson’s 6 ½ % interest
- 14 in HMD shall be set off against Her ½ of the debt to HMD.
- 15 **k) The \$226,485.05 taken by Mary Carlson from HMD Ltd. Partnership**
- 16 i) The evidence is undisputed and the Court finds that on or about November 19, 2013,
- 17 Mary Carlson removed the sum of \$226,485.05 from the bank account of HMD, that
- 18 sum being all of the remaining funds in the only bank account of HMD at the time.
- 19 ii) The evidence supports, and the court finds, that said \$226,485.05 was directly
- 20 traceable to a property sale by HMD and that the funds belong solely to HMD.
- 21 iii) The evidence is also undisputed, and the court finds, that Mary Carlson upon removal
- 22 of said funds caused the closure of the only bank account of HMD.
- 23 iv) The evidence supports, and the court finds, that the removal of said funds from the
- 24 HMD Bank Account and the closure of that Bank Account were contrary to the
- 25 Partnership Agreement, and were contrary to Mary Carlson’s Fiduciary Duties to
- 26 HMD, and was wrongful.
- 27 v) The evidence is, and the court finds, that counsel for Mary Carlson initially
- recommended the funds be returned to a bank account of HMD – and the court
- commends counsel for that advice. However, that was not done, and throughout the
- case, Mary Carlson has insisted upon the funds, clearly the property of HMD, remain
- in the registry of the court. Throughout the term of the case, it has been within the

1 power of Mary Carlson to cause the turnover of the funds in the registry of the court  
2 to HMD, but she has not done so.

3 vi) In the initial pleadings, Mary Carlson has admitted that the removal of said funds and  
4 the placement of those funds in the Registry of the Court have deprived HMD of the  
5 use of those funds. The court accordingly finds that there was a forced forbearance  
6 from the use of its funds by HMD.

7 vii) The Court finds that the \$226,485.05 should be returned to HMD.

8 viii) The Court finds that the amount in issue was liquidated at \$226,485.05.

9 ix) The Court finds that due to this deprivation HMD, is entitled to recover from Mary  
10 Carlson interest on the liquidated amount at the statutory rate of 12% annum totaling  
11 \$ 16,604.77, pursuant to RCW 4.56.110.

12 **l) HMD Loans to the Family Farm entities**

13 i) From 2003-2009 a series of payments was made by HMD to South 80 orchards to  
14 supplement working capital of the family farming operations.

15 ii) Despite the absence of adequate documentation, the fiduciary status of both David  
16 Carlson and Mary Carlson to HMD throughout that period of time, would require  
17 that, and the court finds as fact that, those payments are properly treated as loans to be  
18 repaid to HMD.

19 iii) Those loans were in the amount of \$153,400 and \$165.00 (HMD originally claimed  
20 the first series of payments was 160,400, but the testimony of David Carlson  
21 identified one \$7000 payment as crop proceeds which should not be included in the  
22 calculation). The Principal of those loans, and appropriate interest, which the court  
23 finds, for the reasons set forth below, to be 3% per annum, not compounded, is owing  
24 from the community and/or Carlson Agribusiness and/or South 80. Those amounts  
25 are respectively \$153,400 plus interest of \$144,226.98 to June 19, 2015 for a total of  
26 \$297,626.98, and \$165,000 plus interest of \$29,084.79 to June 19, 2015 for a total of  
27 \$194,084.79. The total due is  $\$297,626.98 + \$194,084.79 = \$491,711.78$ . There was  
no credible evidence or documents introduced to support any payment of the principle  
of those loans. Therefore, the amount of \$491,711.78, remains outstanding, as of June  
19, 2015.

- 1 iv) Because those loans became part of the working capital of the family farm, and were  
2 transferred in the 2011 transition of working capital from South 80 Orchards to  
3 Carlson Agribusiness, LLC, the working capital of the family farms is properly liable  
4 for repayment of the \$491,711.78. Carlson Agribusiness as the transferee of the  
5 working capital is liable for that amount. Because it is a community debt, the court  
6 finds it is appropriate for each of David Carlson and Mary Carlson to repay ½ of that  
7 amount, i.e. \$245,855.89, each.
- 8 v) Because the working capital is community property, and because each was a general  
9 partner of HMD, each of David Carlson and Mary Carlson are liable for one half of  
10 said \$491,711.78, i.e. \$245,855.89 is chargeable to David Carlson and \$245,855.89 is  
11 chargeable to Mary Carlson.
- 12 vi) In 2012, payments were made by HMD to David Carlson which in turn went to the  
13 working capital of the family farm, then in Carlson Agribusiness in the amount of  
14 \$400,000. Of that amount, in 2015 the sum of \$221,350 was repaid. The evidence is,  
15 and the court finds, that repayment was proper. Accordingly, after accrued interest at  
16 3% per annum, the balance owing is \$207,162.05, or \$103,581.02 each.
- 17 vii) As to the said \$400,000, promissory notes in that amount were made, and while done  
18 by a layperson, are properly deemed notes made by David Carlson, on behalf of the  
19 marital community, the funds trace into the working capital of Carlson Agribusiness.
- 20 viii) The majority of those notes call for an interest rate of 3%. Based thereon, and the  
21 fullness of the testimony, the court finds that a reasonable interest rate for all loans of  
22 HMD for the working capital of the community farms is 3% per annum, not  
23 compounded
- 24 ix) Because it is doubtful that sufficient working capital exists to farm the family farms  
25 as allocated by the court, through the end of the 2015 crop year, if funds owing to  
26 HMD are immediately deducted therefrom, and because HMD is willing to extend  
27 repayment of the these amounts, each party may elect to: (a) pay the full amount of  
\$349,436.91 immediately, or (b) sign a note in substantially the form of the notes  
used in 2012 as discussed above, in the principal amount of \$349,436.91, payable in  
monthly installments of \$3,000 per month, to be first applied to accrued interest and

1 the balance to principle, for five (5) years commencing July 1, 2015, with the balance  
2 of principal and accrued interest all payable on June 1, 2020.

3 **m) The Carlson Family Farming Business (including working capital), and Division  
4 and Allocation thereof.**

5 i) By far (several orders of magnitude) the Carlson Family Farming Business is the  
6 largest asset of the parties and the marital community. With the exception of the  
7 Home Place (treated elsewhere) the farming business is conducted upon land owned  
8 by others, including primarily leased land. By far the largest asset of the farming  
9 business is its working capital. While the precise dollar amount of that working  
10 capital cannot be accurately determined, because a large portion thereof is in growing  
11 crops and unsold inventory, the court finds that it exceeds, at least, \$2 million.

12 ii) The court finds that based on the expedient prior transactions, and co-mingling, that  
13 all farming equipment should be treated as owned by Carlson Agribusiness, LLC, and  
14 equipment approximating one half of the utility of the overall equipment, and one half  
15 of the value of the overall equipment, shall be distributed to or at the direction of  
16 Mary Carlson, the other approximately 1/2 shall go to David Carlson. Before the  
17 Effective Date (defined below) the court will approve an allocation of the equipment.  
18 The equipment to be divided shall be done irrespective of whether it is titled in South  
19 80 Orchards, Carlson Agribusiness, LLC, RMT, David Carlson or Mary Carlson, or is  
20 not titled. The only equipment excluded from the distribution shall be that titled in a  
21 third party, including HMD Limited Partnership.

22 iii) Based on the fullness of the evidence, including the testimony of both Mary Carlson  
23 and David Carlson that they wish to continue farming their share of the community  
24 farming business, the court finds that the farming business should be divided; the  
25 rights to farm on an approximately equal basis measured by planted acreage, the  
26 working capital on an equal basis, and the equipment on an approximately equal basis  
27 as set forth above.

iv) At the time of marriage the overall farming business of the parties consisted of  
Carlson Orchards, Inc., the separate property of David Carlson, and other farming  
interests which survived the receivership and liquidation of Carlson Orchards, Inc.  
between 2001 and 2005. Carlson's family farms which survived the collapse of

1 Carlson Orchards, Inc. consisted of various properties growing apples, cherries and  
2 various other fruit varieties; among the land farmed were and are four leases  
3 denominated 901, 902, 903 and 1941, from Native American allottees and  
4 administered by the Bureau of Indian Affairs, title to which was (and is) held in the  
5 name of South 80 Orchards Limited Partnership. They also included the property  
6 known as West 50. Starting in 2003, the farmed properties also included the HMD  
7 Orchard owned orchard known as Sno Valley, and Parker Heights discussed below.

8 v) The land subject to those BIA leases was bare when initially leased in the name of  
9 South 80.

10 vi) The BIA leased property was developed and farmed by Carlson Orchards, Inc. until  
11 the receivership of that company in January 2003.

12 vii) Through negotiation and settlement of the claims against Carlson Orchards, Inc.  
13 David Carlson was able to preserve to the marital community the working capital  
14 used on the surviving family farms, including the BIA leases. The best evidence is,  
15 and the court finds, the origination of the working capital used by the family farm was  
16 from that settlement, negotiated by David Carlson, and that the settlement was  
17 negotiated for the benefit of the marital community, and that the working capital thus  
18 obtained is community property.

19 viii) During the period approximately from September 2009 through early 2011, the  
20 farming working capital, the equipment and the farming operations were transferred  
21 from being nominally conducted by South 80 Orchards to Carlson Agribusiness,  
22 LLC, a Limited Liability Company which formally began business on or about  
23 January 1, 2011. The court specifically finds that Carlson Agribusiness, LLC is  
24 community property.

25 ix) There was significant dispute as to the propriety of the transition of working capital  
26 and farming operations from the name of South 80 Orchards to Carlson Agribusiness,  
27 LLC, but on the fullness of the evidence, the court finds that such transition was  
known to both parties, consented to by conduct, was not for any improper purpose,  
and was done in the exercise of the reasonable business judgment of David Carlson.  
The many arguments of wrongdoing, mismanagement, problems with the Internal

1 Revenue Service, etc. during the period 2008 through 2011, are subsumed in this  
2 finding and mooted by it.

3 x) Further in this connection, the court finds that David Carlson and Mary Carlson did  
4 not observe the indices of separateness between the marital community and its  
5 property and funds on the one hand, and South 80 Orchards or RMT Holdings on the  
6 other, and the court finds on the fullness of the evidence that South 80 Orchards holds  
7 only bare title to the BIA leases, and has no rights separate from the community (or  
8 the admittedly community owned Carlson Agribusiness, LLC) in the working capital  
9 or equipment, all of which was expediently co-mingled by, or with the knowledge of,  
10 the parties, to a degree preventing any meaningful segregation.

11 xi) The court finds that South 80 Orchards permitted others to farm the BIA leases, first  
12 Carlson Orchards, Inc. and later Carlson Agribusiness, LLC. Because the behavior of  
13 the parties is the best evidence of their agreement, absent an integrated written  
14 agreement, the court finds that the proper designation is that South 80 Orchards  
15 licensed a "right to farm" the BIA leases, and may continue to do so.

16 xii) Mary Carlson is the majority holder of South 80 Orchards, and that majority interest  
17 is within the plenary jurisdiction of this court. The court finds that, as between and  
18 among the parties to this action, it may direct the granting of a license or licenses to  
19 farm the BIA leases in this proceeding.

20 xiii) The evidence presented at trial makes it more likely than not that the BIA  
21 leasehold upon the parcel commonly referred by the parties as 901 may be terminated  
22 by the lessor in the event that it is awarded to Mary Carlson.

23 xiv) In approximately September, 2009, the Home Place, consisting of a residence and  
24 20 acres was purchased and introduced into the Carlson family farming operation.  
25 The majority of the Orchard was established using the community working capital  
26 during 2009 through 2011. The improvements thereon included the construction of  
27 the main equipment shop used by the family farm.

xv) Beginning in 2011, David Carlson began planning for expansion of the family  
farming operation by obtaining an additional BIA lease on property now referred to  
as the New Sno Valley. As an appropriate step in that direction, in 2012, he  
contracted to purchase trees to be available in 2014. Carlson Agribusiness, LLC then

1 obtained a lease in its name on the New Sno Valley Orchard in early 2014.

2 Approximately \$250,000 of community working capital has been invested in the  
3 development of that new Orchard.

4 xvi) The New Sno Valley Orchard is titled in Carlson Agribusiness, LLC, was funded  
5 by community working capital, and is community property subject to division in the  
6 dissolution action.

7 xvii) In addition to those mentioned above, the family farm also farmed property  
8 known as Parker Heights. The parties have stipulated that title to Parker Heights has  
9 always been intended for, and should be immediately transferred to, Nick Carlson, the  
10 son of David Carlson. The court finds that is appropriate and accepts the stipulation.

11 xviii) Family farm working capital has been invested in Parker Heights for the 2015  
12 crop. The evidence supports an investment therein of between \$60,000 and \$70,000.  
13 Based on the evidence, the court finds that the investment is \$65,000. The court  
14 further finds, based on the evidence, that the landowner, Nick Carlson, should receive  
15 one half of any net profit above set \$65,000 and that the community should receive  
16 one half of any such net profits. In the division of the working capital, the return of  
17 said \$65,000, or such portion thereof as is obtained, together with one half of any net  
18 profit, shall be included in the working capital divided by the court.

19 xix) The evidence supports, and the court finds that the approximate gross acreage of  
20 the farming rights to be allocated by the court is 500 acres and that the planted  
21 acreage is approximately 435 acres.

22 xx) The evidence supports, and the court finds that the following rights to farm the  
23 following properties (identified by their common names) consisting of the indicated  
24 approximate acreages should be allocated to Mary Carlson:

- 25 (1) The 902 BIA lease – 75 acres.  
26 (2) The 903 BIA lease – 75 acres  
27 (3) The 1941 BIA lease – 75 acres.

Total acreage allocated to Mary Carlson, 225 acres.

xxi) The evidence supports, and the court finds that the following rights to farm the  
following properties (identified by their common names) consisting of the indicated  
approximate acreages should be allocated to David Carlson:

- 1 (1) The Home Place – 17 acres
- 2 (2) The New Sno Valley – 28 acres
- 3 (3) The Sno Valley – 45 acres
- 4 (4) The West 50 – 45 acres
- 5 (5) The 901 BIA lease – 75 acres

6 Total acreage allocated to David Carlson, 210 acres.

7 xxii) The working capital of the family farm is composed of the following elements:  
8 cash, accounts receivable, inventory (unsold fruit in storage) and growing crops. On  
9 the Effective Date (hereinafter defined) those are to be allocated and distributed as  
10 follows:

- 11 (1) Growing Crops on the properties allocated to Mary Carlson go to Mary Carlson.  
12 All harvested crops, inventory, receivables or cash resulting from the 2015 crops  
13 on those properties are also allocated to Mary Carlson.
- 14 (2) Growing Crops on the properties allocated to David Carlson go to David Carlson.  
15 All harvested crops, inventory, receivables or cash resulting from the 2015 crops  
16 on those properties are also allocated to David Carlson.
- 17 (3) Cash on hand (except any required to pay farming obligations incurred on or  
18 before the Effective Date, or resulting from more traceable to 2015 crop) will be  
19 divided equally and paid one half to Mary Carlson and one half to David Carlson.
- 20 (4) Accounts Receivable (except any resulting from more traceable to 2015 or later  
21 crop) will be collected by Carlson Agribusiness, LLC and upon receipt will be  
22 distributed one half to Mary Carlson and one half to David Carlson within five  
23 days of receipt. The said Accounts Receivable shall be deposited in the \*\*\*610  
24 account which has heretofore been referred to as the Court Ordered Account. No  
25 other funds shall be deposited in that account after the Effective Date, and no  
26 amounts (except checks written and delivered prior to the Effective Date for  
27 farming obligations incurred in the ordinary course before the Effective Date)  
shall be paid from such account except one half to David Carlson and one half to  
Mary Carlson, except as otherwise specifically ordered by the court.

1 (5) Inventory (except inventory resulting from more traceable to the 2015 or later  
2 crop) as it is sold will become Accounts Receivable and will be treated identically  
3 when collected as existing Accounts Receivable, as provided immediately above.

4 xxiii) The Effective Date shall be as soon as possible as agreed to by the parties, but no  
5 later than June 30, 2015. If the parties do not agree on an earlier date, the Effective  
6 Date is hereby directed to be June 30, 2015.

7 xxiv) On and after the Effective Date, Carlson Agribusiness, LLC shall become the sole  
8 and separate property of David Carlson, subject only to its obligations to collect and  
9 pay out funds and distribute equipment pursuant to the Court's Orders. Carlson  
10 Agribusiness, LLC may farm those properties allocated to David Carlson, but shall  
11 have no responsibility whatsoever to farm or be involved in any respect with the  
12 properties allocated to Mary Carlson.

13 **n) South 80's Claims Against Carlson Agribusiness**

- 14 i) The Court has heretofore dismissed South 80's claims against Carlson Agribusiness,  
15 LLC for tortious interference, with prejudice.  
16 ii) Based on the findings above, the claim of South 80 for conversion should be and  
17 hereby is dismissed, with prejudice.

18 **o) Distribution of Non-Farm Real Property**

- 19 i) The Cabin on Lake Roosevelt, is properly valued at \$75,000 and is awarded to Mary  
20 Carlson.  
21 ii) The vacant lot in Yakima, is properly valued at \$75,000 and is awarded to Mary  
22 Carlson  
23 iii) The Home Place, is properly valued at \$377,000 and is awarded to David Carlson.

24 **p) Distribution of Non-Farm Personal Property**

- 25 i) By stipulation of the parties, non-farming personal property shall be distributed as set  
26 forth below. The said personal property allocation, with the exception of the Bayliner  
27 Boat, are deemed to be of equivalent value.

**ii) To Mary Carlson:**

- (1) Her separate property including her deceased son's property  
(2) 20\_\_ Toyota Highlander, VIN # \_\_\_\_\_  
(3) Former community property in her possession.

1           **iii) To David Carlson:**

2           (1) Old Corvette

3           (2) His personal truck, VIN # \_\_\_\_\_

4           (3) Former community property in his possession.

5           (4) The approximately 39 foot Bayliner Boat, is properly valued at a net value of  
6           \$75,000 and is allocated to David Carlson.

7           **q) Equalization of Non-Farm Property Allocations and of Allocated Debts.**

8           i) The family farm rights to farm, working capital and equipment, and the personal  
9           property (except the boat) have been distributed on an equal basis.

10          ii) The Home Place and Boat, having respective values of \$377,000 and \$75,000 for a  
11          total of \$452,000 have been allocated to David Carlson.

12          iii) The Cabin and the Vacant Lot each valued at \$75,000 for a total of \$150,000 have  
13          been allocated to Mary Carlson.

14          iv) The difference in allocated value in favor of David Carlson is \$227,000.

15          v) Mary Carlson is liable for one half of the Life Insurance Policy Loans in the amount  
16          of \$\$52,634.35, and the allocated one half of David Carlson's salary in the amount of  
17          \$127,500, for a total of \$180,134.35. That amount should be subtracted from the  
18          difference allocated in favor of David Carlson, which leaves \$46,865.65 owing from  
19          David Carlson to Mary Carlson.

20          vi) To equalize the overall distribution, upon the Effective Date, David Carlson shall pay  
21          the difference, i.e. \$ \_\_\_\_\_, in cash to Mary Carlson.

22          **r) Attorney's Fees**

23          i) Each party has received from assets otherwise distributable from the Community  
24          Estate funds for payment of attorney fees in the approximate amount of \$50,000, an  
25          approximately equal distribution.

26          ii) Upon the fullness of the evidence, the size of the distribution, the conduct of the  
27          parties in litigation, and all other relevant factors, the Court finds that each party shall  
28          bear their own attorney fees to be paid from their post-dissolution separate estates.

29          **s) Unknown or Omitted Property, Gifts or Inheritances.**

30          i) Any unknown or omitted assets related to farming, not identifiable to a particular  
31          property, shall go one-half to Dave Carlson and one-half to Mary Carlson.

1 ii) Any unknown or omitted assets related to the properties which go to Mary Carlson  
2 shall go to Mary Carlson.

3 iii) Any unknown or omitted assets related to the properties which go to David Carlson  
4 shall go to David Carlson.

5 iv) Fully unknown or unexpected assets will be divided equally.

6 v) Any inheritances or gifts will go separately to the party to whom they are or were  
7 directed

8 **2) CONCLUSIONS OF LAW**

9 a) At its core, this is a dissolution action, subject to the plenary jurisdiction of this court, and  
10 the court finds it has jurisdiction over not just community assets, but to the extent  
11 necessary to reach a fair and equitable distribution of property between the parties, the  
12 court has jurisdiction over the separate property of the dissolution parties.

13 b) The court has jurisdiction over South 80 Orchards, property held for the benefit of Mary  
14 Carlson and/or David Carlson by RMT Holdings, LLC, and Carlson agribusiness, LLC.

15 c) In addition to the plenary jurisdiction over the assets of the dissolution parties as noted  
16 above, this court has the power to reach proper and equitable decisions regarding the  
17 parties before it, and their assets and liabilities, pursuant to CR 54(c) to enter a full and  
18 complete final order regarding all matters addressed during the course of the trial. That  
19 rule states: "... Every final judgment shall grant the relief to which the party in whose  
20 favor it is rendered is entitled, even if the party has not demanded such relief in his  
21 pleadings."

22 d) David and Mary Carlson are fiduciaries to one another.

23 e) David Carlson in his capacity as personal representative of the Estate of Hugh A. Carlson  
24 is a General Partner of HMD is a fiduciary to HMD.

25 f) As a general partner of HMD, Mary Carlson was fiduciary to HMD and its limited  
26 partners until the Special Meeting, June 8, 2015, including when she withdrew  
27 \$226,485.05, from the HMD bank account on or about November 19, 2013 and closed  
the account, and thus breached her fiduciary duty to HMD and the limited partners by  
those acts. Accordingly, said \$226,485.05 should be immediately paid to HMD Limited  
Partnership.

- 1 g) Because Mary Carlson wrongfully took the HMD funds from the HMD bank account and  
2 caused the HMD funds to be sequestered in the court registry, she is liable for interest  
3 upon the liquidated amount at the statutory interest rate of 12% per annum.
- 4 h) David Carlson is indebted to HMD Limited Partnership in the amount of \$349,436.91.
- 5 i) Mary Carlson is indebted to HMD Limited Partnership in the amount of \$349,436.91.
- 6 j) David Carlson is entitled to a retroactive salary in the amount of \$85,000 per year from  
and after September 1, 2012 to the Effective Date is defined above.
- 7 k) The assets and liabilities of RMT have been sufficiently comingled to constitute  
8 community property, and Mary Carlson should be, and is, awarded the vacant lot held in  
9 the name of RMT, at a value of \$75,000.
- 10 l) Mary Carlson is awarded the community vacant lot at a value of \$75,000.
- 11 m) David Carlson is awarded the community Home Place at a value of \$377,000.
- 12 n) David Carlson is awarded the Bayliner Boat at a value of \$75,000.
- 13 o) The Rights to Farm are allocated on approximately equal basis as set forth in the Findings  
14 of Fact above.
- 15 p) The farming equipment is allocated on an approximately equal basis as set forth in the  
Findings of Fact above.
- 16 q) The working capital of the family farm, currently held by Carlson Agribusiness, LLC will  
17 be divided equally as set forth in the Findings of Fact above.
- 18 r) Except for its duties to pay working capital, collect and distribute working capital, and  
19 distribute equipment as set forth in the Findings of Fact above, Carlson Agribusiness,  
LLC shall be the sole and separate property of David Carlson as of the Effective Date.
- 20 s) The distribution of assets shall be equalized by the payment of David Carlson to Mary  
21 Carlson in the amount of \$46,865.65.
- 22 t) The community life insurance policy ownership becomes the separate property of David  
23 Carlson, subject to his duty to maintain the policies by paying the premiums thereof, and  
24 to maintain Mary Carlson as a beneficiary of one half of the death benefits thereof, up to  
25 the earlier of payment of the death benefits, or the death of Mary Carlson.
- 26  
27

1 k) Mary Carlson is not entitled to a disproportionate award of the community property.  
2 With the equalizing payment, the property of the parties has been, and should be, divided  
3 equally.

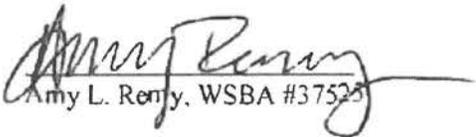
4 l) Mary and David Carlson are each entitled to an equitable division of all community and  
5 separate property.

6 m) Mary Carlson is entitled to spousal maintenance in the amount of \$1500 per month  
7 commencing July 1, 2015 and terminating on June 1, 2018. Mary Carlson is not entitled to  
8 spousal maintenance, beyond that and the requirement that David Carlson make all payments  
9 necessary to keep the Life Insurance in force, a requirement of approximately \$1000 per  
10 month to maintain Mary Carlson's one half beneficiary status.

11 --END OF ORDER--

12 Presented By:

13 **Finney, Falk & Remy, PLLP**

14   
15 Amy L. Remy, WSBA #37525

## APPENDIX -- 8

## APPENDIX -- 8

FILED <sup>P 1 of 3</sup>  
JAN 20 2016  
YAKIMA COUNTY CLERK

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

Mary Alice Carlsm, et al

13-2-04263-0

NO. 13-3-00578-9

vs.

Hugh David Carlsm, et al

ORDER scheduling

THIS MATTER HAVING COME ON for hearing before the undersigned judge/commissioner of the above-entitled court, it is hereby ORDERED THAT:

1) Equipment - the parties agree to have So Lowry serve as arbitrator/mediator/special master to divide & allocate & determine the method & timing of distribution of farm equipment, defined here as wind machines, tangible personal property, farm equipment and vehicles, limited to that equipment listed by Mary Carlson in her 12/18/15 filing & Mr. Carlsm in his 1/19/16 filing. The parties further agree that Mr. Lowry's decision shall be

DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

final & not subject to appeal.

\_\_\_\_\_  
JUDGE/COURT COMMISSIONER

Presented by:  
(Copy received)

SR 34915  
Attorney for husband & petitioner

W. Carlsm 17431  
Attorney for Mary Carlson

Page - 080

Approved as to form:  
(Copy received)

Tommy #31525  
Attorney for MR Carlsm

[Signature] #4646

APPENDIX TO APPELLANTS' OPENING BRIEFS

**FILED**  
JAN 20 2016

YAKIMA COUNTY CLERK

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

Mary Alice Carlson, et al

13-2-04263-0  
NO. 13-3-00578-9

vs.

Hugh David Carlson, et al

ORDER on scheduling

THIS MATTER HAVING COME ON for hearing before the undersigned judge/commissioner of the above-entitled court, it is hereby ORDERED THAT:

- 1) (continued) Mr. Lowry shall not address division of personal furnishings. <sup>the Court retains that issue.</sup> The meeting shall occur on either 1/28/16 at 130 or 2/1/16 at 130 as the parties shall agree & subject to Mr. Lowry's availability. Rules of procedure shall be determined by Mr. Lowry. Location shall be at Stokes.
- 2) Accounting - Mr. Peterson's report is due to Mr. Carlson's counsel on 1/27/16. His deposition shall be on 2/5/16 at 10:00 am at Emrey Falk & Yarger.

DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

JUDGE/COURT COMMISSIONER

Presented by:  
(Copy received)

Approved as to form:  
(Copy received)

[Signature] 31915  
Attorney for petitioner  
[Signature] 17431

[Signature] #4646  
Attorney for H. D. Carlson  
[Signature] #37525

FILED  
JAN 20 2016

YAKIMA COUNTY CLERK

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

13-2-04263-0

Mary Alice Carlsm, et al

NO. 13-3-00578-9

vs.

ORDER on scheduling

Hugh David Carlsm, et al

THIS MATTER HAVING COME ON for hearing before the undersigned judge/commissioner of the above-entitled court, it is hereby ORDERED THAT:

3) Proposed FOF COL - The parties shall each submit their proposed FOF COL, and any related briefing, shall be filed with the court on 2/8/16 & provide a bench copy

DONE IN OPEN COURT this 20<sup>th</sup> day of JANUARY, 2016

[Signature]  
JUDGE/COURT COMMISSIONER

Presented by:  
(Copy received)

Approved as to form:  
(Copy received)

[Signature] 34915  
Attorney for [Name]

[Signature] #37525  
Attorney for Mr. Carlsm

[Signature] 17431

[Signature] #4646

## APPENDIX -- 9

## APPENDIX -- 9

**PARTNERSHIP AGREEMENT**  
**OF**  
**HMD LIMITED PARTNERSHIP**  
*A Washington Limited Partnership*

THIS AGREEMENT is made and entered into as of May 4, 1999, between HUGH A. CARLSON and H. DAVID CARLSON who, together with each other party admitted as a general partner, are hereafter referred to as "general partners," and HUGH A. CARLSON and MARLA R. CONTINI, who, together with each other party admitted as a limited partner, are hereafter referred to as "limited partners."

WITNESSETH:

WHEREAS, the parties hereto desire to engage in business, consider it to be to their mutual advantage to enter into a partnership agreement in furtherance of that objective, and desire to form a limited partnership under the laws of the State of Washington, NOW, THEREFORE, it is hereby agreed as follows:

I.  
NAME, PLACE OF BUSINESS, AGENT, AND OFFICE

1.1 Name. The name of the partnership shall be *HMD LIMITED PARTNERSHIP*, and the principal place of business shall be *4502 Scenic Drive, Yakima, WA 98908 (mailing: P.O. Box 9034, Yakima, WA 98909)*.

1.2 Agent and Office. *H. DAVID CARLSON* shall be the initial agent of the partnership for service of process, and the address of the office of the partnership shall be *4502 Scenic Drive, Yakima, WA 98908 (mailing: P.O. Box 9034, Yakima, WA 98909)*. The general partners may from time to time appoint a new agent and change the location of the office of the partnership.

1.3 Tax Matter Partner. The partnership shall designate a general partner as a "tax matter partner" as provided in the IRC.

II.  
PURPOSE

2.1 The partnership shall be engaged in the business of farming and acquiring, leasing, selling, and developing real estate and personal property, including farm, ranch, and

MENKE JACKSON BEYER  
& ELOFSON, LLP  
1400 Summitview, Suite 100  
Yakima, WA 98902  
Telephone (509) 575-0313  
FAX (509) 575-0351

commercial properties, and such other business activities permitted to a limited partnership as the general partners may from time to time determine, subject to the provisions of Section 7.6.

### III. DURATION

3.1 The partnership shall commence on the date the Certificate of Limited Partnership is filed and shall continue until the occurrence of any one of the following events:

- 3.1.1 The expiration of fifty (50) years from the date the partnership commences;
- 3.1.2 The occurrence of any of the events described in Section 11.2 involving the sole remaining general partner if, within ninety (90) days after the occurrence of any such event, the limited partners have not appointed one or more persons or entities as a general partner or partners or the estate of the deceased general partner does not become a general partner pursuant to Section 12.1.2;
- 3.1.3 The entry of a decree of judicial dissolution;
- 3.1.4 The affirmative vote of the partners as provided in Section 7.6 to dissolve the partnership; or
- 3.1.5 All partners, both general and limited, consenting in writing to dissolution of the partnership.

### IV. CAPITAL CONTRIBUTIONS

4.1 *Initial Contributions.* The individuals named below shall be the initial general and limited partners. HUGH A. CARLSON shall initially contribute to the capital of the partnership the cash and property listed in "Exhibit A" attached hereto, and the parties named below shall receive in exchange the interests in the partnership capital set forth below. The partners, other than HUGH A. CARLSON, acknowledge that the interests received by them constitute gifts of partnership interests from their father, HUGH A. CARLSON. The property is accepted by the partnership and the partners at the values set forth in "Exhibit A."

<u>General Partners</u>	<u>Percentage Interest</u>
Hugh A. Carlson	4
H. David Carlson	1

MENKE JACKSON BEYER  
& ELOFSON, LLP  
1400 Summitview, Suite 100  
Yakima, WA 98902  
Telephone (509) 575-0313  
FAX (509) 575-0351

<u>Limited Partners</u>	<u>Percentage Interest</u>
Hugh A. Carlson	94
Marla R. Contini	1

4.2 Interest. No interest shall be paid on the initial or any subsequent capital contribution, and no partner shall be required to contribute additional capital.

## V. CAPITAL ACCOUNTS

5.1 Individual Account. An individual capital account shall be maintained for each general partner and for each limited partner in accordance with IRC § 704. A person may be both a general partner and a limited partner; and if so, separate capital accounts shall be maintained to reflect such person's general partnership interest and such person's limited partnership interest. The capital account of a partner shall consist of that partner's original contribution of capital (1) increased by additional contributions, the share of any partnership liabilities assumed by that partner, and the amount of profits and gains allocated to that partner hereunder and (2) decreased by distributions to that partner, the share of partnership losses and deductions allocated to that partner, and the amount of any liabilities of that partner assumed by the partnership.

- (a) "Contribution" means the amount of money and fair market value of property transferred to the partnership in exchange for a partnership interest, less the amount of any liability secured by that property and the amount of any liability of the transferor assumed by the partnership.
- (b) "Distribution" means the amount of money and fair market value of property distributed to a partner, less the amount of any liability secured by such property.

A partner's capital account shall also be increased or decreased to reflect that partner's share of any adjustment to the adjusted basis of the partnership's assets pursuant to IRC § 734(b) or 735(b) to the extent permitted by IRC § 704, and to reflect transfers of partnership interests made in compliance with this Agreement.

5.2 Withdrawal of Capital. No partner may withdraw any portion of the partnership capital or be entitled to partnership capital except with the consent of a majority of the general partners.

5.3 Separate Property. Capital accounts and partnership interests of each partner, except those married to each other, and of all partners hereafter admitted to the partnership, shall be and remain the partner's separate property.

MENKE JACKSON BEYER  
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VI.  
PROFITS, GAINS, AND LOSSES

6.1 Profits, Gains, and Losses. Subject to the terms of Sections 6.2 and 6.3, the net profits, gains, or losses of the partnership shall be allocated without priority among the partners in proportion to their respective capital accounts on the last day of each calendar year. The terms "net profits," "net gains," and "net losses" as used in this Section 6.1 shall mean the amount of partnership net ordinary income, net gains from the disposition of property, and net losses as determined from time to time by the partnership's accountant in accordance with accepted accounting principles.

6.2 Gains and Losses on Contributed Property. If property contributed to the partnership is disposed of:

6.2.1 That portion of any gain subject to depreciation recapture shall be allocated:

- (a) First, to all partners in proportion to their shares of profits to the extent of depreciation taken by the partnership after the date of contribution, and
- (b) Second, to the contributing partners in the proportions they owned the contributed property at the time of its contribution to the partnership.

6.2.2 That portion of the remaining gain or loss equal to the difference between the property's value on the contribution date and its adjusted basis on that date shall be allocated among the contributing partners in the proportions in which they owned the contributed property at the time of its contribution to the partnership. If the property contributed is exchanged for other like-kind property, such replacement property shall be deemed to be contributed property for purposes of the foregoing allocation of gains or losses.

6.2.3 Any remaining gain or loss shall be allocated among the partners in proportion to their capital accounts on the last day of the calendar year.

The terms "net gains" and "net losses" as used in this Section 6.2 shall mean the amount of any partnership gain or loss resulting from the sale or other disposition of contributed property, including depreciation recapture, as determined by the partnership's accountant.

6.3 Transfer of Interest. In the event of any transfer of the interest of any partner, or any portion thereof in compliance with this Agreement, the share of the income, gains, losses, deductions, or credits of the partnership allocable to the interest or interests transferred shall be allocated between the transferor and the transferee on the basis of the number of days during such calendar year that the interest or interests transferred were held by each, calculated as of the

MENKE JACKSON BEYER  
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end of the month during which the transfer takes place. A partner acquiring an interest from another partner who received the same in exchange for property contributed shall be deemed a contributing partner for purposes of Section 6.2 to the extent of the interest acquired, subject to any adjustment made pursuant to Section 16.1.

6.4 Cash Contributions. The net cash flow of the partnership shall be distributed annually or more frequently, except that net cash flow may be retained by the partnership as required for the reasonable needs of the partnership business as determined by the general partners.

## VII. MANAGEMENT AND DUTIES

7.1 General Partners. Subject to the restrictions contained herein and the terms of Section 7.6, the management and control of the partnership business shall rest exclusively with the general partners, who shall have all rights, powers, and duties of a general partner under the laws of the State of Washington. The scope of the general partners' power and authority shall encompass all matters connected with or incident to the business of the partnership, including but not limited to the power and authority:

- 7.1.1 To spend the capital and revenues of the partnership;
- 7.1.2 To manage, sell, develop, improve, operate, and dispose of any partnership properties, including to act on behalf of the partnership with respect to any partnership or joint venture in which the partnership participates;
- 7.1.3 To employ persons, firms, and/or corporations for the sale, operation, management, and development of the property of the partnership, including but not limited to sales agents, management agents, architects, engineers, contractors, attorneys, and accountants;
- 7.1.4 To employ agents, attorneys, accountants, engineers, and other consultants or contractors who may be affiliates of the general partners; however, any employment of persons employed by the general partners or their affiliates must be on terms not less favorable to the partnership than those offered by unaffiliated persons for comparable services in the same area;
- 7.1.5 To acquire, lease, and sell personal and/or real property, hire and fire employees, and to do all other acts necessary, appropriate, or helpful for the operation of the partnership business;

- 7.1.6 To appoint representatives to manage the day-to-day operations of the partnership;
- 7.1.7 To enter into agreements of partnership, joint venture, co-ownership, or similar arrangements with other persons, firms, partnerships, or corporations as necessary or appropriate to accomplish the purposes of the partnership;
- 7.1.8 To execute, acknowledge, and deliver any and all instruments to effectuate any of the foregoing powers and any other powers granted the general partners under the laws of the State of Washington or other provisions of this Agreement;
- 7.1.9 To enter into and to execute agreements for employment or services, as well as any other agreements and all other instruments the general partners deem necessary or appropriate to own, sell, improve, operate, and dispose of partnership properties or to effectively and properly perform their duties or exercise their powers hereunder;
- 7.1.10 To borrow money on a secured or unsecured basis from individuals, banks, and other lending institutions to finance or refinance partnership assets, to meet other partnership obligations, provide partnership working capital, and for any other partnership purpose, and to execute promissory notes, mortgages, deeds of trust, assignments of partnership property, and such other security instruments as a lender of funds may require to secure repayment of such borrowings; provided, that no individual, bank, or other lending institution to which the general partners apply for a loan shall be required to inquire as to the purpose for which such loan is sought; and as between the partnership and such individual, bank, or other lending institution, it shall be conclusively presumed that the proceeds of such loan are to be, and will be, used for purposes authorized under the terms of this agreement;
- 7.1.11 To lease, sell, dispose of, exchange, or hypothecate any or all partnership assets;
- 7.1.12 To enter into such agreements and contracts with parties and to give such receipts, releases, and discharges, with respect to the business of the partnership as the general partners, in their sole discretion, deem advisable or appropriate;
- 7.1.13 To sell, dispose of, trade, exchange, quitclaim, release, or abandon, with or without consideration, any or all partnership assets upon such terms and conditions as the general partners, in their sole discretion, deem appropriate;

7.1.14 To purchase, at the expense of the partnership, such liability and other insurance as the general partners, in their sole discretion, deem advisable to protect the partnership's assets and business; however, the general partners shall not be liable to the partnership or the other partners for failure to purchase any insurance; and

7.1.15 To sue and be sued, complain, defend, settle, and/or compromise, with respect to any claim in favor of or against the partnership, in the name and on behalf of the partnership.

7.2 Restrictions on General Partners. Without the consent of a majority of the other general partners, no general partner shall: (1) lend any of the monies of the partnership; (2) enter into any bond or become bail, endorser or surety for any person, or knowingly cause or suffer to be done anything whereby the partnership property may be attached or taken on execution or endangered; (3) compromise or compound, or accept as payment in full, release, or discharge any debt due the partnership; (4) give any promise for the payment of money on account of the partnership unless in the ordinary course of business; (5) give any security for the payment of money on account of the partnership or borrow money in the partnership name; (6) draw or endorse any bill of exchange or promissory note on account of the partnership; or (7) sell or lease any partnership property or any interest therein or enter into any contract for any such purposes unless in the ordinary course of business.

7.3 Further Restrictions on General Partners. Without the written consent or ratification of the specific act by all partners, both general and limited, no general partner shall:

7.3.1 Do any act in contravention of this Partnership Agreement.

7.3.2 Do any act which would make it impossible to carry on the ordinary business of the partnership.

7.3.3 Assign the partnership property in trust for creditors.

7.3.4 Bind the partnership as guarantor or surety for a third person.

7.4 Salaries. Any general partner performing services for the partnership shall receive reasonable compensation for such services. Such compensation shall be determined by a majority of the general partners from time to time, shall be determined in good faith, and shall be treated as an expense in determining partnership profits and losses.

7.5 Limited Partners. Subject to the terms of Section 7.6, the limited partners shall not take part in the management of the partnership or transact any business on behalf of the partnership and shall have no power to execute any documents or written instruments on behalf

of the partnership; provided, that the foregoing shall not limit any rights or powers a general partner shall possess, as such, who is also a limited partner.

7.6 General and Limited Partners. All partners, both general and limited, shall be entitled to vote upon (1) matters affecting the removal, admission or substitution of a general partner; (2) admission of a limited partner; (3) the dissolution and winding up of the partnership; (4) amendment of this Partnership Agreement; and (5) the sale of all or substantially all of the assets of the partnership. A majority of the percentage interests in the partnership capital, whether general or limited, shall be required for determination of each of the foregoing.

7.7 Voting. Each partner, whether general or limited or both, shall be entitled to one vote for each full one percent (1%) interest in the partnership capital owned or held by that partner. Unless otherwise provided herein, a majority of the votes cast at any meeting shall be required for any motion to pass. If a partnership interest is owned or held by a partnership, corporation, trust, or fiduciary, that entity's votes shall be cast by one or more persons authorized by the partnership or corporation and by one or more trustees or fiduciaries. Documents satisfactory to the general partner shall be provided, evidencing authority to vote a partnership interest owned or held by any such entity.

A partner may cast the partner's votes in person or by proxy. Any such proxy shall be in writing, designating the person to cast that partner's votes and the number of votes to be cast pursuant to the proxy, and signed and dated by the partner granting the proxy.

#### 7.8 Meetings.

7.8.1 Annual Meeting. Not less than once a year, and as soon as practical after completion of the financial statements or partnership income tax return, a meeting shall be held of all general partners at a date, time and place determined by the general partners. The following matters shall be reviewed at that meeting, in addition to others determined by the general partners:

- (1) The financial report or income tax return prepared by the partnership's accountant.
- (2) The determination of the amount of partnership net cash flow, if any, to be retained for the reasonable business needs of the partnership.

7.8.2 Special Meetings. Any partner or partners owning twenty percent (20%) or more of the voting rights in the partnership may call a special meeting of the partners by submitting a written request therefor to a general partner. The general partners shall call a meeting to be held within thirty (30) days after the date of such request, to be held at such time and place as the general partners determine.

- 7.8.3 Notice - Waiver. Notice of the annual and any special meeting shall be given in writing, not less than five (5) days prior to the meeting, and shall be deemed given when deposited in the U.S. mail, postage prepaid, addressed to the partner at the address contained in the partnership records. Notice of a special meeting shall include a statement of the specific matters to be acted upon. Attendance at or participation in the meeting shall be deemed a waiver of notice.
- 7.8.4 Telephone Meetings. Any annual or special meeting may be held by telephone conference call wherein all partners participating in the meeting can confer with each other.
- 7.8.5 Consent Without Meeting. Any matter requiring a vote of partners may be determined without a meeting by all partners either (1) voting by written ballot or (2) consenting to the action in writing.
- 7.8.6 Facsimile Signatures. Any consents or signatures required hereunder may be made by facsimile and shall be as effective for all purposes as if original.

7.9 Indemnification. A general partner shall not be liable, responsible, or accountable in damages or otherwise to any of the partners for any act or omission performed or omitted by the general partner in good faith and in a manner reasonably believed by the general partner to be within the scope of the authority granted to the general partner. The partnership shall indemnify and save harmless each general partner from any and all loss or damage, judgment, fine, interest, cost, and expense, including attorneys' fees, incurred by reason of any such act or omission or incurred in any civil, criminal, or administrative proceeding in which the general partner is involved by reason of being a general partner; provided, that the indemnification provision of this section shall not apply if a general partner knowingly breaches this Agreement or acts in bad faith with respect to the act or omission involved. In the event of a settlement, such indemnification and saving harmless shall apply only upon the approval of the partners upon submission to a vote of all partners, both general and limited, notwithstanding anything herein to the contrary, the liability of the limited partners as such hereunder shall not exceed their interest in the capital of the partnership.

7.10 Expenses. Expenses of the partnership paid by any partner shall be reimbursed by the partnership upon receipt of such evidence as the partnership may require. To the extent that these expenditures are not fully reimbursed by the partnership, they are to be borne by the partner incurring them. The fact that such expenses are not reimbursed by the partnership shall not be construed as a conclusion by the partnership that the expenses were not incurred on its behalf.

7.11 Time Devoted to Partnership; Other Ventures. The general partners shall devote so much of their time to the business of the partnership as in their judgment the conduct of the partnership's business reasonably requires. The general partners may engage in business ventures and activities of any nature and description independently or with others, whether or not in competition with the business of the partnership; and neither the partnership nor any of the other partners shall have any rights in and to such independent ventures and activities or the income or profits derived therefrom by reason of their acquisition of interest in the partnership.

## VIII. BOOKS OF ACCOUNT - BANKING

8.1 Books and Records. The general partners shall maintain adequate accounts and records in accordance with IRC Section 704. All books, records and accounts of the partnership shall be open at all reasonable times to inspection and copying by all of the partners. The books of account shall be kept on a cash and calendar-year basis and shall be closed and balanced at the end of each calendar year.

8.2 Records at Partnership Office. The general partners shall maintain at the office of the partnership:

- 8.2.1 A current list of the partners, containing the full name and last known address of each partner.
- 8.2.2 A copy of the Certificate of Limited Partnership, all certificates of amendment thereto, and copies of all powers of attorney executed with respect to the certificate. A copy of the certificate marked "Filed" need only be furnished a limited partner on request.
- 8.2.3 A copy of the partnership's income tax returns and of any financial statements for not less than the three (3) most recent years.
- 8.2.4 A copy of the Partnership Agreement and each amendment thereto.

Copies of each of the foregoing shall be furnished a partner upon receipt of a written request therefor.

8.3 Banking. All funds of the partnership shall be deposited in its name in such checking account or accounts as shall be designated by the general partners. Checks shall be drawn on the partnership bank account for partnership purposes only and may be signed by any one or more of the general partners or their designees.

IX.  
RIGHTS OF TRANSFEREE

9.1 Transfer to General Partner. If a partner transfers by gift, bequest, assignment, or otherwise a general or limited partner's interest to a general partner, such general partner shall take such interest in the class and to the extent of the transfer.

9.2 Transfer to Limited Partner and Certain Inheritors. If a partner transfers by gift, bequest, assignment, or otherwise a general or limited partner's interest to a limited partner or to a party who is not also a general partner, but who is eligible to inherit the same under Section 12.1.2 or 12.2.1, such limited partner or inheritor shall take all of the interest so transferred as a limited partner, and the inheritor shall be admitted to the partnership as a limited partner unless otherwise admitted upon the vote of the partners as provided in Section 7.6, or otherwise entitled pursuant to RCW 25.10.430.

9.3 Other Admission of Partners. Other general and limited partners may be admitted to the partnership, but only upon the vote of partners as provided in Section 7.6.

9.4 Transfer in Compliance With Agreement. Transfer of a partnership interest made in compliance with the terms of this Agreement shall entitle a transferee to receive, to the extent transferred, the distributions to which the transferor would be entitled, but shall not entitle a transferee to become or exercise any rights of a partner except as provided in Sections 9.1, 9.2, or 9.3. A transferee who has become a general or limited partner shall have all rights and powers and be subject to all terms, restrictions, and liabilities provided under this Agreement with respect to and to the extent of the partnership interest acquired.

9.5 Transfer Not in Compliance With Agreement. Any transfer of a partnership interest, or attempt thereof, contrary to any provision of this Agreement shall be void and of no effect, and the transferee shall acquire no right or interest in the partnership or its assets.

X.  
DISSOLUTION

10.1 Dissolution Events. The partnership shall dissolve upon the occurrence of any of the events causing its termination as provided in Article III.

10.2 Payment of Debts and Distribution of Property. In the event of a dissolution which results in winding up the partnership's affairs, its liabilities shall be paid and assets distributed in the following order:

10.2.1 First, all of the partnership's debts and liabilities shall be paid, in the order of priority as provided by law.

- 10.2.2 Second, all debts to partners who are creditors shall be paid. Partners shall not be deemed to be creditors on account of their contributions or capital accounts.
- 10.2.3 Third, the partners shall be paid in respect to their share of the profits and gains.
- 10.2.4 Fourth, there shall be distributed to each general and limited partner, either in cash or property, as the general partners shall deem appropriate, the remaining assets of the partnership in proportion to the partner's capital accounts. All assets in kind shall be valued at fair market value at the date of distribution, less the amount of any liability secured by the property distributed to the extent assumed by the distributee partner. Any partner who has a negative balance in such partner's capital account shall contribute to the assets to be distributed an amount of cash sufficient to raise such balance to zero.

10.3 Gain or Loss. Subject to the terms of Section 6.2, any gain or loss on disposition of partnership properties in the process of liquidation shall be credited or charged to the partners in the proportions of their respective capital accounts, determined as of the last day of the month preceding the month in which the first distribution of property occurs. Any property distributed in kind in the liquidation shall be valued and treated as though the property were sold and the cash proceeds were distributed. The difference between the value of property distributed in kind and its adjusted basis shall be treated as a gain or loss on the sale of the property and shall be credited or charged to the partners in the proportions of their respective capital accounts.

10.4 Deficiency. A limited partner shall look solely to the assets of the partnership for the return of that partner's capital contribution; and if the partnership property remaining after the payment or discharge of the debts and liabilities of the partnership is insufficient to return the capital contribution, a limited partner shall have no recourse against the general partners or any other limited partner for that purpose.

10.5 Conduct. The winding up of the partnership affairs and the liquidation and distribution of its assets shall be conducted exclusively by the general partners, who are hereby authorized to do any and all acts and things authorized by law for those purposes.

10.6 Release. No dissolution or termination of the partnership shall relieve any partner of his obligations to the others or to the partnership under this Agreement prior to completion of the dissolution proceedings.

XI.  
WITHDRAWAL OF A PARTNER

11.1 No Right of Withdrawal. No general or limited partner shall have the right to withdraw from the partnership.

11.2 Termination of General Partner Status. Except as approved by the specific written consent of all partners at the time, a partner shall cease to be a general partner upon the occurrence of any one or more of the following events:

- 11.2.1 The transfer of all of the partner's general partner interest.
- 11.2.2 The partner's removal as a general partner as provided in Section 13.1.
- 11.2.3 Assigning an interest in the partnership for the benefit of creditors; filing a voluntary petition in bankruptcy; being adjudicated a bankrupt or insolvent; filing a pleading in any proceeding seeking for such general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief or admitting, consenting to, or otherwise failing to contest any proceeding seeking such relief, or the commencement of any such proceeding against the general partner and the same not having been dismissed within ninety (90) days thereafter; or seeking, consenting to, acquiescing in, or failing to contest a proceeding for the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, or the appointment of a trustee, receiver, or liquidator and such appointment not having been vacated within sixty (60) days thereafter.
- 11.2.4 The general partner's death.
- 11.2.5 The entry of an order, decree, or otherwise by a court of competent jurisdiction adjudicating the general partner incompetent to manage his person or estate. In such event, the attorney-in-fact, guardian, conservator, or other legal representative of the incompetent partner's estate or person shall be deemed to be an assignee of such partner's interest, subject to the terms of Section 9.1.
- 11.2.6 If the general partner is the trustee of a trust, the termination of the trust, or, if earlier, the distribution of the general partner's interest.
- 11.2.7 If the general partner is a partnership or corporation, the dissolution and commencement of winding up such partnership or filing of Articles of Dissolution or revocation of its authority to conduct business.

11.2.8 If the general partner is an estate, the distribution of the estate's general partner interest.

11.3 Termination of Limited Partner Status. A partner shall cease to be a limited partner upon the occurrence of any one or more of the following events:

11.3.1 The transfer of all of his limited partner interest.

11.3.2 The limited partner's death.

11.3.3 If the limited partner is the trustee of a trust, the termination of the trust, or, if earlier, the distribution of the limited partner's interest.

11.3.4 If the limited partner is a partnership or corporation, the dissolution and commencement of winding up such partnership or filing of Articles of Dissolution or revocation of its authority to conduct business.

11.3.5 If the limited partner is an estate, the distribution of the estate's limited partner interest.

11.4 Continuing Liability. Termination of a general partner's status shall not release the general partner from liabilities incurred during the general partner's tenure.

## XII. DEATH OF A PARTNER

12.1 General Partner.

12.1.1 If there is more than one general partner, the death of a general partner shall not dissolve the partnership. If a sole general partner dies, the partnership shall not dissolve if, within ninety (90) days after the date of death, the limited partners appoint one or more persons or entities as a general partner or partners.

12.1.2 The interest of a general partner may be inherited or otherwise received by such general partner's lineal descendants, any other partner or other partner's lineal descendants (subject to the provisions of Section IX), or by a trust for the benefit of any of the foregoing or for the benefit of the spouse of any of the foregoing, provided that any such trustee shall be subject to the restrictions contained herein and the partnership interest held by the trustee shall be distributable only to a lineal descendant of HUGH A. CARLSON or to a general partner.

12.1.3 If the general partner's interest of a deceased general partner is to be received by a party who is not described in Section 12.1.2, whether under the terms of the deceased partner's Will, by the terms of a trust, under applicable laws of intestacy, or otherwise, the partnership shall have the option to purchase all of the general partner's interest of that partner at the price and terms agreed upon, or, if agreement is not reached, then at the price and terms determined pursuant to Section 12.3. Such option shall be exercised by giving notice in writing to the personal representative of the deceased partner's estate or trustee of such trust at any time after the date of death and before the expiration of five (5) months after the estate or trust attempts to transfer such interest. If the partnership does not exercise its option, such estate's or trust's distributees shall become transferees of such interest, subject to the terms of Section 9.4.

## 12.2 Limited Partner.

12.2.1 The death of a limited partner shall not terminate the partnership business. The interest of a limited partner may be inherited or otherwise received by such limited partner's lineal descendants, any other partner or other partner's lineal descendants, or a trust for the benefit of any of the foregoing or for the benefit of the spouse of any of the foregoing, provided that any such trustee shall be subject to the restrictions contained herein and upon termination of said trust the partnership interest held by the trustee shall be distributable only to a lineal descendant of HUGH A. CARLSON or to a general or limited partner.

12.2.2 If the limited partner's interest of a deceased limited partner is to be received by a party who is not described in Section 12.2.1, whether under the terms of the deceased partner's Will, by the terms of a trust, under applicable laws of intestacy, or otherwise, the partnership shall have the option to purchase all of the limited partner's interest of that partner at the price and terms agreed upon, or, if agreement is not reached, then at the price and terms determined pursuant to Section 12.3. Such option may be exercised by the partnership at any time after the date of death and before the expiration of five (5) months after the estate or trust attempts to transfer such interest. If the partnership does not exercise its option, such estate's or trust's distributees shall become transferees of such interest, subject to the terms of Section 9.4.

12.3 Price and Terms on Exercise of Option. If, upon exercise by the partnership of an option under Section 12.1 or 12.2, the parties fail to agree within forty-five (45) days upon the price and terms for the purchase of the interest subject to the option, the price of the interest shall be its fair market value at the date of the exercise of the option as determined by an appraiser or appraisers appointed by agreement of the parties or, failing agreement, by an arbitrator or arbitrators under the laws of the State of Washington. Any appraiser so appointed shall be

qualified to appraise interests in limited partnerships. The fair market value of the interest shall be determined with application of appropriate discounts. The decision of the appraiser or appraisers shall be binding upon the parties. Unless otherwise agreed, the purchase price shall be paid twenty percent (20%) down in cash and the balance in ten (10) equal annual installments of principal and interest, with the first payment due on the first annual anniversary date of the date of closing. The date of closing shall not be later than the first day of the second month after the fair market value is agreed upon or determined by appraisal as herein provided. Each successive payment shall be made on or before each succeeding annual anniversary date. The unpaid balance of the purchase price shall bear interest at a rate one percentage point above the minimum interest rate which on the date of closing would avoid the unstated interest rules of IRC § 483 and/or 1274. The interest rate shall be fixed through the entire term of payment. All payments shall be applied first to accrued interest and then to principal. Notwithstanding the above, the partnership shall have the right to prepay all or any part of the purchase price and interest on such prepaid amount shall cease.

### XIII. REMOVAL OF GENERAL PARTNER

13.1 Votes. A general partner may be removed from the partnership at any time upon vote and consent pursuant to Section 7.6. The removal shall be effective immediately upon delivery to the removed partner of a written notice of his removal. The remaining partners shall have the right to continue the partnership under its present name. In the event of removal, the general partner shall be deemed to be a limited partner and shall have no rights, power, or authority as a general partner, but shall be entitled to vote upon those matters a limited partner is entitled to vote upon pursuant to the terms of Section 7.6.

### XIV. TRANSFER OF INTEREST

14.1 Transfer Restrictions. No partner may, directly or indirectly, voluntarily or involuntarily, transfer by any means, encumber, or otherwise dispose of all or any portion of the partner's partnership interest without complying with the terms of this Agreement, including, without limitation, Sections 12.1, 12.2, 14.1, 14.2, and 14.3. This prohibition includes any attachment, levy, seizure, garnishment, or charging order by or on behalf of any kind of creditor other than another partner.

14.2 Unrestricted Transfer of Interest. A general or limited partner may transfer without restriction by gift, assignment, sale, or otherwise all or any part of that partner's general or limited partner interest to any party to whom transfer by inheritance is permitted under Sections 12.1 and 12.2, and the transferee thereof shall take such interest as provided in Sections 9.1 and 9.2.

14.3 Sale to Others. A general or limited partner shall also have the right to sell all or any part of the partner's interest in the partnership in a bona fide sale to any party other than a party to whom transfer is permitted under Sections 12.1 and 12.2, but only on the following conditions:

- 14.3.1 The partner shall give written notice to all the other partners that the partner desires to sell such interest in the partnership. The partner shall attach to the notice the cash price and terms of payment which the partner is asking for the interest.
- 14.3.2 The partnership or the other partners shall have the option for sixty (60) days from the receipt of the written notice from the partner to give notice that it intends to purchase such interest of the partner at the price and on the terms contained in the written notice given by the partner. Within the sixty (60) days, the partnership shall have the first right to exercise the option; then the remaining partners shall have the second right to buy a share proportionate to the remaining partner's capital accounts; and, finally, any partner, within the sixty-day period, shall have the right to exercise the option for the remaining available partnership interest being offered for sale. The partnership or exercising partners shall have sixty (60) days after the sixty-day period to purchase the partner's interest.
- 14.3.3 If the partnership and the other partners do not exercise the option to purchase such interest or do not purchase all of such interest, the partner may sell such interest in the partnership, or the remaining portion thereof, for such price or proportional price and on such terms; provided, however, that such interest, or any remaining portion thereof, shall not be sold to any person at any other price or on any other terms without again giving in writing to the partnership and the other partners the option and refusal rights (for the periods of time and on the conditions set forth in Section 14.3.2) to purchase such interest, or any remaining portion thereof, at the same price and at the same terms as offered by such other person.
- 14.3.4 If a bona fide sale is not completed within six (6) months from the date the partner last offered the partnership interest to the partnership, then any attempted transfer thereafter will be deemed pursuant to a new bona fide offer and this section shall again apply.

14.4 Other Restriction on Transfer. No transfer of any partnership interest, or any portion thereof, may be made if such transfer sought to be made, when added to the total of all other interests transferred within the period of twelve (12) consecutive months prior thereto, would, in the opinion of counsel for the partnership, result in the partnership's being considered

to have been terminated within the meaning of IRC § 708. No purchase of partnership interests by the partnership shall be made to the extent that, after giving effect to the distribution, all liabilities of the partnership, other than liabilities to partners on account of their partnership interests, exceed the fair market value of the partnership assets.

XV.  
BREACH OF PARTNERSHIP AGREEMENT

15.1 Continuation of Partnership Business. If any provision of this Agreement, including any restriction on transfer, is breached by any partner, the partnership business shall be continued by the nonbreaching partners, the partner in breach shall be considered to be a transferee who is not a general or limited partner, and the partnership shall have the right to withhold all or any part of the distributions otherwise payable to the breaching partner.

15.2 Purchase Option. Upon a partner's becoming a breaching partner, the partnership has the option to purchase all or any part of the interest of the breaching partner in the partnership unless prior to the time of exercise thereof all breaches have been cured. The partnership shall exercise the option by giving written notice of the exercise to the breaching party and to any person or entity claiming to have an interest in the partnership by reason of any prohibited transfer which led to the partner's becoming a breaching partner. The notice shall be given by certified mail, return receipt requested, at any time before the end of three (3) years after a partner last became a breaching partner. The proof of such mailing shall be sufficient notice, even if the addressee fails or refuses to accept or pick up the mailing. The purchase price for the interest to be purchased shall be seventy percent (70%) of the amount of the capital account of the breaching partner (or at the election of the partnership seventy percent[70%] of the fair market value of the breaching partner's interest determined as provided in Section 12.3) as of the end of the month prior to the giving of the notice provided in this paragraph. The purchase price shall be paid in ten (10) equal annual installments of principal and interest, with the first payment due on the second annual anniversary date of the date of closing. The date of closing shall be the first day of the third month after the notice is given. Each successive payment shall be made on or before the anniversary date of each succeeding year. The unpaid balance of the purchase price shall bear interest at the minimum interest rate which on the date of closing would avoid application of the unstated interest rules of IRC § 483 and/or 1274. The interest rate shall be fixed through the entire term of payment. All payments shall be applied first to accrued interest and then to principal. Notwithstanding the above, the partnership shall have the right at its election to prepay all or any part of the purchase price, and interest on any such prepaid amount shall cease.

XVI.  
ADJUSTMENT TO BASIS

16.1 In the event a partner transfers an interest in the partnership, or upon the death of a partner, or in the event of a distribution of partnership property to any partner, the partnership may file an election, in accordance with applicable Treasury Regulations, to cause the basis of the partnership's property to be adjusted for federal income tax purposes as provided in IRC §§ 734 and 743.

XVII.  
RIGHT OF PARTITION WAIVED

17.1 The partners agree that irreparable damage would be done the partnership if any partner should bring an action in court to dissolve this partnership. Accordingly, each of the partners accepts the provisions of this Agreement as the partner's sole entitlement on termination of the partner's partnership relation. Each partner hereby expressly waives any statutory or other rights which the partner may have to seek dissolution of this partnership or partition of real estate owned by the partnership. Each further partner, by acquiring an interest in the partnership, whether by gift, bequest, devise, purchase, or otherwise, expressly waives such rights simultaneously with such partner's acquisition.

XVIII.  
AMENDMENT

18.1 This Agreement may be amended as provided in Section 7.6.

XIX.  
AGREEMENT BINDING ON HEIRS AND ASSIGNS

19.1 Binding Effect. This Agreement shall be binding upon the partnership and the partners, including all partners hereafter admitted, their legal representatives, legatees, successors in interest, and assigns.

19.2 Binding on Transferee. If requested by a general partner, each transferee of a partnership interest shall, in writing, acknowledge being bound by all of the terms and provisions of this Agreement as the same may be amended from time to time. The request for or execution of such a writing shall not be a condition to such transferees' being bound by all terms and conditions of this Agreement, but a refusal to do so shall be deemed a breach of this Agreement.

XX.  
MISCELLANEOUS

20.1 Terms. Wherever in this Agreement the feminine or masculine gender is used, it shall be deemed to include both and any corporation, partnership, trust, estate, or other entity. The term, "IRC" means the Internal Revenue Code of 1986, amendments thereto, and regulations issued thereunder. The term "descendants" as used herein shall include and be limited to lineal descendants by birth and adoption, whether now living or hereafter born or adopted, except that no person over the age of eleven (11) years at the time of adoption shall be included. Paragraph titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement or any provision thereof as set forth in the text.

20.2 Specific Enforcement. If a partner fails to perform any obligation of such partner to be performed hereunder, any of the other partners or the partnership may, in addition to any other right, option, or remedy provided for in this Agreement, institute and maintain a proceeding to compel the specific performance of this Agreement by the partner in breach, it being agreed that the partners not in breach and the partnership do not have an adequate remedy at law. In any such proceeding, the prevailing party shall receive from the other party reasonable attorneys' fees in addition to costs allowed by law. A failure to seek redress for a violation or to insist upon strict performance of any provision hereof shall not be deemed a waiver of any right or obligation contained herein.

20.3 Arbitration. Except as otherwise provided herein, if any controversy or claim arising out of this Agreement or concerning partnership matters cannot be resolved by the partners, it shall be settled by arbitration. The parties shall appoint such arbitrator as they may agree upon; but in the absence of agreement, each party to the disagreement shall, within thirty (30) days, select an arbitrator, and the two arbitrators so chosen shall select a third within one (1) week of their selection. The three (3) arbitrators, by majority vote, or the single arbitrator agreed upon by the parties, shall render a decision within thirty (30) days, which decision shall be binding on the parties and which decision may be confirmed in a court of law if necessary, in accordance with the provisions of RCW 7.04.

20.4 Applicable Law - Venue. This Agreement is made in accordance with and shall be interpreted in accordance with the laws of the State of Washington. The venue of any proceeding with respect to this Agreement shall be Yakima County, Washington.

20.5 Execution of Certificate. Each partner required to do so under applicable law shall immediately execute a Certificate of Limited Partnership, and the general partners shall cause the same to be filed with the Secretary of State of the State of Washington.

20.6 Notices. Any notices required to be given or which may be given under this Agreement shall be delivered to a partner personally or mailed by first class mail, postage

prepaid, to that partner's address shown on the books and records of the partnership and, unless otherwise provided herein, shall be deemed given on the earlier of date of delivery or on the third day following the date of mailing. A partner may change his or her address by written notice given a general partner. Notice given the partnership shall be given or mailed to a general partner.

20.7 Complete Agreement. As to the subjects contained herein, this Agreement shall be the complete and final Agreement among the parties hereto and incorporates, supersedes all prior and contemporaneous negotiations and agreements, and may not be modified or supplemented in any manner or form whatsoever either by oral or written evidence of such matters or by course of dealing, except as specifically provided herein. Each provision of this Agreement is severable. If any term or provision is declared illegal or invalid for any reason, the remainder of this Agreement shall nevertheless remain valid.

20.8 Execution in Counterpart. This Agreement may be executed in counterparts, each of which shall be deemed an original. The general partners are authorized to affix all of the signature pages to one Agreement, which shall then be deemed to be the original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

*GENERAL PARTNERS:*

*LIMITED PARTNERS:*

\_\_\_\_\_  
HUGH A. CARLSON

\_\_\_\_\_  
HUGH A. CARLSON

  
\_\_\_\_\_  
H. DAVID CARLSON

  
\_\_\_\_\_  
MYRLA R. CONTINI

**EXHIBIT A**  
**INITIAL CONTRIBUTIONS**

Partnership Agreement of HMD Limited Partnership

An undivided one-half (1/2) interest in the following described parcels:

	<i>Fair Market Value of 1/2 Interest (w/o discounts)</i>
1. Assessor's Parcel No. 230915-13412 – Lot 2 of Short Plat 7011532, records of Yakima County, Washington (1.00 acre)	\$54,950
2. Assessor's Parcel No. 230915-13413 – Lot 3 of Short Plat 7011532, records of Yakima County, Washington (.92 acre)	50,000
3. Assessor's Parcel No. 230915-13407 – Lot 2 of Short Plat 94-90 recorded under Auditor's File No. 3069317, records of Yakima County, Washington; AND that part of the North 20.59 feet of Lot 3 of said Short Plat lying Easterly of the West line of said Lot 2, extended Southerly (5.31 acres)	37,425
4. Assessor's Parcel No. 230915-13408 – Lot 3 of Short Plat 94-90 recorded under Auditor's File No. 3069317, records of Yakima County, Washington; EXCEPT that portion of the North 20.59 feet of said Lot 3 lying Easterly of the West line of Lot 2 of said Short Plat, extended Southerly; AND EXCEPT that portion of said Lot 3 lying Easterly of the West line of Lot 4 of said Short Plat, extended Northerly (4.06 acres)	40,350
5. Assessor's Parcel No. 230915-12013 – That portion of the South half of the Northwest 1/4 of the Northeast 1/4 AND the North half of the Southwest 1/4 of the Northeast 1/4 of Section 15, Township 9 North, Range 23, E.W.M., lying Westerly of the Westerly right-of-way line of the Northern Pacific Railroad Co.; EXCEPT that portion lying Northerly of the North line of Stover Road and lying Easterly of the East line of Wallace Way; AND EXCEPT that	

portion thereof condemned for state highway by Yakima County Superior Court Cause No. 77-2-01242-7 (18.4 acres)	83,200
6. 1976 Peerless mobile home, 60' x 12'; Assessor's Parcel No. 300000-04342	5,000
7. 1975 Kirkwood mobile home, 51' x 12'; Assessor's Parcel No. 300000-13106	5,000
Total Market Value (without discounts)	\$275,925
Less 45% Discount	<u>-124,166</u>
<b>NET FAIR MARKET VALUE OF ASSETS</b>	<b>\$151,759</b>

**APPENDIX -- 10**

**APPENDIX -- 10**

**ADDENDUM TO  
 PARTNERSHIP AGREEMENT  
 OF  
 HMD LIMITED PARTNERSHIP**  
*A Washington Limited Partnership*

THIS ADDENDUM TO PARTNERSHIP AGREEMENT is made and entered into as of May 4, 1999, between HUGH A. CARLSON and H. DAVID CARLSON who, together with each other party admitted as a general partner, are hereafter referred to as "general partners," and HUGH A. CARLSON, H. DAVID CARLSON, MARLA R. CONTINI, ANTHONY D. CONTINI, TANYA S. CONTINI, and NICHOLAS JOE CARLSON, who, together with each other party admitted as a limited partner, are hereafter referred to as "limited partners."

WITNESSETH:

WHEREAS, the initial general partners and limited partners of HMD Limited Partnership entered into a Partnership Agreement on May 4, 1999; and

WHEREAS, HUGH A. CARLSON, general and limited partner, desires to transfer by gift general and limited partnership interests in the partnership;

Now, therefore, it is hereby agreed as follows:

1. Partnership interests. As a result of gifts by HUGH A. CARLSON, the general and partnership interests as of the date of this Addendum shall be as follows:

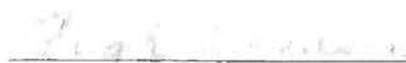
<u>General Partners</u>	<u>Percentage Interest</u>
Hugh A. Carlson	2.5
H. David Carlson	2.5
<u>Limited Partners</u>	<u>Percentage Interest</u>
Hugh A. Carlson	80.0
H. David Carlson	4.0
Marla R. Contini	6.5
Anthony D. Contini	1.5
Tanya S. Contini	1.5
Nicholas Joe Carlson	1.5

MENKE JACKSON BEYER  
 & ELOFSON, LLP  
 1400 Summitview, Suite 100  
 Yakima, WA 98902  
 Telephone (509) 575-0313  
 FAX (509) 575-0351

2. Acceptance of partnership interests. The undersigned hereby accept the transfer of partnership interests in the class and to the extent of the transfer by gift as evidenced herein and agree that their interests in the partnership as described above shall be subject to all the terms, restrictions, and liabilities provided in the original Partnership Agreement dated May 4, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the day and year first above written.

GENERAL PARTNERS:

  
\_\_\_\_\_  
HUGH A. CARLSON

  
\_\_\_\_\_  
H. DAVID CARLSON

LIMITED PARTNERS:

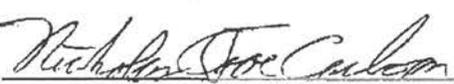
  
\_\_\_\_\_  
HUGH A. CARLSON

  
\_\_\_\_\_  
H. DAVID CARLSON

  
\_\_\_\_\_  
MARLA R. CONTINI

\_\_\_\_\_  
ANTHONY D. CONTINI

  
\_\_\_\_\_  
TANYA S. CONTINI

  
\_\_\_\_\_  
NICHOLAS JOE CARLSON

2. Acceptance of partnership interests. The undersigned hereby accept the transfer of partnership interests in the class and to the extent of the transfer by gift as evidenced herein and agree that their interests in the partnership as described above shall be subject to all the terms, restrictions, and liabilities provided in the original Partnership Agreement dated May 4, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the day and year first above written.

*GENERAL PARTNERS:*

*LIMITED PARTNERS:*

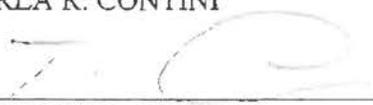
\_\_\_\_\_  
HUGH A. CARLSON

\_\_\_\_\_  
HUGH A. CARLSON

\_\_\_\_\_  
H. DAVID CARLSON

\_\_\_\_\_  
H. DAVID CARLSON

\_\_\_\_\_  
MARLA R. CONTINI

  
\_\_\_\_\_  
ANTHONY D. CONTINI

\_\_\_\_\_  
TANYA S. CONTINI

\_\_\_\_\_  
NICHOLAS JOE CARLSON

**APPENDIX -- 11**

**APPENDIX -- 11**

**SECOND  
ADDENDUM TO  
PARTNERSHIP AGREEMENT  
OF  
HMD LIMITED PARTNERSHIP  
*A Washington Limited Partnership***

THIS SECOND ADDENDUM TO PARTNERSHIP AGREEMENT is made and entered into as of December 22, 2000, between H. DAVID CARLSON as a general partner and as personal representative of the Estate of HUGH A. CARLSON, deceased, and MARY CARLSON (as her separate estate), and MARLA R. CONTINI, as new admitted general partners, who, together with each other party admitted as a general partner, are hereafter referred to as "general partners," and H. DAVID CARLSON, MARY CARLSON (as her separate estate), MARLA R. CONTINI, ANTHONY D. CONTINI, TANYA S. CONTINI, and NICHOLAS JOE CARLSON, who, together with each other party admitted as a limited partner, are hereafter referred to as "limited partners."

WITNESSETH:

WHEREAS, the initial general partners and limited partners of HMD Limited Partnership entered into a Partnership Agreement on May 4, 1999; and

WHEREAS, the general partners and limited partners of HMD Limited Partnership entered into an Addendum to Partnership Agreement on May 4, 1999; and

WHEREAS, HUGH A. CARLSON, general and limited partner, is deceased, and H. DAVID CARLSON is now the sole general partner;

WHEREAS, the general and limited partners desire to admit MARLA R. CONTINI as a general partner;

WHEREAS, H. DAVID CARLSON desires to gift his general and limited partnership interest to his spouse, MARY CARLSON (as her separate estate);

WHEREAS, the general and limited partners, approve of the transfer of H. DAVID CARLSON's general and limited partnership interest to MARY CARLSON (as her separate estate);

Now, therefore, it is hereby agreed as follows:

1. Partnership interests. As a result of the admission of MARLA R. CONTINI as a general partner, and the gifts by H. DAVID CARLSON to MARY CARLSON, the general and partnership interests as of the date of this Second Addendum shall be as follows:

<u>General Partners</u>	<u>Percentage Interest</u>
Estate of Hugh A. Carlson, <i>deceased</i>	2.5
Mary Carlson ( <i>as her separate estate</i> )	2.5
Marla R. Contini	2.5
<u>Limited Partners</u>	<u>Percentage Interest</u>
Estate of Hugh A. Carlson, <i>deceased</i>	80.0
Mary Carlson ( <i>as her separate estate</i> )	4.0
Marla R. Contini	4.0
Anthony D. Contini	1.5
Tanya S. Contini	1.5
Nicholas Joe Carlson	1.5

2. Acceptance of partnership interests. The undersigned hereby accept the transfer of partnership interests in the class and to the extent of the admission of the new general partners and the transfers by gift as evidenced herein and agree that their interests in the partnership as described above shall be subject to all terms, restrictions, and liabilities provided in the original Partnership Agreement dated May 4, 1999, and as amended by the Addendum dated May 4, 1999.

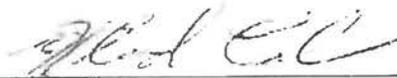
IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum on the day and year first above written.

GENERAL PARTNERS:

LIMITED PARTNERS:

ESTATE OF HUGH A. CARLSON,  
*deceased*

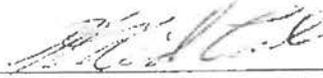
By



H. DAVID CARLSON,  
*Personal Representative*

ESTATE OF HUGH A. CARLSON,  
*deceased*

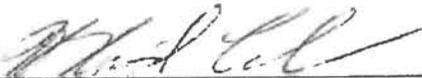
By



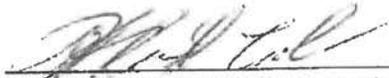
H. DAVID CARLSON  
*Personal Representative*

SECOND ADDENDUM TO  
PARTNERSHIP AGREEMENT - 2

MENKE JACKSON BEYER  
& ELOFSON, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902  
Telephone (509) 575-0313  
FAX (509) 575-0351



H. DAVID CARLSON, *transferring general partner*



H. DAVID CARLSON, *transferring limited partner*



MARY CARLSON, *newly admitted general Partner (as her separate estate)*



MARY CARLSON, *newly admitted limited partner (as her separate estate)*



MARLA R. CONTINI, *newly admitted general partner*



MARLA R. CONTINI

ANTHONY D. CONTINI

TANYA S. CONTINI



NICHOLAS JOE CARLSON

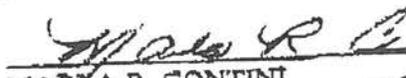
H. DAVID CARLSON, transferring general partner

H. DAVID CARLSON, transferring limited partner

  
MARY CARLSON, newly admitted general Partner (as her separate estate)

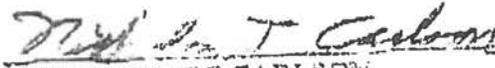
  
MARY CARLSON, newly admitted limited partner (as her separate estate)

  
MARLA R. CONTINI, newly admitted general partner

  
MARLA R. CONTINI

  
ANTHONY D. CONTINI

TANYA S. CONTINI

  
NICHOLAS JOE CARLSON

SECOND ADDENDUM TO PARTNERSHIP AGREEMENT - 3

MERRIE JACKSON BEYER  
a ELOPSON, LLP  
677 North 25th Avenue  
Yakima, WA 98902  
Telephone (509) 873-0313  
FAX (509) 575-0581

H. DAVID CARLSON, transferring general partner

Mary Carlson  
MARY CARLSON, newly admitted general Partner (as her separate estate)

Marla R. Conti  
MARLA R. CONTINI, newly admitted general partner

H. DAVID CARLSON, transferring limited partner

Mary Carlson  
MARY CARLSON, newly admitted limited partner (as her separate estate)

Marla R. Conti  
MARLA R. CONTINI

ANTHONY D. CONTINI

Tanya S. Conti  
TANYA S. CONTINI

NICHOLAS JOE CARLSON

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PARTNERSHIP AGREEMENT - 3

MENKE JACKSON BEYER  
& ELOFSON, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902  
Telephone (509) 575-0313  
FAX (509) 575-0351