

No.73407-5-I

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

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VICTORIA KNOLL, ET AL.,

Appellants,

v.

BUSINESS FINANCE CORPORATION,

Respondent.

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RESPONDENT BUSINESS FINANCE CORPORATION'S APPEAL  
BRIEF

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STATE OF WASHINGTON

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## INTRODUCTION

This is a collection action. Respondent Business Finance Corporation (“BFC”) loaned Knoll Lumber \$1.5 million in 1999. The debt was secured by, among other things, a Deed of Trust (the “DOT”) on the ownership interests of Craig and Victoria Knoll (husband and wife) and the Estate of Lorna Knoll in property known as Parcels A, B, and D in South King County. The parcels were owned as follows:

### **Parcels A and B:**

- Craig (now deceased) and Victoria Knoll: undivided 18% interest
- Estate of Lorna Knoll (now Knoll Greenwater LLC): undivided 64% interest
- Jerry Knoll: undivided 18% interest

### **Parcel D:**

- Estate of Lorna Knoll (now Knoll Greenwater LLC): 100% interest.

Knoll Lumber defaulted on the loan and filed bankruptcy in March 2000. Craig (until his death) and Victoria Knoll then made periodic payments on the loan until January 2005, then defaulted. BFC filed this foreclosure action five years later, in May 2010. Jerry Knoll was the only person to oppose BFC. BFC never claimed any right to foreclose on Jerry

Knoll's 18% interests in Parcels A and B, but Jerry<sup>1</sup> hoped to nullify BFC's security interests in the property and thereby gain all the property himself through inheritance.

The Trial Court correctly rejected Jerry's arguments and ruled that BFC could foreclose on the interests of the Lorna Knoll Estate (now Knoll Greenwater) and Craig and Victoria Knoll. Jerry now assigns four errors to the Trial Court's decision. Jerry's four arguments are incorrect for the following reasons:

**1. The Trial Court Correctly Interpreted The Loan Agreement And DOT To Conclude That The Estate Was A Grantor Under The DOT.** Jerry's argument that the Estate was not a Grantor under the terms of the Loan Agreement and the DOT is incorrect. The plain language of the Loan Agreement and DOT, as well as corroborating evidence such as Jerry's own statements in his 2002 Adversary Proceeding, all show that Trial Court properly interpreted the Loan Agreement and DOT to conclude that the Estate granted BFC a security interest in the Estate's interests in Parcel A, B and D.

**2. This Case Is Not Subject To The Three Year Statute Of Limitations.** Jerry incorrectly argues that the three year statute of

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<sup>1</sup> In this brief BFC refers to members of the Knoll family by first name in order to avoid confusion. BFC does not intend any disrespect by doing so.

limitations applies because BFC submitted parol evidence to corroborate its interpretation of the language of the Loan Agreement and DOT. Jerry's argument fails because BFC referred to parol only to help interpret the language of the DOT and Loan Agreement, not to supply essential terms that were missing from the contract. Using parol in this manner does not remove a contract from the six year statute of limitations.

**3. This Case Was Filed Within The Six Year Statute Of Limitations.** This argument by Jerry challenges the Trial Court's factual finding that Victoria Knoll made the January 2005 \$32,825 payment on the Loan Agreement, thereby tolling the Statue of Limitations until that date. Jerry's argument ignores the totality of the evidence that shows that Victoria was the only person that possibly could or would have made the payment.

**4. Jerry Cannot Evade The Estate's Obligations Under The DOT By Claiming His Unauthorized Signature Was Necessary Before Craig Could Bind The Estate.** Finally, Jerry erroneously argues that Craig, alone, was not authorized to bind the Estate when Craig executed the DOT on behalf of the Estate. Jerry argues that the Estate could not be bound unless Jerry also signed the DOT. Jerry's argument is based on the fact that Jerry obtained an erroneous Ex Parte order in the probate case appointing him Co-Representative with Craig.

Jerry's argument fails because it is undisputed that Jerry never qualified to become a Personal Representative, and since Jerry was not qualified the absence of his signature on the DOT does not excuse the Estate from its DOT obligations.

Most of the evidence in this case consisted of historical documents that the parties stipulated to be admissible. As a result, testimony was very limited, and most citations to the record refer to trial exhibits.

#### **STATEMENT OF THE CASE**

**Parties.** BFC is a now defunct commercial lender. Dane Armstrong is the owner of BFC. Mr. Armstrong purchased BFC in or about 2002. RP, pp. 46-48.

Jerry Knoll is the only Defendant to respond to this matter, on behalf of himself and Knoll Greenwater LLC. Knoll Greenwater LLC is the successor/assignee of the property interests of the estate of Lorna Knoll (Ex. 221). All other Defendants have defaulted.

There are two generations of the Knoll family in this case. The first (now deceased) generation consisted of Carl and Lorna Knoll. Carl was the founder of Knoll Lumber and Knoll Properties. Lorna was his wife. The general Knoll family history is described in the Adversary Complaint Jerry filed against Craig (Ex. 104) and Craig's Response (Ex. 105).

Carl and Lorna were the parents of the second generation, consisting of three brothers, Craig, Charles, and Jerry. Craig and Charles are also now deceased. Jerry is the last surviving member of the family. Victoria Knoll is also mentioned in this case and is the wife of (deceased) Craig (Exs. 104, 105).

**Properties.** The three parcels of property at issue, “Parcels A, B and D” are generically referred to as “the Greenwater Properties” and also referred to by the following tax parcel numbers in several of the documents:

Parcel A:	101909-9005-04
Parcel B:	101909-9015-02
Parcel D:	101909-9001-08

A fourth Parcel, “Parcel C” (tax # 101909-9003-06), was involved in the history of the case, but was not subject to foreclosure because it was sold at a tax sale in December 2013.

**Title to properties and Will of Lorna.** The historical chain of ownership of the parcels prior to 1989 is not relevant to this appeal but is set forth in the footnote below in case any members of the Court have questions.<sup>2</sup> As of August 1989, the ownership of Parcels A and B was

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<sup>2</sup> Carl died in 1979. At his death, Carl left the stock of Knoll Lumber and certain real estate interests (not at issue in this case) in several trusts to his heirs. Ex 104, ¶¶ 7-9. After Carl’s death in 1979, Lorna Knoll owned

64% to Lorna, and 18% each to Craig and Jerry. Parcel D was owned by an unrelated third party.

On August 30, 1989, Lorna executed her last Will and Testament (Ex 101). In Article III(A)(3) of her Will, Lorna left all of her interests in the Greenwater Properties to Craig and Jerry in equal shares:

I give to my sons, CRAIG T. KNOLL and JERRY V. KNOLL, in equal shares, all of my remaining interest in the recreational acreage and cabin located near Greenwater, Washington, and all of my interest in the time-share condominiums in Hawaii.

In Article V of her Will (Ex. 101), Lorna appointed Craig and Jerry as co-executors of her estate, but also stated “if for any reason either of them cannot act as such or ceases to so act, then the other shall act as sole Executor.”

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100% of Parcels A and B. Parcels C and D were owned by unrelated third parties.

On December 30, 1983, Lorna quitclaimed to each of her three sons, Craig, Charles, and Jerry, undivided 12% interests in Parcels A and B. Thus the ownership of Parcels A and B at that time (1983) was 12% each to Craig, Jerry, and Charles (for a total of 36%), and 64% to Lorna. (Ex. 215).

Brother Charles died in August 1984. (Ex. 104, ¶11). On February 8, 1989, Charles’s Estate quitclaimed its 12% interest in Parcels A and B equally to Jerry and Craig. (Ex. 216). After this transaction, ownership of Parcels A and B was 64% to Lorna, and 18% each to Craig and Jerry.

Parcel D was first obtained by Craig and Victoria in 1992 (Ex. 217).

I nominate and appoint my sons, CRAIG T. KNOLL and JERRY V. KNOLL, as co-executors of my estate, to act as such without bond and without the intervention of any court. **If for any reason either of them cannot act as such or ceases to so act, then the other shall act as sole executor.**

In May 1992, Craig and Victoria obtained Parcels C & D from an unrelated third party named Narozny (Ex. 217).<sup>3</sup>

In October 1992, Craig and Victoria sold 100% of Parcel D to Lorna for \$55,000 (Ex. 218). Thus, Craig and Victoria no longer had any interest in Parcel D; it was owned 100% by Lorna.

**Death of Lorna and Letters Testamentary.** Lorna died six years later, on January 18, 1998 (Ex. 104, ¶18). At that time, ownership of the properties was as set forth above, i.e.:

**Parcels A and B:**

- Craig and Victoria Knoll: undivided 18% interest
- Jerry Knoll: undivided 18% interest
- Lorna Knoll Estate: undivided 64% interest

**Parcel D:**

- Lorna Knoll Estate: 100% interest.

On January 30, 1998, a probate was filed for Lorna's Estate (Ex. 112). BFC was never a party to any of the probate proceedings for the

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<sup>3</sup> In the May 1992 Deed (Ex. 217), what we in this case are referring to as "Parcels C and D" are referred to as "Parcels B and C".

Estate (Ex. 112; RP, p. 77). On the date of filing, the Probate Court entered an Order, drafted and presented by counsel for Jerry and Craig, which falsely represented that Jerry was “qualified and willing” to act as personal representative (Ex. 112, pp. 4-5). The Court then also issued Ex Parte Letters Testamentary purporting to appoint Craig and Jerry as executors of the estate. (Ex. 219).

In fact, Jerry was not qualified. At that time, and at all times from 1974 to the present, Jerry lived in a remote location in an isolated area of Alaska (Ex 205; Ex. 104, ¶13; Ex 112; RP, p. 99). Jerry even testified that he “was not much on using the telephone” (Jerry Dep. (CP 416), p. 12, In 3). Jerry was not a resident of Washington. *Id.*

Jerry admitted he never filed an Appointment of Agent in the Estate proceedings as would have been required for him to qualify as a nonresident personal representative under RCW 11.36.010(6) (*See* Jerry Brief, p. 31; Docket, Ex 112).

**BFC Loan Agreement and Deed of Trust.** Nineteen months after Lorna’s death, on September 1, 1999, BFC agreed to loan up to \$1.5 million to Knoll Lumber. Knoll Lumber was managed by Craig and owned by Craig/Victoria, Lorna’s Estate and Jerry. (Ex. 104, ¶12 – 21, Ex. 105, ¶1.18, 1.21). Jerry, however, played virtually no role in either the

family business or the Estate, even though the business sent him monthly checks in Alaska.<sup>4</sup>

The two loan documents relevant to this dispute are the Loan Agreement (Ex. 102) and the DOT (Ex. 103; Ex. 212 is a duplicate). Jerry contends that the language of these documents shows that the only security interests granted were Craig and Victoria's 18% interests in Parcels A and B. BFC contends, and the Trial Court Agreed, the language of both agreements shows that the Estate was Grantor of security interests in the Estate's 64% interests in Parcels A and B and 100% interest in Parcel D.

Parcel D is most relevant to this issue because Parcel D was owned 100% by the Lorna Estate. Craig and Victoria had no ownership in Parcel D. There would be no reason to mention Parcel D if the Estate was not a Grantor.

The Loan Agreement (Ex. 102) clearly states the parties' intent to secure the loan with all three parcels, including Parcel D. Para. 4.1 of the Loan Agreement states: "As further Collateral this Agreement is secured

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<sup>4</sup> See, Ex. 104, discussed below (in which at ¶19 Jerry stated "Craig took over as primary manager of the assets of the Lorna Knoll Estate; Jerry signed documents as necessary", and in ¶¶ 12-21 and Ex. A to Ex. 238, in which Jerry stated he gave Craig exclusive control of the family business).

by a deed of trust encumbering those certain properties attached in Ex.

“A”...

Exhibit “A” to the Loan Agreement lists 15 properties, including all three parcels A, B and D:

101909-9005-04	1/2 Greenwater [Parcel A]
101909-9015-02	1/2 Greenwater [Parcel B]
101909-9001-08	1/2 Greenwater [Parcel D]

The DOT is even more explicit. The first paragraph of the DOT clearly identifies Parcels A, B and D as the encumbered properties:

THIS DEED OF TRUST, made this 1st day of Sept., 1999, between CRAIG T KNOLL and VICTORIA W KNOLL, husband and wife, as to Parcel C and their undivided interests in Parcels A, B and D, GRANTORS, and FIRST AMERICAN TITLE...

The last page of the DOT contains a full legal description of Parcel D, reading:

PARCEL D:

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST, W.M. IN KING COUNTY, WASHINGTON, LYING NORTH OF THE GREENWATER RIVER, EXCEPT THAT PORTION IN THE EAST HALF OF THE EAST HALF OF THE EAST HALF OF SAID SUBDIVISION; AND EXCEPT THE NORTH 660 FEET OF THE WEST 660 FEET OF THE EAST 825 FEET THEREOF; AND EXCEPT THE WEST 492 FEET THEREOF; AND EXCEPT ANY PORTION OF THE ABOVE DESCRIBED MAIN TRACT LYING WITHIN COUNTY

ROAD KNOWN AS DR. ULMAN ROAD AS ESTABLISHED BY VOLUME 32 OF KING COUNTY COMMISSIONERS RECORDS, PAGE 161, IN KING COUNTY, WASHINGTON.

In addition to the grant of security in Parcel D, the signature page of the DOT identifies in ALL CAPS that “THE ESTATE OF LORNA KNOLL” was a “GRANTOR”, and specifies in underlined language that Craig was signing both as the “Personal Representative of Lorna L. Knoll And Individually”. The signature page of the DOT reads as follows:

“GRANTORS”

THE ESTATE OF LORNA L. KNOLL

By: [signed by Craig Knoll]  
Craig T. Knoll

Its: Personal Representative of  
Lorna L. Knoll And Individually

Jerry argues that the Estate is not a Grantor because the first paragraph of the DOT<sup>5</sup> only lists Craig and Victoria and does not separately name the Estate as a “Grantor”. However, any ambiguity over the identity of Grantors is eliminated by the signature line that specifically identifies the Estate as a Grantor. Jerry also contends the word “their” in the first paragraph refers to Craig and Victoria only in their personal

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<sup>5</sup> The first paragraph reads: “THIS DEED OF TRUST, made this 1st day of Sept., 1999, between CRAIG T KNOLL and VICTORIA W KNOLL, husband and wife, as to Parcel C and their undivided interests in Parcels A, B and D, GRANTORS, and FIRST AMERICAN TITLE...”

capacities; yet again, any ambiguity is eliminated by the signature line showing Craig was signing both as “Personal Representative of Lorna L. Knoll and Individually”.

Jerry also contends that a different form Deed of Trust covering different properties (Ex 226) is reason to annul the DOT to the extent it pertains to the Estate. This different form Deed of Trust identifies the Estate as a Grantor in the first paragraph and included signature lines for both Jerry and Craig. But nothing in the language of Exhibit 226 purports to annul the Estate’s explicit grant of a security interest in the DOT. In fact, Exhibit 226 does not even mention the DOT.

**Knoll Lumber Bankruptcy and abandonment.** Knoll Lumber filed bankruptcy in March 2000. Jeff Parker, the BFC bankruptcy lawyer, testified there were no assets left in the Knoll Lumber corporate entity and the bankruptcy was simply abandoned. RP, p. 93; see also RP, p. 40 (Jerry’s counsel acknowledging that “Knoll Lumber was no more”, and the corporate bankruptcy was “jettisoned, dismissed, defunct”).<sup>6</sup>

**BFC Settlement with Craig and Victoria and July 21, 2000**  
**Notes.** By the time Knoll Lumber filed bankruptcy, the loan was in default. On July 21, 2000, to settle the default, Craig and Victoria Knoll

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<sup>6</sup> A quick review of the bankruptcy record on PACER shows that the Knoll Lumber bankruptcy was formally dismissed in March 2001.

(who had not filed bankruptcy) personally executed a settlement agreement and two Promissory Notes to BFC, one in the amount of \$330,780.11 and one in the amount of \$520,000. Copies of the Notes are included as Exhibits 213 and 214; the Settlement Agreement is included in Exhibit 239. Both Notes specify that they are for business purposes and are secured by the Deeds of Trust executed on September 1, 1999.<sup>7</sup>

Craig and Victoria then defaulted on the notes and on December 20, 2001, Craig and Victoria filed bankruptcy. (*See* Bankruptcy Court Docket, Ex. 227).

**Jerry's Adversary Proceeding against Craig and Victoria.**

Three months later, on March 4, 2002, Jerry filed an Adversary Proceeding in Bankruptcy Court against Craig and Victoria (Ex. 104). The Adversary Proceeding is relevant because in ¶¶27, 29, 31 and 32 of his Adversary Complaint (Ex. 104), Jerry stated repeatedly that he interpreted the Loan Agreement and DOT as encumbering the real property of the Estate – just as BFC and the Trial Court interpreted the

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<sup>7</sup> No one disputed that these obligations were secured by the DOT. Paragraphs 1(a-d) of the DOT state that the DOT secures “all indebtedness and other obligations evidenced by. . .the Loan Agreement” (¶1a.); “all obligations of Grantors, or any party identified as the Grantors hereunder...under any loan documents executed between Grantors and Beneficiary (or any one of them)” (¶1c.); and “all future advances and other obligations that the then record owner of all or part of the Property may agree to pay or perform... when such obligation is evidenced by a writing which states that it is secured by this Deed of Trust” (¶1d.).

DOT, and just the opposite interpretation Jerry is now asserting to this Court. These paragraphs of Jerry's Adversary Complaint read as follows:

27: On or about September 1, 1999, Craig encumbered, or attempted to encumber, nearly all the other real properties of the Trust and the Estate by executing a loan and security agreement with Business Finance Corporation.

29: Craig signed the BFC Loan Agreement as president of Knoll Lumber, but pledged the real property of the Trust and Estate.

31: On or about September 1, 1999, Craig attempted to encumber the real property of the Estate, by executing a deed of trust to benefit Business Finance Corporation (hereinafter the "BFC Deed of Trust").

32: "Craig executed the BFC Deed of Trust as "Personal Representative of the Estate of Lorna L Knoll."

Jerry settled his dispute with Craig just three months later. BFC was never served with or made a party to the Adversary Proceeding.

The only relevance of the Jerry/Craig dispute is Jerry's admissions (quoted above) regarding the proper interpretation of the Loan Agreement and DOT. However, the description of the settlement between Jerry and Craig on page 15 of Jerry's brief is inaccurate. Jerry's brief (at 15) mistakenly identifies the Jerry/Craig settlement as Exhibit 232, and also mistakenly states that the settlement "also involved Business Finance Corporation". The settlement is in Exhibit 106, and actually consists of two documents, a Settlement Memorandum dated June 4, 2002 and an

“Amendment to Settlement Memorandum, dated February 17, 2003. Both agreements are solely between Jerry and Craig/Victoria. Business Finance was not a party to either agreement. Exhibit 232 is a different pleading that was filed by BFC 20 months later and merely attaches copies of the Jerry/Craig settlement to give the Bankruptcy Judge some background on what had occurred. The Jerry/Craig settlement is not particularly relevant to this appeal, but Jerry’s description of the settlement implies that there was some sort of agreement to which BFC was a party or some order by the Bankruptcy Court that resolved or addressed issues in this case. There was not. A further description of the Jerry/Craig suit is in the footnote below in case any members of the Court wish to have further information on this topic.<sup>8</sup>

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<sup>8</sup> In the suit, Jerry also contended for the first time (two years after the loan) that Craig was not authorized to alone encumber the property of the Estate. Although he requested that the Bankruptcy Court invalidate the lien granted to BFC (Ex. 104), Jerry did not serve BFC with the Adversary Complaint and BFC was never a party to the short lived proceeding.

On April 3, 2002, Craig and Victoria answered the complaint. Ex. 105. Among other things, Craig and Victoria stated that they acted within their authority, and Jerry had always been informed of and never objected to Craig encumbering the Estate property. Paragraphs 1.27 and 1.33 state:

Defendants [Craig and Victoria] affirmatively allege that most of the properties encumbered by the BFC security agreement were owned by Craig and Victoria, or that they had authority to encumber the assets, and that all

In August 2002, Craig died. All BFC's subsequent dealings were with Victoria.

On March 28, 2003, the Bankruptcy Court approved a Settlement Agreement (Ex. 107) between BFC and Victoria that fixed BFC's "secured claim" against Victoria based on the Loan Agreement and DOT at \$558,000 (Ex. 107; *See* Minute Entry in Bankruptcy Docket, Ex. 227; *see also* Ex 110).

On July 11, 2003, the Bankruptcy Court approved Victoria's plan of reorganization. Article VII(a) of the plan allowed Victoria seven months to market her various real properties. After seven months, secured

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information relevant to the BFC loan was provided to Jerry, who did not voice any objection at the time.

\* \* \*

Defendants affirmatively allege that Jerry has had the ability but has apparently lacked the desire or motivation to attend to any of the Trust or Estate affairs and has by his neglect and inaction effectively abandoned that responsibility to Craig and should not be heard to complain.

On June 4, 2002, just three months after filing his adversary proceeding, Jerry executed a Settlement Agreement with Craig and Victoria resolving the dispute. (Ex. 106). BFC was not a party to the Settlement (or the suit). In the Settlement, Craig and Victoria promised to either pay off the BFC debt or (somehow) avoid the BFC lien against the Greenwater properties. (Ex. 106, ¶2). Jerry voluntarily dismissed the Adversary Proceeding and the Bankruptcy Court never ruled on Jerry's claim that the DOT was invalid. (*See* Minute Entry in Bankruptcy Court Docket, Ex. 227). After Craig died, Jerry and Victoria entered an Amended Settlement (also in Ex. 106) that did not mention the BFC lien.

creditors like BFC were given “the right to pursue nonjudicial foreclosures [sic] actions against the property upon which they are secured.... The secured creditor shall have no right to a deficiency judgment and any unsecured portion of the claim shall be discharged, except as otherwise set forth herein.” (Ex. 109, Article VII(a).)

Following the plan approval, Victoria liquidated various properties, reducing the debt to BFC to \$162,182.61 as of May 7, 2004. (Ex. 110). Victoria thereafter made a \$10,000 payment to BFC and, on January 11, 2005, one last payment to BFC in the amount of \$32,825 on the debt. (Ex. 111, RP, pp. 56 – 59.). Mr. Armstrong testified that the \$32,825 payment “was a voluntary payment through the sale of a piece of property.” RP, p. 85. In his testimony, Mr. Armstrong did not explicitly identify Victoria as the payor of the \$32,825. *Id.*

In May 2010, five years and four months after the \$32,825 payment, BFC commenced this foreclosure action. Knoll Greenwater LLC is a named defendant because in May 2007, Jerry, purporting to act on behalf of Lorna’s Estate, transferred the Estate’s 64% interests in Parcels A and B, and 100% interest in Parcel D, to Knoll Greenwater LLC. (Exs. 220, 221).

At the close of BFC’s case, Jerry argued that there was no evidence that the \$32,825 payment was voluntary, and also argued that the

evidence showed that Knoll Lumber, not Victoria Knoll, made the payment because of a notation under the “comments” column of the BFC Ledger (Ex. 111) for the payment that says “Knoll Lumber”. RP, pp. 101-105.

BFC’s Counsel offered to put Mr. Armstrong on the stand for one minute to clear up any possible confusion or dispute on the issue, requested to do so citing CR 1, and made an offer of proof specifically addressing these issues. (RP 106-107; 112 – 116). The Court took a lunch break and listened to the prior testimony during the lunch break and determined that more testimony was not necessary (RP 110 – 111) and identified the issue as “an issue of fact” (RP, p. 111:6).

The Court subsequently entered judgment in BFC’s favor.

## **ARGUMENT**

Each of Jerry’s four claims of error is addressed individually below.

### **1. The Trial Court Correctly Interpreted The Loan Agreement And DOT To Conclude That The Estate Was A Grantor Under The DOT.**

Jerry’s argument that the Estate was not a Grantor under the terms of the Loan Agreement and the DOT is incorrect. The plain language of the Loan Agreement and DOT, as well as corroborating extrinsic evidence

such as Jerry's own statements in 2002, all show that Trial Court properly interpreted the Loan Agreement and DOT to conclude that the Estate granted BFC a security interest in the Estate's interests in Parcel A, B and D.

Paragraph 4.1 and Exhibit A of the Loan Agreement specifically identify Parcel D as collateral. Paragraph 1 of the DOT also identifies Parcel D as collateral ("their undivided interests in A, B and D"). A complete legal description of Parcel D is attached to the DOT. Parcel D was owned 100% by the Estate. All of this language would be meaningless if the Estate was not a grantor, because Craig and Victoria had no interest in Parcel D.

The Estate was also specifically identified IN ALL CAPS as a GRANTOR in the signature line ("GRANTORS...THE ESTATE OF LORNA L. KNOLL"). Craig was specifically identified as signing for the Estate ("Craig T. Knoll ...Its: Personal Representative of Lorna L. Knoll And Individually"). The signature line is the one section of the document that was obviously read. It is inconceivable that Craig, when he signed, did not intend to bind the Estate and encumber the Estate's property.

Jerry's argument relies on a strained interpretation of the word "their" as referring to Craig and Victoria only in their personal capacities.<sup>9</sup> When the documents are read as a whole, "their" obviously refers to Craig and Victoria where Craig is acting in both his personal and representative capacities. Any ambiguity created by the word "their" or the absence of a specific reference to "the Estate" in the first paragraph is eliminated by the clear designation of the Estate as a "GRANTOR" in the signature line.

It is hornbook law that courts will interpret a contract to give effect to all contractual language rather than choose an interpretation that renders some language meaningless or ineffective. *Newsome v. Miller*, 42 Wn.2d 727, 258 P2d 812 (1953). BFC's interpretation gives meaning to all the language in the Agreements. To adopt Jerry's interpretation, the Court would have to erase wide swaths of language from both the Loan Agreement and the DOT. Attached as Exhibit A to this brief are copies of pertinent pages of the Loan Agreement and DOT. BFC has colored in red all the words the Court would have to erase from the agreements to meet Jerry's interpretation. We believe a quick review of this Exhibit conclusively demonstrates that the Trial Court was correct and Jerry is incorrect. There is simply no way to construe these documents as only

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<sup>9</sup> Jerry apparently argues that "their" should have been "their and its" if the Estate was to be included.

giving security interests in Craig and Victoria's 18% interests in Parcels A and B.

Other rules of contract interpretation also support the Trial Court and refute Jerry. For example, specific and exact terms are given greater weight than general language. *See, e.g., Adler v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.2d 773 (2004). In this case, Jerry attempts to use the general word "their" to eviscerate all the very specific references to Parcel D and the Estate as a Grantor.

In addition, the interpretation given to a contract by the parties before any dispute arises is entitled to great weight. *See, e.g., Kennedy v. Weyerhaeuser Timber Company*, 54 Wn.2d 766, 768, 344 P.2d 1025 (1959). In this case, *Jerry himself in 2002* in his Adversary Complaint against Craig and Victoria (exhibits 104 and 105) interpreted the Loan Agreement and DOT exactly as did the Trial Court and BFC. He only reversed himself years later when it was in his interest in this litigation to adopt a different interpretation.

Finally, agreements will be given a construction that is reasonable. *See, e.g., Fisher Properties v. Arden-Mayfair*, 106 Wn.2d 826, 837, 726 P.2d 8 (1986). In this case, the Estate was one of three owners of Knoll Lumber, and a huge beneficiary of the BFC loan. It was logical and reasonable for an owner to put up property as collateral.

Jerry also contends that the different form Deed of Trust covering different properties (Ex 226) is reason to annul the DOT to the extent it pertains to the Estate. But nothing in the language of Exhibit 226 purports to annul the Estate's explicit grant of a security interest in the DOT. Exhibit 226 does not even mention the DOT. If they intended to annul the DOT, most certainly would have said so.

The plain language of the Loan Agreement and DOT, Jerry's own statements to the Bankruptcy Court in 2002, and common sense all show that Trial Court properly interpreted the Loan Agreement and DOT to conclude that the Estate granted BFC a security interest in the Estate's interests in Parcel A, B and D.

**2. The Six-year Statute of Limitations Applies Because The Parol Evidence Relied Upon Merely Helped Interpret The Language Written In The Documents.**

The six-year statute of limitations applies to any actions based on written agreements, including promissory notes and deeds of trust. *See* RCW 4.16.040(1); *Walcker v. Benson & McLaughlin, P.S.*, 79 Wash. App. 739, 741, 904 P.2d 1176 (1995).

Jerry incorrectly argues that the three year statute of limitations applies because parol evidence, such as Jerry's own contradictory interpretation of the DOT in his Adversary Complaint (Ex. 104), was

admitted to assist in interpreting the Loan Agreement and DOT. This argument fails because all the essential terms of contract were in the Loan Agreement and DOT (as well as the promissory notes marked Exhibits 213 and 214). BFC referred to parol only to help interpret the words of the DOT, not to supply an essential term that was missing from the contract. Using parol in this manner does not remove a contract from the six year statute of limitations:

The Court of Appeals reasoned that parol evidence is necessary to determine the effect of the disclaimer found in the handbook, and therefore that the three-year statute of limitations applicable to oral and partly oral contracts applies as a matter of law. We disagree.

Parol evidence questions take varying forms where contracts are concerned. Interpretation of contracts may require the use of parol evidence. “ ‘[P]arol evidence is admissible...for the purpose of ascertaining the intention of the parties and properly construing the writing.’ ” *Berg v. Hudesman*, 115 Wash.2d 657, 669, 801 P.2d 222 (1990) (quoting *J.W. Seavey Hop Corp. v. Pollock*, 20 Wash.2d 337, 348-49, 147 P.2d 310 (1944)); see also, e.g., *U.S. Life Credit Life Ins. Co. v. Williams*, 129 Wash.2d 565, 570, 919 P.2d 594 (1996). Parol evidence admitted to *interpret* the meaning of what is actually contained in a contract does not alter the terms contained in the contract. Thus, use of parol, or extrinsic, evidence as an aid to interpretation does not convert a written contract into a partly oral, partly written contract.

*DePhillips v. Zolt Constr Co.*, 136 Wn.2d 26, 32, 959 P.2d 1154 (1998).

Jerry's reliance on *Bogle & Gates v. Zapel*, 121 Wn. App. 444, 90 P.3d 703 (2004) is misplaced. In *Bogle*, there was no written indication of an essential element of a contract - the clients' agreement to the contract. In this case, all the terms, including the Estate's Agreement to the DOT, are in writing. The parol evidence corroborates what was written; it does not supply a wholly missing term. Thus the six year statute of limitations applies.

### **3. BFC Filed This Suit Well Within The Six Year Statute Of Limitations.**

The Trial Court correctly concluded that the six year statute of limitations was tolled until the last payment, \$32,825, was made in January 2005. RCW 4.16.270 states:

“When any payment of principal or interest has been . . . made upon any existing contract, whether it be a bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.”.

This case was filed in May 2010, well within the six year period following the \$32,825 payment.

Jerry's argues that the Trial Court erred because “there is no evidence to support the finding that the payment was made by ... Victoria Knoll.” Jerry Brief, p. 26. Instead, Jerry argues that the notation “Knoll Lumber” under the “comments” section of the BFC ledger (Ex. 111)

shows that the payment was made by Knoll Lumber. The real crux of Jerry's argument is that Dane Armstrong testified that the payment "was a voluntary payment through the sale of a piece of property" (Transcript, p. 85), but Mr. Armstrong but did not explicitly state that Victoria made the payment.

Jerry's argument is incorrect. "Where the trial court has weighed the evidence, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law." *Perry v. Costco Wholesale, Inc.*, 123 Wn. App. 783, 792, 98 P.3d 1264 (2004). "Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise." *Id.* Upon appeal of nonjury trials, "respondents are entitled to the benefit of all evidence and reasonable inference therefrom in support of the findings of fact entered by the trial court." *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842, 853, 792 P.2d 142 (1990) (citation and internal quotations omitted).

In this case, "the benefit of all evidence and reasonable inference therefrom" supports the Trial Court's conclusion that Victoria "made or authorized or ratified" the payment (Jerry brief, p. 24), and Jerry's "argument" that Knoll Lumber made the payment is speculation unsupported by evidence. Specifically, the evidence showed:

- Knoll Lumber could not have made the payment. Knoll Lumber went bankrupt before Craig and Victoria. The unrebutted testimony of Jeff Parker was that there were no assets left in the Knoll Lumber corporate entity (Transcript, p. 93). In fact, Jerry’s own counsel acknowledged in Opening Statement that “Knoll Lumber was no more”, and the corporate bankruptcy was “jettisoned, dismissed, defunct” (Transcript page 40) four years before the payment was made.<sup>10</sup>
- All of BFC’s dealings in the entire case on this debt (which all occurred after Knoll Lumber went bankrupt) were with Victoria. These included:
  - The July 21, 2000 Settlement Agreement and two promissory Notes (Ex.’s 213, 214, 239);
  - The March 28, 2003 Settlement between BFC and Victoria (Ex 107);
  - Victoria’s July 11 Plan of Reorganization that provided for the payment of BFC’s debt through liquidation of Victoria’s properties (Ex. 109);

---

<sup>10</sup> The bankruptcy record on PACER shows that the Knoll Lumber bankruptcy was formally dismissed in March 2001.

- The May 27, 2004 Court Order revising the debt amount due to prior sales of Victoria's properties (Ex 110); and
- Dane Armstrong's testimony that the \$32,825 payment was a voluntary payment through the sale of a piece of property" when the only properties being sold were Victoria's (Transcript, pp. 56-59, 85).
- Jerry Knoll, an owner of Knoll Lumber, was present at trial and never testified that the payment was made by him/Knoll Lumber;
- There was no evidence whatsoever of any involvement by Knoll Lumber in the BFC debt after Knoll Lumber filed bankruptcy in 2000.

Jerry's argument ignores the totality of the evidence that shows that Victoria was the only person that possibly could or would have made the payment. It is clear that the Trial Court concluded this after listening to the trial tape, and for that reason determined to not hear another minute or two of Mr. Armstrong's testimony to clarify what the Trial Court had already concluded.

The case law cited by Jerry does not help his argument. In *Walker v. Stieg*, 23 Wn.2d 552, 161 P.2d 542 (1945), the administrator of a mother's estate sued a son claiming that the son had made payments on an old loan from his mother by giving his mother produce that the son had grown on his farm. The Court ruled that there was no evidence to show that the produce was a loan payment rather than a gift by the son to help the mom. In this case, the \$32,825 was certainly not a gift. In *Wickwire v. Reard*, 37 Wn.2d 748, 226 P.2d 192 (1951), the Court ruled that the notation of a deceased creditor on the note stating "Dec. 21, 1942, credit by check \$50.00" was enough to satisfy the statute. In this case there is much more evidence. We also note the *Wickwire* Court's statement that "Underlying our appraisal of the issues before us is the long-standing rule in this state that the statute of limitations, although not an unconscionable defense, is not such a meritorious defense that either the law or the facts should be strained in aid of it." *Id.* at 759. *Sanders v. Brown*, 123 Wash. 611, 212 P. 1070 (1923), contains little discussion of the facts, but the conclusion is clear that a single notation in that case was sufficient to uphold the trial court's findings that a payment was sufficient to toll the statute. In this case, the evidence of payment was greater than that in any of the cases cited by Jerry.

**4. The Trial Court Did Not Err When It Ruled That The Absence Of Jerry's Signature On The DOT Did Not Excuse The Estate From Its Obligations Under The DOT.**

The Trial Court also correctly ruled that Craig was authorized to bind the Estate to the DOT without Jerry's signature.

Jerry was never qualified under Washington Law to be a Personal Representative of the Estate. Under RCW 11.36.010(6), nonresidents are not qualified to act as personal representatives unless they appoint an in state agent for service of process:

A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative must file a bond to be approved by the court.

As stated in a leading Washington practice treatise:

An individual who resides out of state may be appointed as Personal Representative. However, a nonresident who is to be appointed as Personal Representative must appoint an agent in Washington, who is a resident of the county where the estate is being probated, or who is an attorney of record of the estate. This agent can receive service of all documents. The appointment of a resident agent must be included with the Petition whenever the proposed Personal Representative is a resident of another state.

26B Cheryl C. Mitchell & Ferd H. Mitchell, Wash. Pract: Probate Law & Practice, §3.32, at 156 (2006) (emphasis added). “The objective of this statute is to assure accountability for the actions being taken with respect to the probate, by a resident of the State of Washington; if any issues arise, the Court has jurisdiction over this resident to address any such issues.” *Id.* §3.14, at 91.

In this case, Jerry admitted he was a non resident. He has lived in a remote location in Alaska since 1974 and even there “was not much for using a telephone” (Exs. 205, 104, 112, RP 99). Jerry also admitted that he never appointed an agent for service of process in the probate proceeding (Jerry brief, p. 31; Ex. 112). And his brief acknowledges that he was never a validly authorized personal representative under RCW 11.36.010. *Id.*

Nonetheless, Jerry argues that Craig, who was undisputedly authorized to act as the personal representative, could not bind the Estate without Jerry’s signature until and unless a court order was entered vacating the erroneous Order appointing Jerry as co representative.

Jerry’s argument is refuted by RCW 11.28.050, which states that where there are multiple executors, and one executor either “shall not qualify” or “becomes disqualified” or “be removed”, the remaining executors “shall have the authority” to act on their own. This statute does

not require an order removing the unqualified or disqualified executor; on the contrary, being removed by the Court is a separate ground for the remaining executors to act on their own. The authority of the remaining executors to act exists automatically whenever the other executor either “shall not qualify” or “becomes disqualified” or “be removed” – no court order is required in the first two circumstances:

When any of the executors named **shall not qualify** or having qualified shall **become disqualified** or be removed, the **remaining executor** or executors **shall have the authority to perform every act** and discharge every trust required by the will, and their acts **shall be effectual for every purpose**. [Emphasis added]

RCW 11.28.050.

RCW 11.28.040 echoes this same principle. Under RCW 11.28.040, when an executor is a minor or absent from the state, the other executor may act alone until the minor comes of age or the out of state person returns. No court order is required by the statute:

If the executor be a minor or **absent from the state**, letters of administration with the will annexed shall be granted, during the time of such minority or absence, to some other person **unless there be another executor** who shall accept the trust, **in which case the estate shall be administered by such other executor until the disqualification shall be removed**, when such minor, having arrived at full age, or such absentee, having returned, shall be admitted as joint executor with the former, provided a nonresident of this state may qualify as provided in RCW 11.36.010.

RCW 11.28.040.

Washington Practice similarly states: “If several individuals are appointed as the Co-Personal Representatives, and if one individual is no longer able to act, the other Personal Representative may continue to act on behalf of the estate.” 26B Cheryl C. Mitchell & Ferd H. Mitchell, Wash. Pract.: Probate Law & Practice, *supra*, §3.32, at 156. Again, no court order is required.

In this case, Jerry Knoll admits he never qualified. Under RCW 11.28, Craig was at all times authorized to act on his own.

Jerry’s argument on pages 30-31 of his brief regarding “impermissible collateral attack” fails for at least three reasons. First, Jerry’s argument is refuted by, and cannot be reconciled with, the legislative command in RCW 11.28.040 and 050. Second, this is a new argument not raised at the trial court, and should not be considered here. Third, even absent the controlling statutory authority, Jerry has misunderstood the collateral attack doctrine. That doctrine only applies when a judgment is collaterally attacked by the parties to the original judgment or their privies. In *Anderson v. Anderson*, 52 Wn.2d 757, 328 P.2d 888 (1958), relied upon by Jerry, Mr. and Mrs. Anderson were divorced and a judgment of divorce was entered on February 28, 1956. Mrs. Anderson moved to vacate that decree, eight months later, on September 21, 1956. That motion was denied on April 9, 1957. Later,

after Mr. Anderson died, Mrs. Anderson collaterally attacked the divorce judgment by filing a petition in her ex-husband's estate, asking that she be adjudged to be the surviving wife. The court ruled that the divorce decree "is not open to contradiction or impeachment *by parties or privies* by a collateral attack..." (emphasis added).

The rule does not apply to strangers to the original proceeding. Thus in *France v. Freeze*, 4 Wn.2d 120, 102 P.2d 687 (1940), the court held that a decree of distribution of real property was subject to collateral attack by heirs of the decedent's former wife who were not parties to the original action distributing the property. And the *Anderson* case was expressly distinguished on this ground by the court in *In Re Akers*, 541 P.2d 284, fn. 6 (OK App. 1975).

In this case, BFC was never a party to the Estate – BFC never even had any dealings with the Knoll family until 19 months after Lorna's death. Ex. 112.

Jerry's reliance on *Cornett v. West*, 102 Wash. 254, 173 P. 44 (1918), is also misplaced. *Cornett* is distinguishable because the co-trustee in *Cornett* was validly qualified and appointed. The Court even

ruled he could not be removed for his allegedly bad acts. In this case, Jerry was never validly appointed.<sup>11</sup>

Jerry's argument on page 31 about "setting a dangerous precedent" is backwards. It would be a dangerous precedent if a person could go to Ex Parte, obtain an appointment through false pretenses, and then use their false pretenses as a basis to either freeze action by a validly appointed trustee or, years later, annul legitimate actions. Jerry is seeking to be rewarded for his wrongful conduct – that would be "dangerous precedent".

Thus, Craig was authorized (indeed, required) to act without Jerry. Pursuant to RCW 11.68.090(1), as the personal representatives of the estate with nonintervention powers, Craig was free to "mortgage, encumber, lease, sell, exchange, convey. . . the assets of the estate without court order":

Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has

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<sup>11</sup> In fact, the Court lacked the power to appoint him. *See In re Estate of Borman*, 50 Wn.2d 791, 796, 314 P.2d 617 (1957) (a court cannot "disregard the clear mandate of the statute [RCW 11.36.010] and appoint an administrator who is, by statute, disqualified"); *In re Estate of Gordon*, 52 Wn.2d 470, 476-77, 326 P.2d 340 (1958) (remanding to appoint an administrator who is not disqualified under RCW 11.36.010, holding that "the trial court had no authority to appoint a national bank as administrator upon respondent's petition, because, as a nonresident of this state, Mr. Preston was not qualified so to act").

under RCW 11.98.070 and chapters 11.100 and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court.

The deed of trust binds the estate based on Craig's signature alone.

### CONCLUSION

Consequently BFC requests that the Court affirm the Trial Court.

DATED this 21<sup>ST</sup> day of January, 2016.

s/James C. Fowler  
\_\_\_\_\_  
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Finance Corporation

## CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of January, 2016, I caused to be served a true and correct copy of the foregoing Respondent's Appeal Brief to the following:

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- U.S. Mail
- Overnight Mail
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- Hand Delivery
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- E-Mail

s/Nancy Tyler

Nancy Tyler

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# LOAN AND SECURITY AGREEMENT

September 1 CK

This LOAN AND SECURITY AGREEMENT is entered into as of ~~August 31~~, 1999 between BUSINESS FINANCE CORPORATION, a Washington corporation ("*Business Finance Corporation*"), with a place of business located at 1404 140<sup>th</sup> Pl. NE, Suite 103, Bellevue, Washington 98007 and KNOLL LUMBER AND HARDWARE CO. a Washington corporation ("*Borrower*"), with its chief executive office located at 7304 NE Bothell Way, Kenmore, Washington 98028. CK

The parties agree as follows:

## 1. DEFINITIONS AND CONSTRUCTION

**1.1 Terms.** In addition to the terms that are defined within this Agreement, the following terms shall have the following definitions when used in this Agreement:

*Account Debtor* means any Person who is or who may become obligated under, with respect to, or on account of an Account.

*Accounts* means all presently existing and hereafter arising accounts, contract rights, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods or the rendition of services by Borrower, whether or not earned by performance, all credit insurance, guaranties, and other security therefor, as well as all goods returned to or reclaimed by Borrower, and Borrower's Books relating to any of the foregoing.

*Advance Limit* has the meaning specified in Section 2.1(C).

*Agreement* means this Loan and Security Agreement and any riders, addenda, extensions, supplements, amendments or modifications to or in connection with this Loan and Security Agreement.

*Authorized Representative* means any officer, employee, or other representative of Borrower authorized in writing by Borrower to transact business with Business Finance Corporation.

*Bankruptcy Code* means the United States Bankruptcy Code (11 U.S.C. Sections 101 et seq.), as amended, and any successor statute.

*Borrower's Books* means all of Borrower's books and records including all of the following: ledgers; records indicating, summarizing or evidencing Borrower's assets (including the Collateral) or liabilities; all information relating to Borrower's business operations or financial condition; and all computer programs (whether owned by Borrower or in which it has an interest), disk or tape, files, printouts, runs or other computer prepared information, and the equipment containing such information.

*Business Day* means any day which is not a Saturday, Sunday or other day on which banks in the State of Washington are authorized or required to close.

*Code* means the Uniform Commercial Code, as amended from time to time, in the state in which the Collateral is located.

*Collateral* means all of the following: the Accounts; the Permanent Availability Reserve, the Equipment; the General Intangibles; the Inventory; the Negotiable Collateral; any money or other assets of Borrower which hereafter come into the possession custody or control of Business Finance Corporation, and all proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the Collateral, and any and all Accounts, Equipment, General Intangibles, Inventory, Negotiable Collateral, money, deposit accounts or other tangible or intangible property resulting from the sale or other disposition of the Collateral, or any portion thereof or interest therein, and the proceeds thereof.

*Dilution* means, as of the date of determination, the total of all charge-backs, returns, advertising claims, discounts, contra accounts, or write-offs in favor of or held by Account Debtors and any other item that

paid and satisfied, and Business Finance Corporation's continuing security interest in the Collateral shall remain in effect until all of the Obligations have been fully and indefeasibly paid and satisfied.

#### 4. CREATION OF SECURITY INTEREST

**4.1 Grant of Security Interest.** Borrower hereby grants to Business Finance Corporation a continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by Borrower of each and all of its covenants and duties under the Loan Documents. Business Finance Corporation's security interest in the Collateral shall attach to all Collateral without further act on the part of Business Finance Corporation or Borrower. Other than sales of Inventory to buyers in the ordinary course of business, Borrower has no authority, express or implied, to dispose of any item or portion of the Collateral.

along with the personal residences of Vicki Knoll and Craig Knoll, true and correct copies of said deeds of trust and titles are attached hereto as exhibit "A"

**4.2 Negotiable Collateral.** In the event that any Collateral, including proceeds, is evidenced by or consists of Negotiable Collateral, Borrower shall, upon the request of Business Finance Corporation, immediately endorse and assign such Negotiable Collateral to Business Finance Corporation and deliver physical possession of such Negotiable Collateral to Business Finance Corporation.

**4.3 Delivery of Additional Documentation Required.** Borrower shall execute and deliver to Business Finance Corporation, concurrently with Borrower's execution and delivery of this Agreement and at any time thereafter at the request of Business Finance Corporation, all financing statements, continuation financing statements, fixture filings, security agreements, chattel mortgages, pledges, assignments, endorsements of certificates of title, applications for title, affidavits, reports, notices, schedules of accounts, letters of authority, and all other documents that Business Finance Corporation may reasonably request, in form satisfactory to Business Finance Corporation to perfect and/or continue as perfected Business Finance Corporation's security interest in the Collateral and in order to fully consummate all of the transactions contemplated hereunder and under the other Loan Documents.

**4.4 Power of Attorney.** Borrower hereby irrevocably designates and appoints Business Finance Corporation (and any Persons designated by Business Finance Corporation), its true and lawful attorney-in-fact and authorizes Business Finance Corporation, in either Borrower's or Business Finance Corporation's name, to:

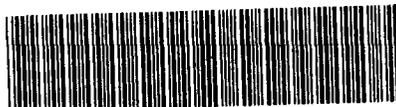
(a) at any time that an Event of Default exists (i) demand payment on Accounts or other proceeds of Inventory or other Collateral, (ii) enforce payment of Accounts by legal proceedings or otherwise, (iii) exercise all of Borrower's rights and remedies to collect any Account or other Collateral, (iv) sell or assign any Account upon such terms, for such amount and at such time or times as Business Finance Corporation deems advisable, (v) to execute, file and record on behalf of Borrower any UCC-1 financing statements, change statements or other instruments necessary to perfect, transfer or protect the security interest of Lender in the Collateral, (vi) settle, adjust, compromise, extend or renew an Account, (vii) discharge and release any Account, (viii) notify the post office authorities to change the address for delivery of Borrower's mail to an address designated by Business Finance Corporation and open all mail addressed to Borrower, (ix) make, settle and adjust all claims under Borrower's policies of insurance and endorse the name of Borrower on any item of payment for the proceeds of such policies of insurance, and (x) do all other acts and things necessary, in Business Finance Corporation's determination, to fulfill Borrower's obligations under this Agreement or any other Loan Documents; and

(b) at any time that Business Finance Corporation determines that it is necessary or appropriate to preserve, protect insure or maintain its rights hereunder (i) take control, in any manner, of any item of payment or proceeds of any Collateral, (ii) sign Borrower's name on any of the documents described in Section 4.3 or on any other similar documents to be executed, recorded or filed in order to perfect or continue as perfected Business Finance Corporation's security interest in the Collateral and file or record any of the foregoing documents, (iii) endorse Borrower's name on any items of payment or proceeds thereof and deposit the same to the account of Business Finance Corporation for application to the Obligations, (iv) sign Borrower's name on any invoices, bills of lading, freight bills, chattel paper, documents, instruments or similar documents or agreements relating to any Accounts or any goods pertaining thereto or any other Collateral, (v) sign Borrower's name on any verification of



Filed for Record at Request of:

Business Finance Corporation  
1404 - 140<sup>th</sup> Pl. NE, Suite 103  
Bellevue, WA 98007



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KING COUNTY, WA

FIRST AMERICAN DT

37.00

DEED OF TRUST

*FATCO # M13213-5*  
THIS DEED OF TRUST, made this 1 *st day of Sept* day of August, 1999, between CRAIG T. KNOLL and VICTORIA W. KNOLL, husband and wife, as to Parcel C and their undivided interest in Parcels A, B and GRANTORS, and FIRST AMERICAN TITLE INSURANCE COMPANY, a corporation, TRUSTEE, whose address is 12505 NE Bel-Red Rd., Ste. 101, Bellevue, WA 98005, and BUSINESS FINANCE CORPORATION, a Washington corporation, BENEFICIARY, whose address is 1404 140<sup>th</sup> PL. NE, Suite 103, WA 98007. *CK UK* *(SC)*

WITNESSETH: Grantors hereby bargain, sell and convey to Trustee in Trust, with power of sale, the following described real property (hereafter the "Real Property"):

Abbreviated legal: Section 10 Township 19N Range 9E Half.

Tax Parcel No(s): 101909-9005-04, 101909-9015-02, 101909-9003-06 & [REDACTED]

For together with all right, title and interest of Grantors in all buildings and improvements now located or hereafter to be constructed thereon (collectively "Improvements");

TOGETHER with all right, title and interest of Grantors in the appurtenances, hereditaments, privileges, reversions, remainders, profits, easements, franchises and tenements thereof, including all timber, natural resources, minerals, oil, gas and other hydrocarbon substances thereon or therein, air rights, and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Real Property and Improvements;

TOGETHER with all of Grantors right, title and interest to all proceeds (including claims or demands thereto) from the conversion, voluntary or involuntary, of any of the Real Property and Improvements into cash or liquidated claims, including, without limitation proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments in lieu thereof made by any public body or decree by any court of competent jurisdiction for taking or for degradation of the value in any condemnation or eminent domain proceeding, and all causes of action and the proceeds thereof of all types for any damage or injury to the Real Property and Improvements or any part thereof, including, without limitation, causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, and all proceeds from the sale of the Real Property and/or Improvements.

IN ADDITION, Grantors absolutely and irrevocably assigns to Beneficiary all right, title and interest of Grantors in and to (i) all leases, rental agreements and other contracts and agreements relating to use and possession (collectively "Leases") of any of the Real Property or Improvements, and (ii) the rents, issues, profits and proceeds therefrom together with all guarantees thereof and all deposits (to the full extent permitted by law) and other security therefore (collectively "Rents"). The Real Property, Improvements, Leases, Rents and all other right, title and interest of Grantors described above are hereafter collectively referred to as the "Property".

"GRANTOR"

[Redacted]

By: Craig T. Knoll  
Craig T. Knoll

Its: [Redacted]

Victoria W. Knoll  
Victoria W. Knoll, Individually and as  
spouse of Craig T. Knoll

COURTESY RECORDING ONLY...  
NO LIABILITY FOR VALIDITY AND / OR  
ACCURACY ASSUMED BY FIRST AMERICAN  
TITLE INSURANCE COMPANY

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

On this 15th day of Sept, 1999, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Craig T. Knoll and Victoria W. Knoll to me known to be the individuals described in and who executed the foregoing instrument.. and acknowledged said instrument to be their free and voluntary act and deed. for the uses and purposes therein mentioned.

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

Sally R. Kavelly  
Notary Public in and for the State of  
Washington, residing at Bellevue, WA  
My commission expires: 9/19/2000

REQUEST FOR FULL RECONVEYANCE

TO: TRUSTEE

The undersigned are the legal owners and holders of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said notes above mentioned, and all other evidences of indebtedness secured by said Deed of trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by your thereunder.

DATED \_\_\_\_\_, 1999.

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\_\_\_\_\_



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**GREENWATER COMMERCIAL**

**PARCEL A:**

COMMENCING AT THE NORTHEAST CORNER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST, W.M., IN KING COUNTY, WASHINGTON;  
THENCE WEST 165 FEET TO PLACE OF BEGINNING;  
THENCE WEST 40 RODS;  
THENCE SOUTH 20 RODS;  
THENCE EAST 40 RODS;  
THENCE NORTH 20 RODS TO PLACE OF BEGINNING.

**PARCEL B:**

COMMENCING AT A POINT 828 FEET WEST OF THE NORTHEAST CORNER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST, W.M., IN KING COUNTY, WASHINGTON;  
THENCE WEST 660 FEET;  
THENCE SOUTH TO GREEN WATER RIVER OR COUNTY LINE;  
THENCE SOUTHEASTERLY ALONG SAID RIVER OR COUNTY LINE TO A POINT DUE SOUTH OF BEGINNING;  
THENCE NORTH TO POINT OF BEGINNING.

**PARCEL C:**

THAT PORTION OF GOVERNMENT LOT I AND THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 19 NORTH, RANGE 9 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 1675.2 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION;

THENCE SOUTH 63°31' EAST 851.3 FEET;

THENCE NORTH 63°41' EAST 259 FEET;

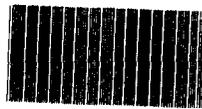
THENCE NORTHWESTERLY TO A POINT WHICH BEARS SOUTH 75.2 FEET AND SOUTH 17°10' EAST 149.7 FEET FROM THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION;

THENCE NORTH 61°24' EAST 150 FEET

THENCE NORTH 65°23' EAST TO A POINT ON 40 FOOT ROAD, SAID POINT BEING 63.13 FEET SOUTH AND 357.7 FEET EAST OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION;

THENCE SOUTH 83°06' EAST 250 FEET;

THENCE SOUTH 08°20' EAST ALONG THE EASTERLY BOUNDARY OF THAT CERTAIN TRACT OF LAND CONVEYED TO MARGARET E. LUSK BY DEED RECORDED UNDER RECORDING NO. 2758454 TO THE GREENWATER RIVER;



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THENCE EASTERLY ALONG THE GREENWATER RIVER TO THE INTERSECTION OF A LINE 1488 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION;

THENCE NORTH ALONG SAID INTERSECTING LINE TO THE NORTH LINE OF SAID SECTION;

THENCE WEST ALONG SAID NORTH SECTION LINE TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 2672.01 FEET EAST AND 257.42 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION;

THENCE NORTH 45°00' WEST 80 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF A 40 FOOT ROAD;

THENCE SOUTHWESTERLY ALONG SAID ROAD 123 FEET;

THENCE SOUTHEASTERLY TO A POINT DISTANT SOUTH 63°41' WEST 123 FEET FROM THE POINT OF BEGINNING;

THENCE NORTH 63°41' EAST 123 FEET TO THE TRUE POINT OF BEGINNING; AND EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 63.13 FEET SOUTH AND 357.7 FEET EAST OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 83°06' EAST 50 FEET TO A POINT ON THE SOUTHERLY LINE OF A 40 FOOT ROADWAY AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 83°06' EAST 50 FEET;

THENCE NORTH 07°00' WEST TO THE NORTH LINE OF SAID SECTION; THENCE WESTERLY ALONG SAID SECTION LINE TO A POINT WHICH BEARS NORTH 06°30' WEST OF THE TRUE POINT OF BEGINNING; THENCE SOUTH 06°30' EAST TO THE TRUE POINT OF BEGINNING

AND EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 312 FEET SOUTH AND 2561.7 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION;

THENCE SOUTH 63°41' WEST 6 FEET TO THE TRUE POINT OF BEGINNING;

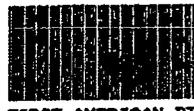
THENCE WESTERLY 29°14' NORTH 207 FEET;

THENCE WESTERLY ALONG THE SOUTH SIDE OF THE PRESENT PRIVATE ROAD 13 FEET;

THENCE EASTERLY 29°13' SOUTH 207 FEET;

THENCE NORTHERLY 63°41' EAST 13 FEET TO THE TRUE POINT OF BEGINNING;

AND EXCEPT ANY PORTION OF THE ABOVE DESCRIBED MAIN TRACT LYING WITHIN COUNTY ROAD KNOWN AS DR. ULMAN ROAD AS ESTABLISHED BY VOLUME 32 OF KING COUNTY COMMISSIONERS RECORDS, PAGE 161, IN KING COUNTY, WASHINGTON.



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