

APPELLANTS' BRIEF
NO. 36391-7-II
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON
STATE OF WASHINGTON
BY: *JW*
DATE: _____

NO. 36391-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SOUTHRIDGE SILVER CREEK, LLC
and JOHN DOES and JANE DOES 1 through 10,
Appellants

v.

EVERGREEN STATE BUILDERS LLC,
and CONIFER HOMES, LLC
Respondents

APPELLANTS' BRIEF

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I. INTRODUCTION

Southridge Silver Creek LLC, (“Southridge”) is one of the developers with long-standing involvement in the Southridge Silver Creek Development (the “Development”), a large residential plat located in Pierce County. When Southridge’s seventh development phase (“Phase 18”) was commenced, Evergreen State Builders (“Evergreen”), a repeat customer of Southridge, negotiated a contract to purchase 77 lots from Southridge. The parties’ contract was specifically drafted to ensure full performance and closing and took into account the unpredictable nature of the development process.

In reliance on the contract with Evergreen Southridge progressed with Phase 18, and completed the lots per its usual practice. Southridge submitted the final plat to Pierce County (the “County”) for approval and believed the lots complete for purposes of submitting building permits; one of the closing criteria per the parties’ contract. Southridge relied upon its extensive experience with the County throughout this process and never was informed anything was amiss with the lots by either the County or Evergreen.

However, upon learning Southridge was prepared to discuss closing, Evergreen alerted Southridge that it was not prepared to close and that it viewed the purchase as a bad deal. Despite Southridge’s attempts to

cooperate with Evergreen, Evergreen unilaterally terminated the parties' contract. Upon termination, which Southridge maintains was prior to the closing date, Evergreen asserted for the first time that the lots were unfinished and Southridge was the breaching party. Evergreen demanded Southridge relinquish the earnest money but Southridge refused since it believed, and continues to believe, that it performed per the contract.

Evergreen responded by filing suit and subsequently a motion for order of summary judgment which alleged Evergreen was entitled to its earnest money, interest and attorney fees. After oral argument, in which both parties presented conflicting issues of fact, the trial court awarded Evergreen its Order on Motion for Summary Judgment ("Order Granting Judgment") on May 4, 2007.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its Order Granting Motion for Summary Judgment in favor of Evergreen on May 4, 2007.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does a trial court err when it awards an order of summary judgment to the moving party when the responding party presents issues of material fact?

2. Does the trial court err when it awards an order of summary judgment to the moving party when the moving party anticipatorily breached the parties' contract?

3. Does a trial court err when it fails to analyze a negotiated contract between two parties per the parties' express intent?

IV. STATEMENT OF THE CASE

A. **Southridge Developed Hundreds of Lots in the Development Prior to Phase 18 and Previously Contracted with Evergreen.**

Southridge has been actively involved in developing Southridge Silver Creek for over five years. CP 162. Between 2003 and 2004 Southridge, through its members, developed and sold over 500 lots in previous phases. *Id.* Southridge sold approximately 163 lots in Phase 18, the seventh phase of development in which Southridge has been involved. *Id.* As with the previous six phases, Southridge's Phase 18 responsibilities entailed excavating the property, bringing in roads and utilities and preparing the lots for construction of single family residences.

Phase 18 was not Evergreen's first exposure to the Development or Southridge, let alone the County permit process. *See* CP 165. Prior to purchasing the 77 lots in Phase 18, Evergreen purchased approximately 50 of the 266 lots Southridge developed in Phase 3. CP 162, 257-292.

B. The Parties' Contract was Drafted To Effectuate the Parties' Performance and Address Unexpected Delays.

Southridge and Evergreen executed the Real Estate Purchase and Sale Agreement (the "Agreement") on or about November 1, 2005. CP 181-220. Evergreen agreed to purchase 77, 40-foot lots at a negotiated price of \$123,295 per lot for a total purchase price of \$9,493,715.00. CP 163, 182, 185. Evergreen further negotiated the \$300,000 earnest money deposit. CP 163 The earnest money, which was less than 5% of the purchase price, became non-refundable upon removal of the feasibility contingency, unless Southridge breached the Agreement and operated as liquidated damages in the event Evergreen failed to close without legal justification. CP 163, 192.¹

The Agreement was drafted to assure that closing would not be delayed due to items out of the parties' control or that could be easily completed after closing. CP 163, 197. Specifically, it states that "minor unfinished improvements or minor repairs, replacements or corrections to improvements, shall not be grounds for [Evergreen's] refusal to close." CP 189. The time allotted for closing was fifteen (15) days after first recording the plat. CP 189.

¹ Evergreen and Southridge agreed to remove the feasibility contingency per Evergreen's suggestion. CP 192.

C. **Southridge Submitted the Final Plat for Approval Because it Believed the Lots were Finished and Could be Closed upon in 15 Days per the Agreement.**

On March 16, 2006, Pierce County conducted a hearing in the Office of Hearing Examiner. CP 164. The Hearing Examiner (the "Examiner") approved the Final Plat of Phase 18 ("Final Plat") and signed off on the Mylar. CP 169. Southridge recorded the Final Plat the day of the hearing. CP 164, 169-174. In the previous six phases developed by Southridge, the County accepted building permit applications immediately after Final Plat approval. Southridge believed Phase 18 to be no different, and in fact had "substantially completed" all obligations. CP 163, 197.

Southridge sent notice to Evergreen regarding the Final Plat on March 13, 2006, and proposed a tentative closing date. CP 164. This notice was three days premature. CP 164, 182. The Agreement expressly states that "closing *shall* occur fifteen (15) days following the date on which a Final Plat *...is recorded...*" CP 189 (*emphasis added*). If calculated from the correct date, March 16, 2006, closing should have occurred on March 31, 2006. Evergreen and Southridge discussed the closing numerous times immediately after recording the Final Plat on March 16. CP 166.

At the time the County Approved the Final Plat, it also provided Southridge with a punch list of work. CP 164. This was a typical

procedure and had occurred in all of Southridge's phases. CP 163. The list included minor work to be completed on one intersection, surveying, street signage and street sweeping. CP 164. None of the work listed on the punch list items applied to the lots Evergreen agreed to purchase nor had punch list items stopped the County from issuing building permits for the six earlier phases. CP 165.

While closing was dependant upon the lots being "finished", the numerous contractual terms anticipating possible delays and granting extensions of time more than adequately assured that the closing could take place. *See* CP 191-92, 197, 199. Southridge was prepared to close per the Agreement. Evergreen simply breached before the closing date.

D. Evergreen Anticipatorily Breached the Contract Because It Disliked the Terms of the Agreement.

Just after Southridge sent notice to Evergreen that the Final Plat had been recorded, Evergreen contacted Southridge stating it was not willing or able to close the sale. CP 165, 182. This news caused Southridge alarm. Evergreen had never informed Southridge of its escrow and conventional financing plans. CP 182. Moreover, Southridge learned that Evergreen was concurrently poised to close on a \$21 Million deal for a separate real estate transaction in which it had exposed over three times as much earnest money as involved in Silver Creek. CP 301, 318. Based

on this information, or lack thereof, Southridge became increasingly concerned that Evergreen would indeed fail to close on the transaction.

When Southridge pressed for specific reasons why Evergreen was not going to close the sale, Dan Kelley, Evergreen's principal, admitted at a meeting with Robert Baldwin, Southridge's project manager for Silver Creek, that he thought the purchase price was too high and Evergreen would not close. CP 182. Mr. Kelley did not identify any problems with the plat or improvements thereto. *Id.* Southridge offered to review the purchase price and to financially assist Evergreen with the closing, but within one day of the meeting, Mr. Kelley called Mr. Baldwin and terminated the agreement, specifically stating that Evergreen would not close and Southridge should sell the lots to a third party. *Id.* The meeting and conversations occurred prior to March 28, 2006. *Id.*

On March 28, 2006, after Mr. Kelley's verbal breach, Evergreen confirmed its intention to terminate the Agreement in writing. Rather than citing Mr. Kelley's reasoning, the letter from Evergreen's attorney vaguely blamed Evergreen's decision to terminate the agreement on "various problems with the completion of the plat improvements" which kept the County from issuing building permits. CP 131, 165, 182. This was the first time Evergreen expressed dissatisfaction with the finished lots. CP 165, 182.

E. **Though Complete, without Explanation the County Unexpectedly Delayed Issuing Permits Only for the Evergreen Lots.**

After Evergreen terminated the sale, Southridge learned the County permitting department was not accepting building permit applications for the Evergreen lots. CP 165. No explanation for the delay was given. *See* CP 248.

This was the first and only time in the previous five years of Southridge selling lots within the Development that the County delayed issuance of permits following the plat recording. CP 166. Due to Southridge's extensive history with this particular Development, it worked with the same Pierce County officials throughout all phases to monitor and review the various project completions. CP 163. Its long-standing experience with Pierce County indicated the County systematically issued building permits shortly after recording the final plat. *Id.*

Likewise, the punch lists had never delayed the County's issuance of building permits. *Id.*, 183. Even if this was a potential delay, Southridge was always fully bonded for completion of work on the Evergreen lots. *Id.*, CP 183, 199. This included all punch list work and work for the water system; the bond for which was released by the fire department upon exhibiting the system was operational. CP 179.

It was not until the deposition of Ms. Carol Johnson, the Pierce County Permit Coordinator, that Southridge learned that the holdup was due to the failure of the Examiner to enter the March 16, 2006 decision into the computer system. CP 248, 250-255. Interestingly, the two remaining parties that purchased the balance of the Southridge Phase 18 lots, Centex Homes and Reich Construction, timely closed on their respective purchases in March and April 2006, and raised no concerns with the condition of the plat. CP 182-83. Despite the fact the Examiner failed to enter the final report until May 8, 2006, the County accepted building permits for all of the Phase 18 lots save Evergreen's. CP 166. There was nothing to physically distinguish the Evergreen lots from the 86 lots purchased by Centex and Reich. CP 231.

F. Evergreen Refuses to Take Responsibility for Unilaterally Breaching the Agreement.

When Evergreen terminated the Agreement, it demanded Southridge return the earnest money. Southridge refused on the basis that Evergreen was the party who breached the Agreement, not Southridge. Evergreen consequently filed suit on or about April 12, 2006 for a judgment in the amount of \$300,000 plus interest, attorney's fees and costs. CP 1-3. A little under a year later, Evergreen filed its Motion for an Order of Summary Judgment CP 10-17.

Evergreen's Motion focused on the allegation that Southridge failed to provide "Finished Lots" per the Agreement and that consequently the County would not issue building permits. *See* CP 13. It argued there were no material issues of fact surrounding these two issues. CP 10-17.

In its response, Southridge offered extensive briefing, numerous declarations and evidence illustrating the fact it had completed the lots per the Agreement, and that Evergreen anticipatorily breached the Agreement. CP 133-318. Furthermore, it presented substantial arguments disputing Evergreen's interpretation of the contract and timeline of events and introduced evidence of government delay beyond Southridge's control, all of which raised material issues of fact. *Id.* Nevertheless, on May 4, 2007, the trial court awarded Evergreen its Order on the Motion for Summary Judgment. CP 341.

V. SUMMARY OF ARGUMENT

Per established Washington law, the trial court erred when it granted Evergreen its Order Granting Judgment. Southridge introduced numerous issues of material fact relating to (1) it's fulfillment of contractual obligations; (2) the "finished" status of the lots; (3) Pierce County's delays when issuing building permits; (4) the correct timeline for closing and giving notice of contract termination; as well as (5) material issues of fact regarding the Agreement's language and the parties' intent

to close the sale regardless of intervening events or minor issues. Lastly, Southridge introduced material issues of fact relating to Evergreen's bad faith and anticipatory breach of the parties' Agreement. As a result, summary judgment was not appropriate as Evergreen simply attempted to obfuscate its breach by citing conflicting factual arguments rife with material issues.

VI. ARGUMENT

A. Summary Judgment Standard of Review.

Summary judgment should only be granted when, after considering the evidence in a light most favorable to the nonmoving party, there is no issue of material fact remaining for trial. *Conrad v. Smith*, 42 Wn. App. 559, 712 P.2d 866 (1986). On a motion for summary judgment, the non-moving party is entitled to all reasonable inferences supported by the evidence. *Young v. Key Pharmaceuticals*, 112 Wn. 2d 216, 226, 770 P.2d 182 (1989). The burden is on the moving party to prove that there is no genuine issue of material fact. *Safeco Ins. Co. of Am. V. Butler*, 118 Wn. 2d 383, 823 P.2d 499 (1992). Summary judgment is not appropriate when reasonable minds might reach different conclusions. *Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn. 2d 255, 256-57, 616 P.2d 644 (1980). When reviewing an order for summary judgment, the court of appeals engages in the same inquiry as the trial court. *Griffith v. Centex Real*

Estate Corp., 93 Wn. App. 202, 969 P.2d 486 (1998). Additionally, this court must review all questions of law de novo. *Marthaller v. King Co. Hosp. Dist No. 2*, 94 Wn. App. 991, 973 P.2d 1098 (1999).

B. Material Issues of Fact Remain Regarding Whether the Lots were “Finished Lots” and if Southridge Met its Obligations under the Contract.

For the first time, Evergreen argued in its summary judgment that there were “various problems” with the lots including the lack of an “operational and energized” water system and the County’s refusal to issue building permits, both of which were attributable to Southridge. CP 13. This argument is unfounded, not specifically supported and Southridge raised numerous issues of material fact regarding whether the lots were complete and if the water system was operational. CP 131.

Section 17 of the Agreement describes the standards for completion of “Finished Lots” for purposes of closing per Section 7:

17. Finished Lots.

17.2 Finished Lots Definition. As used herein, “Finished Lots” shall mean that (i) the Lots shall be in a condition that makes the Lots “complete” for the purposes of submitting a building permit **and there are no restrictions preventing the issuance of building permits that are related to the Seller’s obligations in the Final Plat** and (ii) Seller shall have substantially completed the plat improvements identified in this Section in a good and workmanlike manner and in accordance with all conditions and requirements of the Permitting Jurisdiction; provided

that where the Permitting Jurisdiction allows Seller to bond completion of an improvement, then Seller may provide such bond at the time of Final Plat Recording, complete such improvements after the Closing (in which event the Lot shall be deemed a Finished Lot notwithstanding that the improvements will be completed after the Closing). The plat improvements to be constructed by Seller to Create Finished Lots shall mean the following:

- (i) Utilities consisting of water, gas, sanitary sewer system, underground electrical power, telephone and cable TV. All such water, gas, sewer and electrical improvements shall be operational and energized with appropriate markers at stubbed-in locations.

CP 197 [**emphasis added**].

In summation, Finished Lots were (1) “complete” for purposes of submitting a building permit; (2) were unburdened by restrictions related to Southridge’s obligations; and (3) the improvements thereon were “substantially complete”. CP 197.

1. The Work on the Lots was Substantially Complete.

The trial court left unresolved material issues of fact regarding whether the Evergreen Lots were complete and unrestricted. Contrary to Evergreen’s assertions in its Motion, Southridge completed all work on Plat 18 before the Final Plat recording on or about March 16, 2006. CP 164, 166. Though the Examiner approved the Final Plat of Silver Creek Phase 18 and signed the same on March 16, 2006, for unknown reasons he did not sign or enter his report (“Examiner’s Report”) into the computer.

CP 227. Carol Johnson, testified in her deposition that the failure of the Examiner to enter his report was the basis for withholding permits on the Evergreen Lots. CP 228. Despite her testimony, on April 3, 2006, Ms. Johnson sent a letter to Southridge indicating building permits were available for Phase 18 lots 1 to 36 and 114 to 155; all Phase 18 lots except those Evergreen contracted to purchase. CP 166, 230.

On summary judgment, Evergreen attempted to twist this fact by claiming it proves Southridge failed to deliver Finished Lots. CP 319. However, there is no evidence in the record that the lots were not finished. In reality, the lots were substantially complete, ready to be permitted and the County created the delay not Southridge. CP 231. In her deposition, Ms. Johnson recalled there was nothing different between the physical status of Evergreen's lots and the Phase 18 lots which were approved for permit applications. CP 231. For some reason, the permits for the other 86 non-Evergreen lots were issued despite the fact that no Examiner's Report had been filed. Regardless, the completed status of the Evergreen lots was evident as the County did not require, nor did Southridge perform, any additional work on the Evergreen lots. Southridge bonded around the minor punch list work for the 86 lots not under contract with Evergreen. CP 164-65.

Infact, the computer print outs provided by Pierce County indicate all departments signed their approval of the Final Plat by March 16, 2006. CP 169. Thus from a completion standpoint, the lots were ready to be transferred to the respective purchasers when the Final Plat was recorded on March 16, 2006. CP 248. Since there is no evidence that the County withheld permits because the lots were incomplete, the County never before delayed Southridge's permit process, and granted building permits to the other lots in Plat 18, the cause of the delay is an issue of fact which affects the analysis of whether the lots were "finished".

2. The Water System was Operational.

The water system was approved by the County on March 10, 2006, after the system was fully tested and certified by the fire department and the water company, Rainier Water Company ("Rainier Water"). CP 169, 248. On March 22, 2006, the fire department released the bond on the water system indicating the flow met its requirements and the system was satisfactory. CP 179. The water system was demonstrably "operational and energized" as required by the contract. *See* CP 138, 197.

In its summary judgment motion, Evergreen focused on the fact that Southridge did not obtain a Certificate of Water Availability, ("Certificate") for the Plat until May 30, 2006, which was "two months after [Southridge] was required to have a Certificate of Water Availability

under the contract.” CP 324. Nowhere in the Agreement, does it state a Certificate had to be obtained prior to the closing date. Furthermore, the Certificate clearly states that water service was made available to the Plat by April 1, 2006.²

As Rainier Water’s employee Robert Blackman states in his declaration in support of Southridge’s Response to Summary Judgment, (“Response”) the only thing needed to obtain a Certificate after the Fire Marshall approves the system is for a Rainier Water representative to visit the site and simply confirm the site is operational. CP 153-154. Whether the water system was operational was not dependent upon the company’s confirmation or the Certificate; either it was or it was not. The Certificate was merely part of the process of Rainier Water “taking over ownership and maintenance” of the system. CP 336.

Furthermore, Evergreen offered no evidence refuting water was actually available on April 1, 2006. It did not explain exactly what part of the system it believed to be inoperable. Mr. Kelley’s Declaration in Support of Summary Judgment did not mention specific items in need of attention. CP 90. Moreover, the other builders who closed on the Phase

² April 1, 2006 was a Saturday. March 31, 2006, was the closest previous business day. March 31, 2006, is exactly 15 days after the Final Plat was recorded.

18 lots in a timely fashion in March and April 2006 had no problems with the operational water system. CP 183.

Southridge's factual argument and presentation of specific evidence created material issues of fact and should have precluded summary judgment.

C. Evergreen Anticipatorily Breached the Agreement and Acted in Bad Faith.

Southridge was responsible for providing Finished Lots 15 days after the Final Plat was recorded so that closing could occur. CP 189. Southridge prematurely sent notice to Evergreen on March 13, 2006 stating that the Final Plat was achieved and it was ready to work with Evergreen to get the closing documents prepared for March 28, 2006. However, the Final Plat was actually approved and recorded on March 16, 2006. CP 189. The 15-day closing timeline was not triggered until March 16, 2006 thus closing should have taken place March 31, 2006.

Regardless, Evergreen took actions to terminate the Agreement on several occasions prior to either date. It did so by verbal notice to Southridge on two separate occasions prior to March 28, 2006 and by its letter on March 28, 2006, thereby anticipatorily breaching the Agreement. CP 131, 322, 324. Southridge introduced material issues of fact regarding

Evergreen's breach as well as the fact that it acted in bad faith when it terminated the Agreement.

An anticipatory breach occurs when one of the parties to a bilateral contract either expressly asserts through a positive statement or circumstantially manifests through its conduct that it repudiates the contract prior to the time for performance. *Wallace Real Estate Inc., Inc. v. Groves*, 72 Wn. App. 759, 868 P.2d 149 (1994).

Evergreen took advantage of Southridge's minor error in sending the premature notice and despite its knowledge to the contrary, acted as if closing was scheduled for March 28, 2006. *See e.g.* CP 89, 322. By terminating the Agreement, Evergreen denied Southridge the chance to perform and ignored the fact Southridge had in fact performed.

Even if for the sake of argument, closing was properly scheduled for March 28, 2006, Evergreen still anticipatorily breached the Agreement. Well before the March 28 letter Mr. Kelley informed Robert Baldwin and Scott Inveen of Southridge in meetings and a phone call that he had no interest in the lots and was not going to close the deal. CP 165, 182. Evergreen anticipatorily breached the contract regardless of which closing date applies. In their pleadings, Evergreen never denied the fact that it had informed Southridge of its intent not to perform under the Agreement prior to the closing date. In order for the court to find for summary

judgment in favor of Evergreen, it would have had to have disbelieved the declarations submitted by Robert Baldwin and Scott Inveen which the court cannot do in finding for the moving party in summary judgment. *See In re Estate of Black*, 118 Wn. App. 476, 486, 66 P.3d 670 (2003) (on motion for summary judgment court does not sit as trier of fact.)

As a result, Southridge was under no obligation to perform. *Wallace*, 72 Wn App. at 772-773 (once a party repudiates the contract, the other party's performance is excused.) Consequently, it did not matter for purposes of summary judgment that the County did not accept applications for permits for the Evergreen lots until March 28, 2006, March 31, 2006 or even May 9, 2006, or that the Water Certificate was not sent until May 30, 2006 despite the fact that water was available on or before April 1, 2006.

As Mr. Kelley's communications demonstrated, the real reason Evergreen terminated the Agreement was that the deal was too expensive. CP 165. The total price for the lots was just over \$9 Million; this was slight compared to the \$21 Million deal Evergreen was attempting to close at the same time. CP 182, 256. Regardless of Evergreen's obvious shift of attention and funds, it owed an implied duty of good faith and fair dealing to Southridge by which it was obligated to cooperate so that each could obtain the full benefit of performance. *See Badgett v. Security State*

Bank, 116 Wn. 2d 563, 807 P.2d 356 (1991) (citations omitted). Evergreen breached this duty when it terminated the Agreement prior to performance simply because it got cold feet or because it was already financially committed to another transaction that involved significantly more money than the purchase of the lots from Southridge. These unresolved issues of material fact should have precluded summary judgment.

D. The Trial Court Erred when it Interpreted the Contract Terms Contrary to the Parties' Intent.

While it is unknown exactly why the computer entry of the Examiner's Report was delayed, the County's failure to accept permits was out of Southridge's control. Any permitting delays were due to the County and were not due to "restrictions related to the Seller's obligations." CP 197. The possibility of unforeseen permitting delays was contemplated by the Agreement in numerous terms so that closing could be flexible depending on the circumstances. The court did not properly take into consideration the parties' intent when analyzing the circumstances surrounding the Agreement.

The intention of the parties controls the construction of a contract. *See Dixon v. Gustav*, 51 Wn. 2d 378, 380, 318 P.2d 965 (1957); *See also Denny's Restaurants, Inc. v. Security Union Title Ins. Co.*, 71 Wn. App.

194, 201, 859 P.2d 619 (1993). *Paradise Orchards General Partnership v. Fearing*, 122 Wn. App. 507, 516, 94 P.3d 372 (2004) (“[a]n appellate court’s primary goal in interpreting a contract is to ascertain the parties’ intent.”) The contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the “reasonableness of respective interpretations advocated by the parties” may be used to evaluate the contract’s meaning and intent. *Berg v. Hudesman*, 115 Wn. 2d 657, 667, 801 P.2d 222 (1990) (*quotation omitted*).

The parties’ intent should be taken into consideration when analyzing the parties’ conduct under the Agreement. The parties clearly intended for the closing to occur regardless of minor interferences unrelated to their good faith performance. For instance, Section 7.2 allowed a seven-month window for closing. Section 7.3 granted a possible extension of the outside closing date for six months. CP 189. Section 17.5 allowed Southridge to bond around improvements, such as the work needed to complete the water system had it been necessary. CP 199. The Agreement was designed so closing could occur before improvements were completed and simply demanded Southridge

substantially complete the improvements. CP 197. Sections 17.1 and 17.2 are subject to Section 7 which allowed additional time. CP 197, 199.

Both parties are experienced developers and builders and had worked successfully in previous transactions involving the Development. The parties negotiated the Agreement and it was the final expression of their intent. *See* CP 185-220. The negotiated Agreement recognized the high likelihood that unforeseen circumstances, such as government delay, could arise and offered adaptable solutions to assure the project could continue. *Id.* Southridge recorded the Final Plat aware that this act triggered closing per the Agreement and believed in good faith based on prior experience that there would be no issues surrounding the issuance of the permits. *See* CP 190. The trial court had to necessarily believe Evergreen's unlikely arguments that implied an experienced developer would record the plat despite having failed to complete the lots per the contract. The trial court should have interpreted the contract as a question of law taking into consideration the *Berg* test and analyzing the total facts in a light most favorable to Southridge.

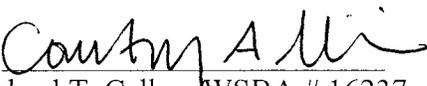
VII. CONCLUSION

For the above-stated reasons, Southridge requests this Court reverse the trial court's summary judgment decision. Southridge presented numerous issues of fact refuting Evergreen's contentions.

Material issues of fact remain regarding whether the lots were finished per the Agreement and if the water system was operational. However, more importantly, Southridge introduced evidence that Evergreen anticipatorily breached the contract. Because Evergreen verbally communicated its breach through its principal Mr. Kelley, as well as in writing, Southridge was denied the opportunity to perform and was released from its obligations. Consequently, for purposes of this case, questions regarding the water Certificate and delayed permitting date are irrelevant, and at the very least are suffused material issues of fact.

Respectfully submitted this 16th day of August, 2007.

PETERSON RUSSELL KELLY PLLC

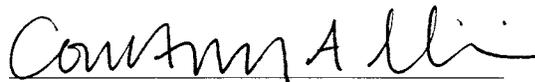
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CERTIFICATE OF SERVICE BY MAIL

I certify that I mailed, or caused to be mailed, a copy of the foregoing BRIEF OF APPELLANT postage prepaid, via U.S. mail on the 16th day of August, 2007, to the following counsel of record at the following addresses:

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Real Estate Purchase and Sale Agreement..... CP 185-220

REAL ESTATE PURCHASE AND SALE AGREEMENT
(PHASE -18 - SILVER CREEK)

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement"), dated as of the Effective Date specified above the signature block for Seller below, is entered into by and between SOUTHRIDGE SILVER CREEK, LLC, a Washington limited liability company ("Seller"), and Evergreen State Builders, LLC, a Washington limited liability company ("Purchaser").

*Conifer Communities LLC
(a related entity)*
[Signature]
11/12/05

1. Property. Seller is the owner of that certain real property located in Pierce County, Washington ("Permitting Jurisdiction") and commonly known as Phase 18 - Silver Creek, located on land more particularly described on the attached Exhibit A ("Property"). Seller has obtained preliminary plat approval, subject to certain conditions, under Pierce County File Nos. 367727 / 367729 / 367731, for the subdivision of a portion of the Property known as Phase 18 - Silver Creek pursuant to the site plan and layout shown in drawings referenced in attached Exhibit B ("Phase 18 - Silver Creek Preliminary Plat"), consisting of approximately one hundred fifty-five (155) lots (each, a "Lot") in the mix of 40', 50' and 60' lots for detached single family dwellings. Purchaser will purchase the Lots preliminarily identified in Exhibit B-1 attached hereto ("Lot Mix Matrix") for detached single family dwellings. The Phase 18 - Silver Creek Preliminary Plat, as it may be amended from time to time subject to the terms of this Agreement, is referred to herein as the Preliminary Plat. Purchaser wishes to purchase the Lots on the Property. The parties acknowledge and agree that Lot numbers and mix may change in which event the Purchase Price shall be adjusted as provided in Section 3 below.

2. Purchase and Sale. Seller agrees to sell the Lots identified in the Lot Mix Matrix, attached hereto as Exhibit B-1 and incorporated herein by this reference, to Purchaser, and Purchaser agrees to purchase the Lots from Seller, on the terms and conditions of this Agreement.

3. Purchase Price and Number of Lots.

Purchaser is purchasing the following number of lots and the following price per lot:

- 77 of the 40' Lots at ~~\$120,000~~ ^{\$123,295} per lot*
- 0 of the 50' Lots at \$ _____ per lot
- 0 of the 60' Lots at \$ _____ per lot

[Signature]
[Signature]
11/12/05

The total purchase price, subject to the terms of this agreement, including the provisions

11/17/05
FOUR

Purchaser is purchasing the lots identified in the Lot Mix Matrix assuming that the Final Plat (defined below) for the Property results in a total of ~~seventy-seven~~ (77) Lots with the mix of Lot types described in the Lot Mix Matrix, and assuming the Purchase price per lot and the number of lots identified above, shall be ~~nine million seven hundred and forty-two thousand~~ ^{ninety-three thousand} and No/100 Dollars (\$9,742,040.00). The total Purchase Price shall be reduced or increased accordingly for each Lot less or more than the ~~seventy-seven~~ (77) Lots identified above to be purchased by Purchaser which is included in the final plats recorded in the Permitting Jurisdiction's county records (each a "Final Plat") and sold to Purchaser and Coordinated Purchasers.

9,740,000
9493,715

Three Hundred Thousand \$ or less dollars (Earnest Money)

4. Earnest Money. Upon execution of this Agreement, Purchaser shall deposit with Chicago Title Insurance Company's Seattle Office ("Escrow Company")

~~two~~ Promissory Notes payable to Seller in the total amount of ~~Four Hundred Eighty-Seven Thousand One Hundred Two and No/100 Dollars (\$487,102.00)~~ ^{equal to five percent (5%) of the Purchase Price} ("Earnest Money"). The Earnest Money notes shall be substantially in the form attached as Exhibit C-1

If Purchaser approves the Feasibility Contingency as set forth in Section 9, Purchaser shall convert the ~~First~~ Earnest Money Note attached as Exhibit C-1 equaling ~~Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00)~~ ^{Three}

to cash and deliver such amount by wire transfer of immediately available U.S. funds to Escrow Agent within two (2) business days after such approval. The proceeds of the ~~First~~ Earnest Money Note, upon being converted to cash, shall be non-refundable except in the event of Seller's breach of its obligations hereunder.

Upon receipt of the ~~Two~~ ^{Three} Hundred ~~Fifty~~ Thousand and No/100 Dollars (\$250,000.00), Escrow Agent shall promptly deliver the ~~Two~~ ^{Three} Hundred ~~Fifty~~ Thousand and No/100 Dollars (\$250,000.00) to Seller. The Earnest Money, including the Second Earnest Money Note attached as Exhibit C-2 which shall become due on the Closing Date or Purchaser's default under this Agreement, is applicable to the Purchase Price, and shall be applied to the Purchase Price at Closing, as provided in Section 7, or retained as Seller's liquidated damages in accordance with Section 21.2.

5. Conveyance of Title. At Closing, Seller shall execute and deliver to Purchaser a Statutory Warranty Deed substantially in the form attached as Exhibit D conveying fee title to the Lots, subject only to the Permitted Exceptions, as defined in Section 6 ("Deed"). Monetary encumbrances to be discharged by Seller at Closing pursuant to the terms of this Agreement shall be paid from Seller's proceeds.

6. Title Insurance.

6.1 Policy. It shall be a condition precedent to Purchaser's obligation to proceed with the Closing that Chicago Title Insurance Company ("Title Company") be committed to issue to Purchaser an ALTA Extended Coverage Owner's Policy of Title Insurance in the amount of the Purchase Price, insuring fee simple title to the Lots is vested in Purchaser, subject only to the Permitted Exceptions ("Policy").

6.2 Commitment. Purchaser has received a copy of the preliminary commitment for the Policy ("Commitment") encompassing the Property and will approve or disapprove the condition of title during the Contingency Period (as such term is defined in Section 9 below).

After the Contingency Period, if Title Company issues a supplement to the Commitment or an amended and restated Commitment (each, a "Supplemental Commitment") that contains exceptions or defects that are not Permitted Exceptions (as defined below) and were not shown on the Commitment, as previously updated, Purchaser shall deliver a Purchaser's Notice of Purchaser's approval or disapproval of the exceptions or defects shown in the Supplemental Commitment within five (5) business days after receipt of the Supplemental Commitment, but in no event later than the Closing Date. If Purchaser fails to notify Seller in writing of its disapproval of any such exceptions or defects within such 5-day period or by Closing, whichever is sooner, Purchaser shall be deemed to have accepted such exceptions or defects and they shall be Permitted Exceptions. Notwithstanding the foregoing, Purchaser may only disapprove those Supplemental Commitment exceptions or defects which would materially interfere with Purchaser's Intended Use.

6.3 Permitted Exceptions. For the purpose of this Agreement the following shall be deemed approved exceptions to title (collectively, "Permitted Exceptions"): (a) non-delinquent taxes; (b) terms and conditions of the Preliminary Plat and the Final Plats, as long as they are generally consistent with the Preliminary Plat; (c) encumbrances which are typically required for construction of plat improvements, such as, but not limited to, utility easements and right-of-way dedications, which are shown on the Preliminary Plat, to the extent such encumbrances do not materially interfere with Purchaser's ability to use, develop, permit, construct market and sell single family residences on the Lots ("Purchaser's Intended Use"), and such encumbrances are generally consistent with the Preliminary Plat; (d) Declaration of Covenants, Conditions, Restrictions, and Easements of record ("CC&Rs") including any changes to the CC&Rs Seller deems reasonably necessary to address issues and concerns raised by the Permitting Jurisdiction, the homeowner's association, the engineering drawings, and otherwise, provided that the changes do not materially adversely affect Purchaser's Intended Use; (e) rights in federal patents or state deeds; (f) building, zoning or use restrictions, regulations, or provisions general to the district; (g) general exceptions which generally appear in extended coverage title policies issued by Title Company; (h) exceptions approved by Purchaser and exceptions which Purchaser is deemed to have approved; (i) exceptions which are expressly permitted pursuant to the terms of this Agreement; and (j) all exceptions caused by or through Purchaser.

6.4 Supplemental Commitment - Disapproved Exceptions and Defects. If Purchaser timely disapproves any exception or defect in any Supplemental

Commitment, as the case may be, Seller shall, within ten (10) days after receipt of Purchaser's Notice, notify Purchaser in writing whether Seller (a) will make good faith efforts to remove such disapproved exception or defect; (b) shall be obligated to remove such disapproved exception or defect; or (c) does not intend to remove such disapproved exception or defect.

6.5 Purchaser's Response. In the event Seller (a) provides Purchaser written notice that it does not intend to remove a disapproved exception or defect or (b) fails to provide written notice within the foregoing 10-day period that it shall be obligated to remove or will make good faith efforts to remove a disapproved exception or defect (which failure shall be deemed an election not to remove such disapproved exception or defect), Purchaser shall, within five (5) business days after receipt of Seller's election or Seller's deemed election not to remove such disapproved exception or defect, whichever occurs first, deliver written notice to Seller of Purchaser's election, as its sole and exclusive remedy, to either (i) accept the disapproved exceptions or defects as Permitted Exceptions and consummate the transaction contemplated by this Agreement or (ii) terminate this Agreement, in which event the Earnest Money shall be refunded to Purchaser and Purchaser and Seller shall have no further obligations under this Agreement except for those obligations expressly surviving termination of this Agreement; provided however, if the exception or defect was first disclosed in a Supplemental Commitment Purchaser's termination right shall be limited to the Lots with respect to which Purchaser's Intended Use is materially and adversely affected by the disapproved exception or defect (which may include Lots not actually encumbered by such disapproved exception or defect), in which case neither party shall have any further obligations under this Agreement with respect to such Lots except those obligations expressly surviving termination or Closing of this Agreement. Purchaser's failure to deliver written notice within said 5 days shall be deemed an election to waive such objections and Purchaser shall purchase the Lots in with the exceptions or defects deemed to be Permitted Exceptions. If necessary to permit Purchaser 5 business days to respond, Closing shall be extended until one (1) business day after such 5 business day period or the date Seller receives Purchaser's response, whichever occurs first. If Purchaser elects to terminate this Agreement in accordance with the foregoing, Seller shall pay any cancellation fee charged by the Title Company for the Commitment.

6.6 Failure to Remove. If Seller has elected to make good faith efforts to remove a disapproved exception or defect, but despite exercising good faith efforts has been unable to remove such exception or defect on or before the scheduled Closing date, then Purchaser shall either (i) accept the disapproved exception or defect as a Permitted Exception and consummate the transaction contemplated by this Agreement or (ii) terminate this Agreement and receive a refund of the Earnest Money.

7. Closing.

7.1 Closing. For purposes of this Agreement, the term "Closing" shall mean the date of delivery and recording of the Deed from Seller to Purchaser and delivery of the applicable Purchase Price to Seller. Closing shall take place through an escrow in the offices of the Escrow Company, and Escrow Company shall open an escrow and perform the duties of escrow agent.

July
7.2 Closing Date. Closing shall occur fifteen (15) days following the date on which a Final Plat for Lots in Phase 18 – Silver Creek is recorded with the Pierce County Auditor's Office, but in no event sooner than December 1, 2005 or later than ~~April~~ 30, 2006 (the "Outside Closing Date"). Minor unfinished improvements or minor repairs, replacements or corrections to improvements, shall not be grounds for Purchaser's refusal to close. On or prior to the Closing Date, the Lots being purchased by Purchaser shall be completed in accordance with Paragraph 17 below. Purchaser shall cooperate with Seller in obtaining the Final Plat.

7.3 Extension of Outside Closing Date. If Seller, despite using good faith efforts, has not completed the Final Plat Approval at least ten (10) days prior to the Outside Closing Date specified herein, then (i) Seller shall not be deemed in default hereunder, (ii) at Seller's sole option this Agreement shall terminate on the Outside Closing Date, and (iii) if terminated by Seller, the Earnest Money shall be refunded to Purchaser; provided, however, Seller may, by written notice to Purchaser delivered on or before the Outside Closing Date, extend the Outside Closing Date for up to six (6) months in order to provide additional time to achieve Final Plat Recording and complete the Finished Lot work. Notwithstanding the foregoing, if Seller, despite using good faith efforts, is delayed in achieving Final Plat Recording and completing the Finished Lot work due to a Force Majeure Event (as defined in Section 17.5), Seller may, by written notice to Purchaser delivered within twenty (20) days after the occurrence of such Force Majeure Event, extend the Outside Closing Date by the number of days reasonably required to address such Force Majeure Event up to a maximum of six months in order to provide additional time to achieve Final Plat Recording and complete the Finished Lot work ("Force Majeure Extension"). In the event of a Force Majeure Extension, the Closing shall occur within ten (10) days after Final Plat Recording and completion of Finished Lot work.

7.4 Deliveries at Closing. At Closing each party shall execute and deliver to the other or into escrow with the Escrow Company the following documents, duly executed and acknowledged, as appropriate:

7.4.1 Seller shall deliver to Purchaser or Escrow Company: (i) the Deed for the Lots included in the Closing executed and acknowledged by Seller; (ii) a non-foreign transferor certification pursuant to Section 1445 of the Internal Revenue Code; and (iii) additional documents reasonably and customarily required by Title Company in order to close and issue the Policy, including without limitation documents

evidencing the authority of the person or persons who are executing the various documents on behalf of Seller in connection with this Agreement and such affidavits or indemnities that the Title Company typically requires a Seller to execute in order to issue title insurance coverage against construction liens.

7.4.2 Purchaser shall deliver to Seller or Escrow Company: (i) the Purchase Price and other amounts payable to Seller in connection with the Closing by wire transfer; and (ii) additional documents reasonably and customarily required by Title Company in order to close, including without limitation documents evidencing the authority of the person or persons who are executing the various documents on behalf of Purchaser in connection with this Agreement.

7.4.3 Seller and Purchaser shall jointly deliver to Escrow Company: (i) a closing statement; and (ii) all transfer declarations or similar documentation required by law.

7.5 Closing Costs. Seller shall pay the cost of the Policy to the extent of owner's extended coverage, real estate excise tax, one-half the escrow fee and other customary Seller's closing costs. Purchaser shall pay the cost of any endorsements to the title policy requested by Purchaser or its lender, recording fees for recording of the Deed, one-half the escrow fee, costs incurred in connection with the transfer of any transferable permits or licenses, costs associated with Purchaser's financing, if any, transfer and use taxes arising from the transfer of any personal property and other customary Purchaser's closing costs.

7.6 Reimbursements and Credits.

7.6.1 ULID and Other Reimbursements. At Closing Purchaser shall pay Seller Four Hundred Eighty Dollars (\$480.00) per Lot as partial reimbursement for ULID-89-1 sewer facility costs. In addition, Purchaser shall pay Seller Five Thousand Dollars (\$5,000) per Lot as reimbursement for traffic mitigation costs and water charges. Except for the foregoing reimbursement amount and those fees or charges specifically identified as Purchaser's responsibility in Section 18 below, or otherwise provided for herein, Seller shall pay any and all fees, charges or impositions for mitigation, utility connections, permits and other governmental approvals arising out of or associated with development of the Silver Creek Master Planned Community ("Master Community") to the extent such development is necessary for obtaining Preliminary Plat Approval, Final Plat Approval and performing the Finished Lot work, whether payable before or after any Closing hereunder.

7.6.2 Street Trees. Seller shall be responsible for the purchase and installation of the any street trees required as part of Final Plat Approval (collectively "Street Trees"). Street Trees will be installed per the requirements of the

Final Plat and bonds. Notwithstanding anything to the contrary herein, Seller shall not be responsible for, and Buyer shall reimburse seller for any damages due to water shortages, failure to water the trees, or the negligence or willful misconduct of Buyer, Buyer's invitees, licensees, employees or subcontractors. Notwithstanding the forgoing, if Buyer and Seller are successful in obtaining Pierce County's acceptance of Buyer's bond for the Street Trees, Seller will credit Buyer for the cost of the Street Trees at a credit of \$ 175.00 per tree and Buyer shall assume all obligations with respect to the Street Trees.

11/21/05



7.6.3 Marketing Reimbursement. In addition to the Purchase Price, Buyer shall pay to Seller at Closing the sum of Two Thousand and No/100 Dollars (\$2,000.00) as a non-refundable reimbursement for Seller's marketing of the Property prior to Closing.

7.6.4. Buyer's Maintenance Bond. In addition to the Purchase Price, Buyer shall pay to Seller, the sum of Five Hundred and No/100 Dollars (\$500.00) per Lot purchased by Buyer ("Buyer's Maintenance Bond"). Such amounts shall be held by Seller and applied by Seller towards the compliance with any maintenance requirements imposed as a part of the Final Plat or the Permitting Jurisdiction. Upon the final release of Seller for any maintenance bonds or requirements imposed by the Final Plat or the Permitting Jurisdiction, Seller shall return any unused portion of the Buyer's Maintenance Bond to Buyer.

7.7 Prorations. Except as otherwise provided in this Agreement, all real property taxes, assessments, membership dues, permits, licenses, utilities, surface water management charges and similar fees or charges, and other expenses due and payable in the year shall be prorated as of Closing based upon (i) the actual days of ownership of the parties for the year in which the Closing occurs utilizing the most recent ascertainable tax bills, and (ii) if the Lots have not yet been segregated as individual tax parcels, by the ratio that the total area of the Lots bears in relation to the larger tax parcels of which the Lots are a part. Seller and Purchaser agree to reproporate said real estate taxes upon Purchaser's receipt of the actual tax bill for the tax year in question, if any. Seller shall retain all rights with respect to any refund of taxes or other obligations prorated under this Section applicable to any period prior to the Closing. Except as otherwise provided in this Agreement, all other items which are customarily prorated in transactions similar to the transaction contemplated hereby and which were not otherwise dealt with, will be prorated as of the Closing. In the event any prorations, reimbursements or computations made under this Section are based on estimates or prove to be incorrect, then either party shall be entitled to an adjustment to correct the same, provided that it makes written demand on the party from whom it is entitled to such adjustment within one hundred and eighty days (180) after the end of the calendar year in which the Closing occurs. The terms of this Section shall survive termination or

Closing.

8. Condition to Parties' Obligation to Close. In addition to all other conditions set forth in this Agreement, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to Close shall be conditioned upon the following:

8.1 As of the Closing date, the other party shall have performed its obligations required to be performed by such date under the terms of this Agreement in all material respects and all deliveries to be made by such party at the Closing have been tendered; and

8.2 As of the Closing date, there shall exist no material breach of any of the representations and warranties made by such party under Sections 14 or 15 this Agreement.

So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing has not been satisfied or waived as of Closing date or such earlier date as provided herein, such party may, in its sole discretion, terminate its obligations under this Agreement by delivering written notice to the other party on or before such date, or such party may elect to close notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition (but regardless of which election such party makes, such party shall not thereby be deemed to have waived its rights and remedies against the other party for its failure of performance or breach of its representations and warranties except as otherwise provided in this Agreement). The terms of this Section shall survive termination or Closing of this Agreement.

9. Feasibility Contingency. Purchaser's obligation to purchase the Lots in accordance with this Agreement is conditioned upon Purchaser's satisfaction, of Purchaser's Feasibility Contingency set forth below. Purchaser's notice of satisfaction of such Purchaser's Feasibility Contingency shall be given by written notice from Purchaser to Seller ("Contingency Waiver Notice") on or before fifteen (15) days after mutual acceptance of this Agreement ("Contingency Period"). If the Contingency Waiver Notice is not timely received by Seller on or before the end of the Contingency Period, Purchaser shall be deemed to have approved Purchaser's Feasibility Contingency. The parties agree that Seller will seek approval for the Final Plat in a manner substantially in accordance with the Preliminary Plat referenced in Exhibit B to this Agreement ("Approved Lot Layout"). The parties acknowledge that Final Plat Approval may not be completely achievable in accordance Preliminary Plat lot layout depending on existing title encumbrances of record, applicable laws, rules and regulations, and the preliminary plat requirements for the Preliminary Plats; Purchaser acknowledges that such changes shall not be grounds to terminate this Agreement provided that the changes do not materially adversely affect Purchaser's Intended Use

11/11/05
11/11/05 Purchaser's Feasibility Contingency is hereby
436732.01 removed subject to changes proposed by
Purchaser. Said changes affect the existing P & S
Agreement. See Initialed Changes.

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which shall include, but not be limited to, the building footprints located on each Lot.

10. Right of Entry. Subject to the terms of this Agreement, Purchaser, its agents, contractors, employees and designees shall be entitled to enter upon the Property from the Effective Date through Closing or earlier termination of this Agreement to conduct the investigations and studies and to perform soil, engineering and other studies and investigations referred to in Section 9 and to develop plans and strategies and make other preparations regarding Purchaser's Intended Use of the Property ("Due Diligence and Planning"). Purchaser's right to conduct Due Diligence and Planning, shall be subject to the following in each such instance (i) Purchaser notifies Seller of its intent to enter the Property not less than 24 hours in advance of such entry; (ii) at Seller's election, a representative of Seller is present during any entry by Purchaser or its agents, contractors, employees and designees upon the Property, provided that it shall be Seller's responsibility to ensure that such representative is present at the time that such entry is scheduled by Purchaser; (iii) Purchaser shall take all necessary actions to insure that neither it nor any of its agents, contractors, employees and designees interfere with the development or operations occurring at the Property or neighboring properties; (iv) the Due Diligence and Planning shall be conducted at Purchaser's sole expense; (v) Purchaser shall not cause or permit any mechanic liens, materialmen's liens or other liens to be filed against the Property as a result of its Due Diligence and Planning or other activities prior to Closing; and (vi) neither Purchaser nor its agents, contractors, employees and designees shall perform any intrusive or destructive testing, including without limitation, a Phase II environmental assessment or boring, without submitting to Seller the scope and specifications for such testing and obtaining the prior written consent of Seller.

11. Restoration, Indemnification. Purchaser shall promptly restore and repair any damage caused to the Property arising from the exercise of Purchaser's rights hereunder, including without limitation damage caused by the activities of its agents, contractors, employees and designees on the Property. Purchaser shall indemnify, defend and hold Seller and its partners, members, managers, employees, officers, directors, shareholders, advisors and agents and their respective partners, members, managers, employees, officers, directors, shareholders, advisors and agents (collectively including Seller, "Indemnified Parties") harmless from and against any and all costs, claims, losses and damages, including without limitation, reasonable attorneys fees and court costs, suffered or incurred by any of the Indemnified Parties as a result of or in connection with any activities of Purchaser or Purchaser's agents, contractors, employees and designees relating to the Property, including, without limitation, materialmen's and/or mechanic's liens, damage to the Property, or injury to persons or property resulting from such activities in connection therewith, except insofar as any such claims arise from the negligence or intentional misconduct of Seller or Seller's agents, contractors, employees and designees. Purchaser's obligations under this

Section shall survive Closing or termination of this Agreement.

12. Insurance. Upon execution of this Agreement and prior to any entry onto the Property Purchaser agrees to maintain and have in effect commercial general liability insurance with (i) all risk coverage, (ii) waiver of subrogation, and (iii) limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) for personal injury, including bodily injury and death, and property damage. Such insurance shall name Seller as an additional insured party. Purchaser shall, upon request from Seller from time to time, deliver to Seller a copy of the certificate of insurance effectuating the insurance required hereunder prior to the commencement of such activities which certificate shall provide that such insurance shall not be terminated without at least thirty (30) days' prior written notice to Seller.

13. Seller's Covenant to Cooperate by Providing Documents.

13.1 Within three (3) business days following the Effective Date, Seller shall provide or make available to Purchaser for inspection and copying copies of documents, if any, relating to the Property which are in Seller's possession ("Property Information"). Subsequent to Final Plat Recordings and Closing, Seller shall provide or make available to Purchaser for inspection and copying, copies of the recorded Final Plat maps and as-built drawings for the Lots. Seller agrees to make available copies of any other document related to the Property in Seller's possession which may be reasonably requested by Purchaser. For purposes of this Agreement, references to "Seller's possession" or to terms of similar import shall mean those items which are located in any of the offices of Seller located 7525 SE 24th Street, Mercer Island, Washington 98040.

13.2 Notwithstanding the foregoing, in no event shall Seller be required to make available to Purchaser any memoranda, correspondence, analyses, documents or reports prepared by or for Seller, its members, or their agents, contractors, or representatives consisting of or discussing (i) the terms of this Agreement; (ii) appraisals, assessments or other valuations related to the Property in the possession of Seller, its members or their agents; (iii) offers or inquiries from third parties relating to the purchase of the Property; (iv) organizational documents of Seller; (v) personnel records of Seller; or (vi) communications or other internal memoranda, correspondence, analyses, documents or reports that are subject to an attorney-client or other evidentiary privilege.

13.3 In the event this Agreement terminates for any reason, Purchaser shall, within ten (10) days after Seller's written request, deliver to Seller copies of all surveys, environmental audits, engineering studies, soil reports, maps, master plans, feasibility studies, and other reports and studies prepared by or for Purchaser that pertain to the Property. The foregoing sentence shall survive termination or Closing of

this Agreement.

14. Representations of Seller. Seller represents and warrants to Purchaser the following:

14.1 Non-Foreign Status and Ownership. Seller is not a foreign person as defined by the Foreign Investment in Real Property Tax Act, IRS Section 1445(b)(2), as amended.

14.2 Authority. Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transactions contemplated by this Agreement. The individuals executing this Agreement and the instruments referenced in this Agreement on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

14.3 No Conflicting Agreements. This Agreement and the consummation of the transaction evidenced by this Agreement do not violate any other agreement to which Seller is a party.

14.4 Hazardous Substances. To Seller's actual knowledge, except as may be disclosed in the documents made available to Purchaser prior to expiration of the Feasibility Contingency, there are no substances or materials defined as hazardous or toxic under any existing laws, ordinances or regulations, including without limitation petroleum and hydrocarbons ("Hazardous Substances"), in, on, or about the Lots, except in accordance with applicable laws, ordinances or regulations. To Seller's actual knowledge, except as may be disclosed in the documents made available to Purchaser prior to expiration of the Feasibility Contingency, there are no underground storage tanks in or on the Lots.

14.5 No Omission of Materials Facts or Circumstances. To Seller's actual knowledge, as of the date of this Agreement, there is no material fact or material circumstance that Seller has failed to disclose to Purchaser that would make the Property Information deceptive or misleading or the representations and warranties set forth in this Section 14 deceptive or misleading; provided, however, Seller shall have no liability for breach of the representations and warranties contained in this Section 14.5 unless Seller's failure to disclose constitutes reckless or fraudulent conduct.

14.6 Seller's Knowledge. As used in this Agreement, the terms "to Seller's knowledge" "actual knowledge" or "best of Sellers knowledge" (i) shall mean and apply to the actual knowledge of, Robert Baldwin, Andrew Miller, Scott Inveen, and Harold Kleiderman, and not to any other parties, (ii) shall mean the actual knowledge of such individuals, without any investigation or inquiry, and (iii) shall not

mean such individuals are charged with knowledge of the acts, omissions or knowledge of Seller's agents, representatives or employees. Seller represents and warrants to Purchaser that the persons named in this Section are those officers, employees, agents, contractors or representatives of Seller who are most likely to have current knowledge of the facts and circumstances which are the subject matter of the representations and warranties of Seller contained in this Agreement.

14.7 Survival of Seller Representations and Warranties. All of the representations and warranties of Seller contained in this Agreement shall be continuous and shall survive the Closing; provided that any claim for breach of Seller's representations and warranties shall be deemed waived unless Purchaser has given Seller written notice of a claim related to the same prior to the date which is one (1) year after Closing.

15. Representation of Purchaser. Purchaser represents and warrants to Seller the following:

15.1 Authority. Purchaser has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transactions contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of Purchaser have the legal power, right and actual authority to bind Purchaser to the terms and conditions hereof and thereof.

15.2 No Conflicting Agreements. This Agreement and the consummation of the transaction evidenced by this Agreement do not violate any other agreement to which Purchaser is a party.

15.3 Contractor. Purchaser is engaged in the business of construction of single family homes for commercial purposes and is a registered contractor in the State of Washington. The Lots are not being purchased for personal or individual use.

15.4 Survival of Purchaser Representations and Warranties. All of the representations and warranties of Purchaser contained in this Agreement shall be continuous and shall survive the Closing; provided that all representations and warranties shall be deemed waived unless Seller has (i) given Purchaser written notice of a claim related to the same prior to the date which is three (3) years after Closing, and (ii) filed suit within six (6) months after delivery to Purchaser of any such notice of claim.

16. Seller's Obligations With Respect to Preliminary Plat Approval and Final Plat Recording. Seller shall, at Seller's sole cost and expense, promptly proceed to make good faith efforts to complete the following: obtain all approvals for the construction of the Preliminary Plats for Phase 18 – Silver Creek obtain issuance of

approval of the Final Plat from the Permitting Jurisdiction ("Final Plat Approval"); and cause Final Plat Recording for the Lots. In obtaining Final Plat Approval, Seller shall use good faith efforts to have the Final Plat generally conform with the Preliminary Plat lot layout in terms of the mix of Lot types, configurations and locations, but the parties recognize and acknowledge that the requirements of the permitting jurisdiction may mean that the Final Plat will not precisely conform with the Preliminary Plat lot layout (e.g., the total number of Lots may be less). Seller's obligations to obtain Final Plat Approval and complete Final Plat Recording under this Section 16 shall be subject to Section 7.3, and limits Purchaser's rights and remedies for Seller's inability to perform its obligations under this Section 16.

17. Finished Lots.

17.1 Finished Lots Completion. Seller shall, at Seller's sole cost and expense, make good faith efforts to complete such Lots as Finished Lots on or before December 25, 2005, and in any event Seller shall complete such Lots as Finished Lots prior to Closing. Seller's obligations to complete the Lots as Finished Lots on or before Closing under this Section 17.1 shall be subject to Section 7.

17.2 Finished Lots Definition. As used herein, "Finished Lots" shall mean that (i) the Lots shall be in a condition that makes the Lots "complete" for the purposes of submitting a building permit and there are no restrictions preventing the issuance of building permits that are related to the Seller's obligations in the Final Plat and (ii) Seller shall have substantially completed the plat improvements identified in this Section in a good and workmanlike manner and in accordance with all conditions and requirements of the Permitting Jurisdiction; provided that where the Permitting Jurisdiction allows Seller to bond completion of an improvement, then Seller may provide such bond at the time of Final Plat Recording, complete such improvements after the Closing (in which event the Lot shall be deemed a Finished Lot notwithstanding that the improvements will be completed after the Closing). The plat improvements to be constructed by Seller to create Finished Lots shall mean the following:

(i) Utilities consisting of water, gas, sanitary sewer system, underground electric power, telephone and cable TV. All such water, gas, sewer and electrical improvements shall be operational and energized with appropriate markers at stubbed-in locations. *(incl Steam Sewer)*

(ii) For Lots entered from the street, the lots will not be level but the grade of each Lot inside the building setbacks will be within one and one-half (1 ½) foot of the grade at the back of curb at the center of the street frontage. For Lots entered from the alley, the lots will not be level but the grade of each Lot inside the building setbacks will be within one and one-half (1 ½) foot of the grade at the edge of

alley paving at the center of the alley frontage. Where the grade between adjacent lots is more than six (6) inches and less than three (3) feet, the slope of the grade change will occur on a 1:1 slope on the downhill lot.

(iii) On Lots that have been filled, there will be 95% modified proctor compaction (not including the topsoil) inside the Building Envelope, which is defined as the lot area less the setbacks. Compaction shall comply with code and other requirements or conditions of approval applicable to the Final Plat. Upon request by the Purchaser, Seller shall provide evidence with respect to 95% compaction. The evidence will be in the form of a certified Geotechnical engineer's report that includes random testing of the filled areas during the grading process. The report will address all Lots, but will not test each Lot individually. The report will include field inspection reports from said engineer with respect to the composition of such fill and filling procedures

(iv) Corners of all Lots together with all plat corners and angle points shall be staked on or before Closing. Curb plugs shall be placed in the curb.

(v) All roads shall be constructed and paved/asphalted to all municipal codes and standards; provided, that the roads may be completed with ATB, with final lift to be bonded and completed within one (1) year after Closing.

(vi) All Lots and rights of way shall be cleared of all debris at Closing.

(vii) Seller shall install street lights to the extent required by the Permitting Jurisdiction for Final Plat Approval. Seller shall install perimeter fencing to the extent required by the Permitting Jurisdiction for Final Plat Approval. CBU mailboxes shall be installed on the Lots in locations designated and approved by the U.S. Postal Service.

(viii) Seller agrees to place upon the face of the Final Plats the following easement language: "All Lots shall be subject to a non-exclusive easement 2.5 feet in width, parallel with and adjacent to all interior Lot lines and five (5) feet in width, parallel with and adjacent to all rear Lot lines for the purpose of private drainage. In the event Lot lines are adjusted after the recording of this Plat, the easements shall move with the adjusted Lot lines. Maintenance of all private drainage easements on this Plat shall be the responsibility of all Lots deriving benefit from said easements. No structures other than fences shall be constructed within these easements."

(ix) Seller shall have planted any and all other trees required for Final Plat Approval, including those required for any other common areas, open spaces or buffer tracts of the Plat.

17.3 Warranty Regarding Finished Lots. Seller agrees to pass on or transfer to Purchaser at Closing, any transferable warranties regarding the improvements on the Finished Lots. Notwithstanding the foregoing, any warranty coverage excludes: (i) damage or defect caused by Purchaser or its contractors (which term shall include subcontractors of all tiers for the purposes of this Agreement) and agents; (ii) abuse, modification, improper or insufficient maintenance, improper operation unless attributable to the acts or omissions of Seller or its contractors (which term shall include subcontractors of all tiers) and agents, and (iii) normal wear and tear.

17.4 Maintenance Bonds. If Seller posts maintenance or warranty bonds required by the Permitting Jurisdiction, Seller shall assume maintenance of and complete Final Plat improvements within the warranty period, if any, required by the terms of any maintenance bond required to be given to any governmental agency, and release of such maintenance bond shall be conclusive evidence of Seller's satisfactory performance of this condition. Seller shall further be responsible for obtaining the release of any and all such bonds obtained by Seller. If Seller posts bonds for completion of work after Closing in accordance with the terms of this Agreement, Purchaser shall grant to Seller at Closing an easement evidencing Seller's right to enter upon the applicable Lots and complete such work. The terms of this paragraph shall survive termination or Closing of this Agreement. Notwithstanding anything to the contrary herein, Buyer shall reimburse Seller for any costs or damages incurred in the event that the release of such maintenance or warranty bonds are delayed or prevented due to the negligence or willful misconduct of Buyer or Buyer's invitees, licensees, employees, or subcontractors.

17.5 Force Majeure Events. As used herein, a "Force Majeure Event" shall mean any of the following events identified by Seller in its reasonable discretion: (i) not reasonably anticipatable governmental requirements or delays, (ii) abnormally adverse weather, (iii) earthquake, fire or similar catastrophic event, (iv) acts of god, (v) unreasonably long entitlement or permit processing by Jurisdictional Authorities, or (vi) other events or circumstances beyond the reasonable control and anticipation of a party or such party's engineers, design professionals, contractors, subcontractor or agents. In no event, however, shall Force Majeure Events include a party's lack of funds or party's breach of any financial or contractual obligation.

18. Permits, Utility and Connection Fees. Seller shall pay for any and all licenses, permits, assessments, mitigation fees and impact fees and any other governmental fees or charges due and owing prior to or as a condition of recording of the Final Plat. Purchaser shall have sole responsibility to pay for any and all licenses, permits, assessments, mitigation fees, impact fees and any other governmental fees or charges, or any increases thereto, due and owing as a condition of obtaining building

permits (which were not previously paid by Seller in connection with recording the Final Plat and not specifically identified in this Agreement).

19. Purchaser's Development Obligations.

19.1 Construction Practices. Purchaser covenants that any work undertaken on or about the Lots will be performed and accomplished in a good and workmanlike manner and in accordance with all conditions and requirements of the Permitting Jurisdiction. When performing work on or about the Lots, Purchaser shall not allow dirt, debris or other excess material to accumulate on the Lots or on any other portion of the Property, including without limitation, improvements such as the storm drains, sanitary sewer systems and the streets within the Property. When performing any grading, site improvement work or construction on or about the Lots, Purchaser shall make adequate provisions to manage the surface water runoff and sedimentation in a manner required by applicable law. Purchaser shall at all times conduct the operation in such a manner as to preserve the lateral support for the adjoining properties. Purchaser shall not damage any of the improvements or personal property within the Property ("Plat Improvements"), including without limitation, public right of ways, storm drains, sanitary sewer systems, roads, curbs and grading work, and shall immediately repair any damage caused by Purchaser or Purchaser's agents, employees, contractors and designees, including without limitation damage caused by overloaded trucks crossing the Plat Improvements to access the Lots. In the event that Purchaser is in violation of the terms of this Section 19.1, as determined by Seller in Seller's sole discretion, Seller may, but is not required to, undertake any and all actions Seller deems reasonably necessary to correct such violation and invoice buyer for such cost which shall be paid within ten (10) days of invoice and thereafter bear interest at a rate of eighteen percent (18%) per annum until paid in full provided that Purchaser has received written notice of such violation at least thirty (30) days prior to Seller's election to take such action.

19.2 Covenants, Conditions and Restrictions. Purchaser acknowledges that its purchase of the Lots will be subject to the CC&Rs for the Property. Purchaser agrees that all construction, landscaping and sales must be accomplished in accordance with all of the applicable provisions of the CC&Rs.

19.3 No Protest Agreement. Except for amendments that would materially adversely affect Purchaser's Intended Use, Purchaser agrees that it shall not lodge any protest whatsoever with any governmental authority, nor otherwise interfere in any way, with respect to the development of the Planned Development District approval for Master Community ("PDD"), or any approvals for amendments to the original PDD.

19.4 Marketing. Seller shall have no obligation to provide any marketing with respect to the Lots, the Property or the Master Community. Purchaser agrees to comply with all applicable sign laws, ordinances and rules. Seller shall have the right to consent to all of Purchaser's all on-site signage for the Lots prior Closing and all off-site signage for the Lots, including off-site signage inside and outside the Master Community, provided that Seller shall not unreasonably withhold, condition or delay its consent.

19.5 Survival. The terms of this Section shall survive termination or Closing of this Agreement.

20. Notices. All notices, demands, deliveries and communications under this Agreement shall be delivered or sent by: (i) first class, registered or certified mail, postage prepaid, return receipt requested, (ii) nationally recognized overnight carrier, or (iii) facsimile (provided the original notice is also sent via a nationally recognized overnight carrier on the next business day) and shall be addressed to the address of the party set forth below with copies to the parties designated below or to such other address as either party may designate by notice pursuant to this Section. Any notice transmitted in the manner described above shall be deemed given when personally delivered, upon receipt of facsimile transmission, upon delivery by the designated carrier, or on the third (3rd) business day after mailing, whichever occurs first.

If to Seller: Southridge Silver Creek, LLC
7525 SE 24th Street, Suite 650
Mercer Island, WA 98040
Attn: Mr. Robert Baldwin
Telephone: (206) 357-4800
Fax: (206) 357-4801

With a copy to: Peterson Russell Kelly LLP
Attn: Rick Carlson
10900 NE Fourth Street
Bellevue, WA 98004
Telephone: (425) 462-4700
Facsimile: (425) 451-0714

If to Purchaser: *Conifer Homes LLC*
Evergreen State Builders, LLC
Attn: Dan Kelley
PO BOX 39573
Lakewood, WA 98439
Telephone: (253) 475-6622
Facsimile: (253) 475-6127

*(253) 381-5546
Cell #*

esblc@qwest.net

With a copy to: Campbell Dille
Attn: Bryce Dille
PO BOX 488
Puyallup, WA 98371
Telephone: (253) 848-3753
Facsimile: (253) 845-4941

21. Remedies.

21.1 Purchaser's Remedies. In the event of a material breach of this Agreement by Seller without legal excuse, Purchaser may pursue any rights or remedies available at law or equity. Notwithstanding the foregoing in no event shall Seller be liable to Purchaser for any exemplary, punitive, or consequential damages, or lost profits.

21.2 Seller's Remedies. The parties agree that in the event the Purchaser fails, without legal excuse, to complete the purchase of the Property, Seller shall keep as liquidated damages a portion of the Earnest Money pursuant to RCW 64.04.005 ~~that is does not exceed 5% of the Purchase Price~~, as the sole and exclusive remedy available to Seller for such failure (except for those obligations which expressly survive termination or Closing of this Agreement) and the unapplied Earnest Money held by Escrow Agent, shall be delivered by Escrow Company to Seller. Notwithstanding the foregoing, the forfeiture of the Earnest Money as set forth in this Section shall under no circumstances limit Seller's recovery as a result of a breach by Purchaser of any indemnifications by Purchaser or other obligations which expressly survive termination or Closing of this Agreement.

21.3 Survival of Remedies. This Section shall survive Closing or termination of this Agreement.

22. As-Is Purchase; Waiver and Release.

22.1 EXCEPT FOR THE COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT OR ARISING OUT OF THE DEEDS, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS PURCHASING THE PROPERTY IN ITS "AS-IS, WHERE IS" CONDITION "WITH ALL FAULTS" AS OF THE CLOSING DATE AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO ITS CONDITION, FITNESS FOR ANY

PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF SELLER AND WAIVES ALL CONTRARY RIGHTS AND REMEDIES AVAILABLE TO IT UNDER WASHINGTON AND FEDERAL LAW. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED HEREIN, SELLER HAS MADE NO AGREEMENT TO ALTER, REPAIR OR IMPROVE ANY OF THE PROPERTY.

22.2 EXCEPT FOR THE COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT OR ARISING OUT OF THE DEEDS, SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING THE WATER, STRUCTURAL INTEGRITY, SOIL AND GEOLOGY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY FUTURE DEVELOPMENT; (C) THE COMPLIANCE OF OR BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY OR ANY COVENANTS, CONDITIONS AND RESTRICTIONS; (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (E) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (F) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY OR ANY OTHER ENVIRONMENTAL MATTER OR CONDITION OF THE PROPERTY.

22.3 EXCEPT FOR THE COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT OR ARISING OUT OF THE DEEDS, ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY SELLER OR ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON OR OTHERWISE MADE AVAILABLE TO PURCHASER EXCEPT FOR THE EXPRESS COVENANTS, REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT OR ARISING UNDER THE DEEDS.

22.4 PURCHASER REPRESENTS AND AGREES THAT PURCHASER IS A SOPHISTICATED AND EXPERIENCED PURCHASER OF PROPERTIES SUCH AS THE PROPERTY AND HAS BEEN DULY REPRESENTED BY COUNSEL, OR HAS BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH COUNSEL, IN CONNECTION WITH THE NEGOTIATION OF THIS AGREEMENT. PURCHASER ACKNOWLEDGES THAT SELLER HAS ONLY OWNED THE PROPERTY FOR A SHORT PERIOD OF TIME.

22.5 IN RECOGNITION OF THE OPPORTUNITY AFFORDED TO PURCHASER PURSUANT TO THIS AGREEMENT TO INVESTIGATE ANY AND ALL ASPECTS OF THE PROPERTY AS PURCHASER DETERMINES TO BE APPROPRIATE, PURCHASER, FOR ITSELF AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, SHAREHOLDERS, TRUSTEES, PARTNERS, AGENTS, EMPLOYEES, SUCCESSORS, AND ASSIGNS, AND EACH OF THEM, BOTH PRESENT AND PAST, AGREES THAT THEY WILL BE DEEMED UPON COMPLETION OF CLOSING TO, AT THAT TIME, RELEASE, DISCHARGE AND ACQUIT SELLER AND THE INDEMNIFIED PARTIES OF AND FROM ANY AND ALL CLAIMS, DEMANDS, OBLIGATIONS, LIABILITIES, INDEBTEDNESS, BREACHES OF CONTRACT, BREACHES OF DUTY OR ANY RELATIONSHIP, ACTS, OMISSIONS, MISFEASANCE, MALFEASANCE, CAUSES OF ACTION, DEBTS, SUMS OF MONEY, ACCOUNTS, COMPENSATIONS, CONTRACTS, CONTROVERSIES, PROMISES, DAMAGES, COSTS, LOSSES AND EXPENSES, OF EVERY TYPE, KIND, NATURE, DESCRIPTION OR CHARACTER (COLLECTIVELY, "CLAIMS"), WHETHER IN TORT OR CONTRACT, ARISING OUT OF OR RELATING TO THE PHYSICAL, ECONOMIC OR LEGAL CONDITION OR ANY OTHER ASPECT OR CONDITION OF THE LOTS INCLUDED IN THE CLOSING, AND IRRESPECTIVE OF HOW, WHY OR BY REASON OF WHAT FACTS, WHETHER HERETOFORE, NOW EXISTING OR HEREAFTER ARISING, OR WHICH COULD, MIGHT OR MAY BE CLAIMED TO EXIST, OF WHATEVER KIND OR NAME, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, LIQUIDATED OR UNLIQUIDATED, OTHER THAN (I) CLAIMS BASED UPON OR ARISING FROM REPRESENTATIONS, WARRANTIES OR COVENANTS OF SELLER SET FORTH IN THIS AGREEMENT OR ARISING OUT OF THE DEEDS AND (II) CLAIMS ARISING UNDER ANY LAW, REGULATION OR ORDINANCE RELATED TO HAZARDOUS SUBSTANCES. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT FACTUAL MATTERS NOW UNKNOWN TO IT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CLAIMS WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND IT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT HAS

BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THAT REALIZATION AND THAT IT NEVERTHELESS HEREBY INTENDS TO RELEASE, DISCHARGE AND ACQUIT SELLER FROM ANY SUCH UNKNOWN CLAIMS AT THE APPLICABLE CLOSING TO THE EXTENT PROVIDED HEREIN.

22.6 NOTHING IN THIS SECTION 22 SHALL BE CONSTRUED TO REQUIRE PURCHASER TO INDEMNIFY, DEFEND OR HOLD HARMLESS SELLER FROM AND AGAINST ANY CLAIMS BROUGHT BY THIRD PARTIES.

22.7 This Section shall survive termination or Closing of this Agreement.

23. Broker Disclosure; Commissions, Finder's Fees, and/or Monetary Compensation. The parties warrant that they have not dealt with any real estate licensees or finders with respect to this transaction and the Property and that there are no real estate commissions owing. If Buyer or Seller has dealt with any such person with respect to the sale of this Property, each party shall be solely responsible for the payment of any sum due such person or firm with whom the respective party has dealt and that party shall indemnify and hold the other party harmless from any liability in respect thereto, including attorney's fees and costs incurred by the other party.

24. Cooperation. Purchaser shall cooperate with Seller in making applications and other submissions required under the terms of this Agreement, including without limitation, applications for preliminary and final plat approvals and submissions for bonds, and Purchaser shall promptly execute such documents as are necessary for such applications and submissions as long as any such cooperation does not require Purchaser to incur any costs, expenses or liabilities Purchaser would not otherwise be obligated to pay pursuant to this Agreement and would not otherwise have a material and adverse effect on Purchaser's Intended Use. This Section shall survive termination or Closing of this Agreement.

25. Seller's Right to Participate in Assignment /Sales. In addition to any other rights given under this Agreement, for (i) six (6) months after the Closing Date, or (ii) at any time while Seller retains ownership of any of the Lots within the Property, whichever occurs later, in the event of any offer or negotiation by Purchaser to sell a Lot or Lots to another builder or to sell any portion of the Property without Purchaser constructing a home on each Lot thereon, Seller retains the right to approve of such sale which consent shall not be unreasonably withheld. In addition, in the event that Seller approves of such sale or transfer, Seller shall receive twenty-five percent (25%) of the gross profits from the sale of the Lots by Buyer.

26. General Provisions.

26.1 Venue. Venue for any action arising out of this Agreement shall be in the county in which the Property is located.

26.2 Waiver of Trial by Jury. Seller and Purchaser, to the extent they may legally do so, hereby expressly waive any right to trial by jury of any claim, demand, action, cause of action, or proceeding arising under or with respect to this Agreement, or in any way connected with, or related to, or incidental to, the dealings of the parties hereto with respect to this Agreement or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and irrespective of whether sounding in contract, tort, or otherwise. To the extent they may legally do so, Seller and Purchaser hereby agree that any such claim, demand, action, cause of action, or proceeding shall be decided by a court trial without a jury and that any party hereto may file an original counterpart or a copy of this Section with any court as written evidence of the consent of the other party or parties hereto to waiver of its or their right to trial by jury.

26.3 Captions. The captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision contained in it.

26.4 Severability. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

26.5 Assignment. Except as provided below, Purchaser shall not assign or otherwise transfer this Agreement or any interest herein without Seller's prior written consent.

(i) If Purchaser disagrees with Seller's decision to deny approval, Purchaser's sole remedy shall be to seek injunctive relief. No assignment hereunder, whether consented to or not, shall be deemed to relieve Purchaser from any liability or obligation under this Agreement and Purchaser and assignee shall remain jointly and severally liable for all of Purchaser's liabilities and obligations under this Agreement. Any assignee shall be deemed to have made all representations and warranties made by Purchaser hereunder, as if the assignee were the original signatory hereto. The giving of consent to any assignment hereunder shall not release Purchaser from obtaining consent to any other assignment hereunder.

(ii) Notwithstanding anything to the contrary herein, in the event that Purchaser is attempting to assign some or all of its rights to purchase the Lots under the terms of this Agreement, in addition to Seller's right to approve or disapprove of such assignment, Seller may, in Seller's sole discretion, elect to terminate this Agreement

between Seller and Purchaser with respect to the Lot(s) in question and sell the such Lot(s) to such third party on the same terms and conditions as stated in the proposed assignment agreement; in the event of a partial assignment of rights under this Agreement, Purchaser shall still be bound to purchase the balance of the Lots.

26.6 Binding Effect. Subject to the foregoing limitations on assignment, this Agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, personal representatives, successors and assigns of both Purchaser and Seller.

26.7 Attorneys' Fees. If an action or proceeding occurs between the parties seeking interpretation or enforcement of any provision contained in this Agreement, or in connection with any arbitration or mediation of any dispute, the prevailing party in any such action or proceeding shall be entitled to reasonable attorneys' fees and costs (including such costs and fees as are incurred in any trial, on any appeal, in any bankruptcy proceeding) and in any petition for review in addition to any other relief which a court of law having jurisdiction determines it is entitled to.

26.8 Time. Time is of the essence of this Agreement.

26.9 Recordation. Buyer shall not, without the prior written consent of Seller, which may be withheld or granted in Seller's sole discretion, record this Agreement, or any Memorandum referencing Buyer's rights under this Agreement.

26.10 Entire Agreement; Amendment. This is the entire agreement of the parties with respect to the Property and supersedes all written or oral agreements or understandings. This Agreement may be modified only in writing signed by both parties.

26.11 Governing Law. This Agreement shall be construed according to the internal laws of the State of Washington, without regard to conflict of laws principles.

26.12 Date of Performance. If the date for any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day.

26.13 Eminent Domain. If any of the Lots are taken in eminent domain proceedings prior to Closing, Purchaser may terminate this Agreement with respect to those Lots for which Purchaser's Intended Use is materially and adversely affected by the taking (which may include Lots not actually taken by such disapproved exception or defect). Purchaser must exercise the foregoing election to terminate with respect to affected Lots by written notice to Seller on or before the earlier of (i) twenty (20) days

after such taking or (ii) two (2) business days prior to Closing, in which case neither party shall have any further obligations under this Agreement with respect to such Lots except those obligations expressly surviving termination or Closing of this Agreement. If Purchaser does not elect to terminate or if the taking does not materially and adversely affect Purchaser's Intended Use, then the Closing shall take place as herein provided without abatement of the Purchase Price, and Seller shall deliver or assign to Purchaser at the Closing, without warranty or recourse, all of Seller's right, title and interest in and to all condemnation awards paid or payable to Seller.

26.14 Governmental Approval. Prior to Closing, Purchaser shall not, except with Seller's prior written consent, which shall not be unreasonably withheld, conditioned or delayed: (i) apply for a zoning change, variance, subdivision maps, lot line adjustment, or other discretionary governmental act, approval or permit or (ii) submit any reports, studies or other documents, including, without limitation, plans and specifications, impact statements for water, sewage, drainage or traffic, environmental review forms, or energy conservation checklists to any governmental agency, or any amendment or modification to any such instruments or documents. Except as expressly provided herein, Purchaser's obligation to purchase the Lots shall not be subject to or conditioned upon Purchaser's obtaining any variances, zoning amendments, subdivision maps, lot line adjustment or other discretionary governmental act approval or permit.

26.15 Beneficiaries; No Joint Venture. This Agreement is for the benefit of Purchaser and Seller, and except for Indemnified Parties, no other person or entity will be entitled to rely on this Agreement, receive any benefit from it or enforce any provisions of it against Purchaser or Seller. Neither this Agreement nor anything contained in this Agreement shall create, or be deemed to create, a partnership, joint venture or other joint or equity type agreement between Purchaser and Seller.

26.16 Waiver. No covenant, term or condition of this Agreement other than as expressly set forth herein shall be deemed to have been waived by Seller or Purchaser unless such waiver is in writing and executed by Seller or Purchaser, as the case may be.

26.17 Exhibits. The following attached Exhibits are incorporated into and made a part of this Agreement:

Exhibit A	Legal Description of the Property
Exhibit B	Preliminary Plat of Phase 18 – Silver Creek
Exhibit B-1	Lot Mix Matrix
Exhibit C-1	Earnest Money Note
Exhibit C-2	Second Earnest Money Note
Exhibit D	Deed

26.18 Counterparts; Facsimile. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute the same agreement, whether or not all parties execute each counterpart. Signatures transmitted by facsimile shall have the same effect as original ink signatures.

26.19 Acceptance. This offer is made subject to acceptance by Seller on or before 5:00 P.M. on that date which is two (2) days after receipt of a signed original from Purchaser ("Acceptance Date"). Seller shall be deemed to have accepted all of the terms and conditions of this Agreement and to be bound by its terms and conditions at such time that it executes the signature space provided below. If such acceptance is not acknowledged below by Seller's execution of this Agreement on or before the Acceptance Date, this Agreement shall be immediately deemed null and void and all rights and obligations arising from it shall be terminated and of no further force and effect whatsoever.

11/18/05
AGREED AND ACCEPTED THIS 28 DAY OF Oct, 2005.

PURCHASER: Evergreen State Builders, LLC, a Washington limited liability company *Comifer Homes LLC*

By: *Daniel M. Kelley*
Name: *DANIEL M. KELLEY*
Title: *MANAGER*

AGREED AND ACCEPTED THIS 1 DAY OF November, 2005 ("Effective Date").

SELLER: SOUTHRIDGE SILVER CREEK, LLC, a Washington limited liability company

By: *Robert Baldwin*
Name: *ROBERT BALDWIN*
Title: *General Manager*

EXHIBIT A
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT
(PHASE 18 – SILVER CREEK)

LEGAL DESCRIPTION OF REAL PROPERTY

EXHIBIT B
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT
(PHASE 18 – SILVER CREEK)

PRELIMINARY PLAT OF PHASE 18 – SILVER CREEK

Preliminary Plat of Phase 18 – Silver Creek Map by Apex Engineering PLLC File No.
_____ dated _____ and revised _____.

SR 028

**EXHIBIT B-1
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT
(PHASE 18 – SILVER CREEK)**

LOT MIX MATRIX

Silver Creek Phase 18 – Silver Creek - Lot Mix Summary				
40 Foot Lots	50 Foot Lots	60 Foot Lots		Summary
37	19	1		77 - 40 Foot
38	20	2		36 - 50 Foot
39	21	3		42 - 60 Foot
40	22	4		155 TOTAL
41	23	5		
42	24	6		
43	25	7		
44	26	8		
45	27	9		
46	28	10		
47	29	11		
48	30	12		
49	31	13		
50	32	14		
51	33	15		
52	34	16		
53	35	17		
54	36	18		
55	114	124		
56	115	125		
57	116	126		
58	117	127		
59	118	128		
60	119	129		
61	120	130		
62	121	131		
63	122	132		
64	123	133		
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66	149	135		
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72	155	141		

Handwritten initials

Handwritten signature and date: 11-1-05

Drill

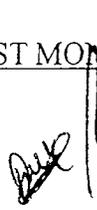
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			TOTALS ()

EXHIBIT C-1
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT
(PHASE 18 - SILVER CREEK)

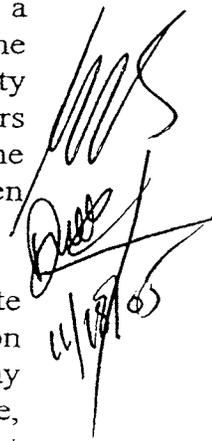
FORM OF ~~REAL~~ EARNEST MONEY PROMISSORY NOTE



~~\$300,000.00~~ \$ 300,000 ^a

~~Buyer~~  Lakewood, Washington
Nov 11th ~~October 28~~, 2005
Compartments LLC

FOR VALUE RECEIVED, the undersigned, ~~Evergreen State Builders, LLC~~, a Washington limited liability company ("Purchaser"), does hereby promise to pay to the order of **SOUTHRIDGE SILVER CREEK, LLC**, a Washington limited liability company ("Seller") the sum of ~~Two Hundred Fifty Thousand and No/100 Dollars~~ ^{Three} ~~Two Hundred Fifty Thousand and No/100 Dollars~~ ^{\$ 300,000} ~~(\$250,000.00)~~, in lawful money of the United States of America, upon approval of the Feasibility Contingency, as defined in the Purchase and Sale Agreement between Purchaser and Seller dated October 28, 2005 ("Purchase Agreement").



11/11/05

Purchaser's failure to pay the earnest money in accordance with the terms of this Note shall constitute default on said Purchase Agreement as well as on this Note. Upon Purchaser's default under the Purchase Agreement or this Note, including the failure to pay this Note when due, and without notice or demand, all amounts owed under this Note, including all accrued but unpaid interest, shall thereafter bear interest at twelve percent (12%) per year.

No failure or delay by Seller in exercising Seller's rights under this Note shall be a waiver of such rights. Every person or entity at any time liable for the payment of the indebtedness evidenced hereby waives presentment for payment, demand, and notice of nonpayment of this Note.

Time is of the essence under this Note and in the performance of every term, covenant and obligation contained herein.

This Note shall be construed according to the internal laws of the State of Washington, without regard to conflict of laws principles.

If an action or proceeding occurs between the parties seeking interpretation or enforcement of any provision contained in this Note, or in connection with any arbitration or mediation of any dispute, the prevailing party in any such action or proceeding shall be entitled to reasonable attorneys' fees and costs (including such costs and fees as are incurred in any trial, on any appeal, in any bankruptcy proceeding) and in any petition for review in addition to any other relief which a court of law having jurisdiction determines it is entitled to.

SR 031

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO
EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A
DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

PURCHASER:

Conifer Homes LLC
Evergreen State Builders, LLC,
a Washington limited liability company

By: *Paul Kelley*
Name: _____
Title: *Manager*

Void
[Signature]

EXHIBIT C-2
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT
(PHASE 18 - SILVER CREEK)

FORM OF SECOND EARNEST MONEY PROMISSORY NOTE

\$ 237,102.00

[Signature], Washington
October 28, 2005

FOR VALUE RECEIVED, the undersigned, **Evergreen State Builders, LLC**, a Washington limited liability company ("Purchaser"), does hereby promise to pay to the order of **SOUTHRIDGE SILVER CREEK, LLC**, a Washington limited liability company ("Seller") the sum of Two Hundred Thirty-Seven Thousand One Hundred Two and No/100 Dollars (\$237,102.00), in lawful money of the United States of America, upon approval of the Feasibility Contingency, as defined in the Purchase and Sale Agreement between Purchaser and Seller dated October 28, 2005 ("Purchase Agreement").

Purchaser's failure to pay the earnest money in accordance with the terms of this Note shall constitute default on said Purchase Agreement as well as on this Note. Upon Purchaser's default under the Purchase Agreement or this Note, including the failure to pay this Note when due, and without notice or demand, all amounts owed under this Note, including all accrued but unpaid interest, shall thereafter bear interest at twelve percent (12%) per year.

No failure or delay by Seller in exercising Seller's rights under this Note shall be a waiver of such rights. Every person or entity at any time liable for the payment of the indebtedness evidenced hereby waives presentment for payment, demand, and notice of nonpayment of this Note.

Time is of the essence under this Note and in the performance of every term, covenant and obligation contained herein.

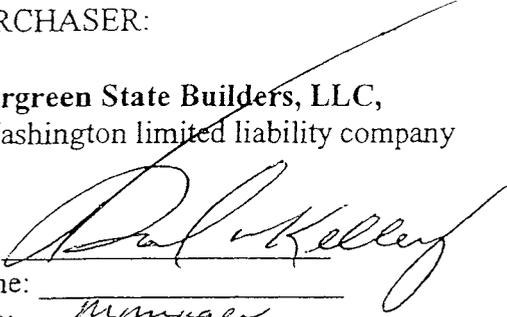
This Note shall be construed according to the internal laws of the State of Washington, without regard to conflict of laws principles.

If an action or proceeding occurs between the parties seeking interpretation or enforcement of any provision contained in this Note, or in connection with any arbitration or mediation of any dispute, the prevailing party in any such action or proceeding shall be entitled to reasonable attorneys' fees and costs (including such costs and fees as are incurred in any trial, on any appeal, in any bankruptcy proceeding) and in any petition for review in addition to any other relief which a court of law having jurisdiction determines it is entitled to.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO
EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A
DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

PURCHASER:

Evergreen State Builders, LLC,
a Washington limited liability company

By: 

Name: _____

Title: Manager

DATED this ____ day of _____, 20 ____.

GRANTOR:

a Washington limited liability company

By: _____

Name: _____

Title: _____

[Insert notary block.]

EXHIBIT 1 - LEGAL DESCRIPTION [Attach legal description for applicable Lots.]

EXHIBIT 2 - LIST OF PERMITTED EXCEPTIONS [Attach Permitted Exceptions for applicable Lots.]

SR 036

D-2