

NO. 35301-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

GOLD CREEK UMBRELLA ASSOCIATION,
a Washington nonprofit corporation,

Appellant,

v.

GOLD CREEK NORTH LIMITED PARTNERSHIP, a Washington
limited partnership; PAUL E. MILLER, an individual; and DEIDRA J.
MILLER, an individual,

Respondents.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR	1
	A. <u>Assignments of Error</u>	
	B. <u>Issues Relating to Assignments of Error</u>	
II.	STATEMENT OF THE CASE	2
	A. <u>Procedural History</u>	2
	B. <u>Relevant Factual History</u>	5
III.	ARGUMENT	19
	A. <u>The Trial Court was in Error by Denying the Umbrella Association’s CR 41(b)(3) Motion to Dismiss at the end of the Millers’ Case and Granting the Millers their requested relief, without giving the Umbrella Association the Opportunity to Present its Case</u>	19
	B. <u>The Trial Court was in Error by Denying the Umbrella Association’s Motion to Dismiss at the end of the Plaintiffs’ Case</u>	22
	1. <i>Miller’s Claim to An Express Easement Fails</i>	23
	a. The Real Property at Issue is Subject to Washington Condominium Principles and Statutes	23
	b. Millers Joined in the Gold Creek Umbrella Declaration and Subordinated Their Interest in the Property Thereto.....	29

c.	Millers' Claimed Chain of Title Is Deficient.....	34
(1)	The Purchase and Sale Agreement is Not in Proper Deed Form	34
(2)	Real Estate Contract Failed to Preserve Easement Rights.....	35
(3)	Application of Washington's Race-Notice Statutory Scheme.....	39
2.	<i>Millers' Action is Barred by the Doctrine of Comparative Innocence</i>	43
C.	<u>The Trial Court was in Error in Entering Findings of Fact.</u>	44
1.	<i>Finding of Fact Nos. 1 and 2 were in Error</i>	44
2.	<i>Finding of Fact No. 5 is in Error</i>	45
3.	<i>Finding of Fact No. 6 is in Error</i>	45
4.	<i>Finding of Fact No. 7 is in Error</i>	46
D.	<u>In the Event this is Remanded to the Trial Court for a New Trial, the Case must be Assigned to a New Judge</u>	48
E.	<u>This Court Should Award Appellant Umbrella Association its Attorney Fees and Costs Related to this Appeal Pursuant to RAP 18.1 and RCW § 49.60 et seq. and RCW § 49.48 et seq.</u>	49
IV.	CONCLUSION	49

TABLE OF AUTHORITIES

Cases -- Washington

Barnhart v. Gold Run, Inc., 68 Wn. App. 417, 423,
843 P.2d 545 (1993)..... 37, 38

Beebe v. Swerda, 58 Wn. App. 375, 379, 793 P.2d 442 (1990) 35, 36

Berg v. Ting, 125 Wn.2d 544, 553 (1995) 37

Dickson v. Kates, 132 Wn. App. 724, 731 (2006) 45

Kunkel v. Meridian Oil, Inc., 54 Wn. App. 675, 678,
775 P.2d 470 (1989)..... 38

Paganelli v. Swedsen, 50 Wn.2d 304, 308, 310-11,
311 P.2d 676 (1957)..... 42, 43, 44

In re Parentage of J.H. v. Robinson, 112 Wn. App. 486, 496 (2002) 48

Cases -- Other

Cantonbury Heights Condo, Ass'n, Inc. v. Local Land Dev., LLC,
873 A.2d 898 (Conn. 2005) 24

Clampit v. Cambridge Phase II Corp., 884 S.W.2d 340, 345
(Mo. Ct. App. 1994)..... 28, 34

Wharf East Condo. Ass'n v. Waterfront Parking Corp., 552
N.E.2d 66 (Mass. 1990)..... 26

Statutes

RCW 64.04.010 34, 35

RCW 64.04.020 35, 36

RCW 64.32 23

RCW 64.32.090 23, 24

RCW 64.32.120 24

RCW 64.32.120(1).....	25
RCW 64.34.010	23
RCW 64.34.020(16) -.216(1)(j) and (k).....	25
RCW 65.08.070	40, 42, 43

Rules

CR 41(b)(3).....	1, 22, 49
RAP 10.3(g).....	44
RAP 18.1.....	49
RAP 18.1(b).....	49

Other Authority

15A AM. JUR.2D <i>Condominium and Cooperative Apartments</i> § 8 (2d ed. 2000).....	28, 34
4 RICHARD R. POWELL & MICHAEL ALLAN WOLF, POWELL ON REAL PROPERTY § 34.11[1] (2005).....	27
1 PATRICK J. ROHAN & MELVIN A. RESKIN, REAL ESTATE TRANSACTIONS: CONDOMINIUM LAW AND PRACTICE § 3.02 (2006)	24
6 PATRICK J. ROHAN, REAL ESTATE TRANSACTIONS: HOME OWNER ASSOCIATIONS AND PLANNED UNIT DEVELOPMENTS § 4.02[3] (2006)	25
ROHAN & RESKIN, § 7.01, at 7-5 n.2.	28, 33
ROHAN & RESKIN, § 7.05[1][a]	28
ROHAN & RESKIN § 7.05[2][d], at 7-23.....	26
4 THOMPSON ON REAL PROPERTY § 36.06(a), at 197 (David A. Thomas ed. 1994).....	27, 34
WILLIAM B. STOEBUCK & JOHN W. WEAVER, 18 WASHINGTON PRACTICE: REAL ESTATE TRANSACTIONS § 12.2 (2004).....	23,29

STOEBUCK & WEAVER § 12.3.....	24
STOEBUCK & WEAVER § 12.8.....	29
STOEBUCK & WEAVER § 12.13, at 64.....	25
STOEBUCK & WEAVER § 14.8, at 143-44.....	37

I. ASSIGNMENT OF ERRORS

A. Assignment of Errors

1. The trial court erred in granting the Millers' ultimate claim for relief in response to the Umbrella Association's CR 41(b)(3) motion to dismiss at the end of the Plaintiffs' case which did not allow the Umbrella Association the opportunity to present its case.

2. The trial court erred in denying the Umbrella Association's CR 41(b)(3) motion to dismiss.

3. The trial court was in error in entering Findings of Fact Nos. 1, 2, 5, 6 and 7.

B. Issues Relating to Assignment of Errors

1. May a trial court in denying a CR 41(b)(3) motion to dismiss, grant the plaintiff its requested relief without giving the defendant the opportunity to present its case? (Assignment of Error No. 1).

2. Must a trial court grant a defendant's CR 41(b)(3) motion to dismiss when the plaintiff has shown no right to relief? (Assignment of Error No. 2).

3. Was the Millers' alleged easement incorporated into Section 16.4 of the Umbrella Declaration and extinguished by the terms of that section? (Assignment of Error No. 2).

4. Does the Millers' alleged easement fail due to the failure to comply with RCW 64.04.010-.020? (Assignment of Error No. 2).

5. Was the brief reference to the “Seller’s Easement” in the Real Estate Contract sufficient to provide adequate notice to subsequent purchasers? (Assignment of Error No. 2).

6. Are reserved easement rights lost through the doctrine of merger: (a) when those alleged easement rights are based upon a document that does not comply with the statute of frauds, (b) the alleged easement rights are briefly referenced in a Real Estate Contract, and (c) the fulfillment deed to the Real Estate Contract makes no reference to the reserved easement? (Assignment of Error No. 2).

7. Was there substantial evidence to support the trial court’s findings of fact? (Assignment of Error No. 2).

II. STATEMENT OF THE CASE

A. Procedural History

The Appellant, Gold Creek Umbrella Association, (“Umbrella Association”) is a Washington non-profit corporation, which owns certain real property that is utilized in common by three abutting condominium developments, Gold Creek, Goldmont and Gold Pointe. The property owned by the Umbrella Association includes an access road utilized in common by the three condominiums, and also property comprising a “green belt” around the condominiums. The properties comprising the

three condominiums and the Umbrella Association will be referred to herein as “Gold Creek South.”¹

The Respondents, Gold Creek North Limited Partnership, Paul Miller and Deidra Miller (collectively, “Millers”) own approximately 45 acres of undeveloped property which abuts and is north of Gold Creek South, and that property will be referred to herein as “Gold Creek North.”²

On March 14, 2006, Millers filed a lawsuit against the Umbrella Association in the Pierce County Superior Court. (CP 2-42). Millers’ Complaint sought access over the Umbrella Association’s property for a 62-lot single family subdivision being proposed by Millers on Gold Creek North. Although Millers state seven causes of action in the Complaint, the crux of the Complaint are claims of express easement, easement implied by necessity, and private way of necessity. The Millers have alternative access to Gold Creek North over a parcel owned by Paul and Deidra Miller’s aunt (RP I, p. 102).

Nine days later, on March 23, 2006, Millers moved for a preliminary injunction seeking to enjoin the Umbrella Association from interfering with Millers’ claim of access over the Umbrella Association’s property. (CP 43-60). The trial court granted the motion in limited part, allowing Millers to access the Umbrella Association’s property for only

¹ For the approximate location and depiction of Gold Creek South, see the site plan and vicinity map attached to Plaintiffs’ Ex. 1.

² See generally, site plan for Millers Narrows Ridge Estates, Plaintiffs’ Ex. 9.

civil engineering and survey purposes. (CP 299-301). The court also accelerated the trial in the case to May 8, 2006. *Id.*

Subsequently, the Umbrella Association moved to bifurcate the trial to deal first with the issue of Millers' claim of an express easement over the Umbrella Association property. (CP 324-337). That motion was granted (CP 370-371), and the trial date was later continued to June 26, 2006. (CP 592-593).

At trial, at the end of the plaintiff Millers' case, the defendant Umbrella Association made a motion to dismiss pursuant to CR 41(b)(3). (RP III). After the argument of that motion, the court took the matter under advisement, stating:

Several things. One is I am not able to finish ruling on the motion to dismiss at this time, and in fact, I indicated to counsel at side bar that there are some legal cases, some legal precedents I need to review and study, facts that I need to summarize, and then I need to apply the facts and the law and in that way decide whether or not the Millers have met their burden. I think the motion clearly could be dispositive depending on how I rule on the motion and whether or not we need to go forward with any additional testimony or not.

RP III, p. 247, ln. 18 – p. 248, ln. 2.

Inexplicably, two months later, the court filed its Order Denying Defendant's Motion to Dismiss and Granting Equitable Relief (CP 739-745), which granted the Millers their ultimate relief requested in the case,

without giving the defendant Umbrella Association the opportunity to present its case. A copy of that decision is attached as Appendix A. This appeal followed.

B. Relevant Factual History

In the mid to late 1970s, Ed and Juanita Miller, along with their children Paul and Deidre Miller, owned both Gold Creek North and Gold Creek South (RP I, pp. 50-51). This property is located west of Narrows Drive and east of the Burlington Northern Railroad, overlooking the Narrows in Tacoma, Washington (Plaintiffs' Ex. 9). Millers and Donald G. Huber, on behalf of Gold Creek Limited Partnership,³ a nonparty to this litigation, began negotiations for the purchase and development of the Gold Creek property, including both Gold Creek North and Gold Creek South (RP I, pp. 52, 102-103). Paul Miller, the Plaintiffs' only witness at trial was 22 at the time. (RP I, p. 104). Ed Miller was actively involved in his real estate business up to the time of his death in 1986. *Id.*

While Millers have not produced the relevant document, it is evident that in 1977 Millers and Mr. Huber entered into a purchase and sale agreement whereby Millers granted Mr. Huber the right to purchase

³ Donald Huber executed the Purchase and Sale Agreement and the subsequent documents referenced herein as the general partner of the Gold Creek Limited Partnership, an entity unrelated to the parties to this litigation. For sake of clarity, the Umbrella Association simply describes all such actions as being performed by "Mr. Huber."

both Gold Creek South and Gold Creek North. (RP I, p. 103). Thereafter, in 1979 Mr. Huber, and the Millers purportedly entered into the “Gold Creek Parcel A Real Estate Purchase and Sale Agreement,” (“1979 Purchase and Sale Agreement”) for the purchase of Gold Creek South. (Plaintiffs’ Ex. 3) The Millers have not produced an original or even a complete copy of this document⁴. This purchase and sale agreement is not in proper deed form, was not notarized, and was not recorded upon execution.

The apparent intent of the parties at the time was for Mr. Huber to eventually acquire and develop the entirety of the property consisting of both Gold Creek South and Gold Creek North. Within two months of the apparent execution of the 1979 Purchase and Sale Agreement, Millers conveyed to Mr. Huber fee title to the portion of Gold Creek South which would become Phase I.⁵ This Phase I property is also the location of the Gold Creek Condominium, one of the three condominium developments in Gold Creek South. (See site plan attached to Plaintiffs’ Ex. 1).

⁴ The Umbrella Association made a motion in limine to exclude this exhibit (CP 638-642, RP I, pp. 9-18).

⁵ A corresponding statutory warranty deed was recorded on February 26, 1980. (Plaintiffs’ Ex. 5). In a document executed therewith entitled the “Gold Creek Easement Agreement,” Millers also granted Mr. Huber an easement over the yet to be conveyed remainder of the Gold Creek South property for ingress and egress. This document was recorded on February 26, 1980, (Plaintiffs’ Ex. 4) and later amended in 1981 (Plaintiffs’ Ex. 7).

Additionally, as part of the 1979 Purchase and Sale Agreement, Millers' and Mr. Huber purportedly agreed that, at an unspecified later date, Mr. Huber would grant Millers an easement over Gold Creek South for access to the Gold Creek North parcels.

As a material consideration to Seller [Millers], Buyer [Mr. Huber] has agreed to grant Seller an unspecified and undefined easement (the "Sellers' Easement") for road and utility access down and across the Sellers' properties located adjacent to the south and north sides of the sale property and abutting the Burlington Northern Railroad right-of-way on the west (the "Sellers' Parcels").

As the unambiguous text of the 1979 Purchase and Sale Agreement indicates, Mr. Huber did not convey an easement to Millers, but rather purported to grant a right that such an easement could later be conveyed. No such conveyance, by Mr. Huber or any successor-in-interest, has ever taken place.

The following day, on December 28, 1979, Millers and Mr. Huber executed a Real Estate Contract for the purchase of the remainder of Gold Creek South that was not the subject of the deed of the Phase I. This document made a truncated reference to the above described agreement to later convey an easement to Millers. (Plaintiffs' Ex. 6).

After the acquisition of Gold Creek South through the deed of Phase I and the Real Estate Contract for the purchase of the remainder,

Mr. Huber built the Gold Creek Condominium - Phase I. On May 28, 1982, Mr. Huber, as the declarant, recorded the Gold Creek Umbrella Declaration and Covenants, Conditions, Restrictions, Easements and Reservations ("Umbrella Declaration"). (Plaintiffs' Ex. 8). For ease of reference, a copy of the Umbrella Declaration is attached as Appendix B. As the Millers' maintained a security interest in the remaining parcels comprising Gold Creek South (through the Real Estate Contract, Plaintiffs' Ex. 6), including the Umbrella Property, they joined in signing the Umbrella Declaration and along with Mr. Huber. Shortly thereafter, in a deed dated May 20, 1982, Mr. Huber conveyed the Umbrella Property to the Umbrella Association, although that property was still subject to the Millers' Real Estate Contract⁶.

The result of this recordation of the Umbrella Declaration was to dedicate the entire Umbrella Property to condominium form and governance. Of great significance in this case, Millers and their assigns joined in the Umbrella Declaration and accordingly subjected their interest in any portion of the entire property to the terms and strictures set forth in the Umbrella Declaration. Paul Miller acknowledged in his testimony that he understood that he was subjecting his interest in the property to the

⁶ This deed was recorded with the Pierce County Auditor on June 3, 1982 under Recording No. 8206030081. (Defendant's Ex. 1). The admission of this exhibit was reserved by the trial court. (RPI, pp. 122-132).

Declaration. (RP I, pp. 119-120, 144). Specifically, the relevant provision provided as follows:

Article 24. JOINDER BY REAL ESTATE CONTRACT VENDORS AND SUBORDINATION BY VENDORS' ASSIGNEE.

For and in consideration of Ten Dollars (\$10.00) and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, Edward P. Miller and Juanita J. Miller, husband and wife, and Deidra J. Miller, as her separate estate, and Paul E. Miller, as his separate estate, each of whom has a real estate contract vendor's interest in portions of the Entire Property, for each of themselves, their heirs, successors and assigns, hereby joins with Declarant in this Umbrella Declaration and hereby subject to this Umbrella Declaration their or any of their interest or interests in that Contract of Sale recorded February 26, 1980 in the office of the Pierce County Recorded under Auditor's File No. 2978048 and their or any of their interest or interests in all or any of the Entire Property.

(Emphasis Added). (Plaintiffs' Ex. 8). As a matter of operation, the Umbrella Declaration governed the entire property now controlled by the Umbrella Association. *See* Umbrella Declaration art. 2 (stated purpose of declaration to "submit[] and subject[] the Entire Property to this Umbrella Declaration"). The term "Entire Property" is a defined term in the Umbrella Declaration referring to "the land described in Exhibit A as the 'Entire Property' and shall include the Phase Parcels and the Umbrella Property." Umbrella Declaration § 1.1.6. Thus Millers subjected any and

all of their interest in Gold Creek South, including the Umbrella Property to the Umbrella Declaration.

Recognizing the interest of the parties to maintain some easement rights for future development of Gold Creek North, the Umbrella Declaration did contain a recitation of easement rights of the parties concerning the ability to access to the Gold Creek North parcels through Gold Creek South. The relevant provision provided, in detail, how and under what circumstances any later desired easement reservation could come to fruition.

Section 16.4 Reservation of Access and Utilities Easements Related to Declarant's Other Parcel. Declarant owns or has the right to acquire Declarant's Other Parcel⁷, which lies in a northerly direction from the Umbrella Property. Declarant hereby reserves for itself, its successors and assigns, an easement for pedestrian and vehicular ingress and egress to and from Narrows Drive and Declarant's Other Parcel, including the right to connect into and branch off of the roadway improvements on the Roadway Parcel, and an easement to use the surface and subsurface of the Umbrella Property for utilities, including, without limitation, water, sanitary sewer, storm sewer, electricity, gas, telephone, cable television and other utilities in Declarant's discretion. Declarant also hereby reserves for the benefit of Declarant's Other parcel, an easement for a storm water line to run from the Declarant's Other Parcel to a location acceptable to Declarant and located approximately on the cliff of the Greenbelt

⁷ As described below, "Declarant's Other Parcel" is Gold Creek North, which Huber had the right to purchase pursuant to the 1977 Purchase Agreement. (RP 136)

Area above Puget Sound, including the right to discharge storm water directly into a collection system meeting the requirements of applicable law. Declarant shall, as soon as reasonably possible, and in any event, within ten years of the recording of this Declaration, establish, of record, the location of all easements and related improvements arising out of this Section 16. All easements reserved and granted under this Section 16.4 are for the benefit of Declarant and any present and future Owner of all or any portion of Declarant's Other Parcel, including their respective grantees, successors, heirs, executors, administrators and assigns and shall include perpetually the right of access to improve, repair, restore, and relocate any of the roadway, utility or storm water lines provided only that after any such invasion of the surface or subsurface of the easement area, the surface shall be restored to its condition immediately before such invasion. All terms and provisions of this Section 16.4 shall be deemed covenants running with the land and shall bind the Greenbelt Area as the servient tenement in favor of the Declarant's Other Parcel as the dominant tenement and shall at times inure to the benefit of and be binding upon each Person who has at any time an interest or estate in any part of the Greenbelt Area or Declarant's Other Parcel. This Section 16.4, however, shall be void and of no effect, without action by any Person, if Declarant fails to acquire, or record, fee title or a real estate contract vendee's interest in Declarant's Other Parcel within five years from the date hereof.

Umbrella Declaration § 16.4 (emphasis added). The “Declarant's Other Parcel” is Gold Creek North, and is legally described as such in the Umbrella Declaration. (RP I, 69). As is undisputed, at the time of recordation of this declaration, Millers were the “present . . . owner” of

“Declarant’s Other Parcel.” (RP 139-141). Thus, this provision was drafted for the benefit of both Millers and Mr. Huber.

The language of Section 16.4 clearly provides that it is intended to bind any party with any interest in Gold Creek South or Gold Creek North, including the Millers. To the point, it concludes that “[a]ll terms and provisions of this Section 16.4 shall be deemed covenants running with the land and shall . . . be binding upon each Person who has at any time an interest or estate in any part of the Greenbelt Area or Declarant’s Other Parcel [Gold Creek North].” Umbrella Declaration § 16.4. By its plain language, this includes Millers.

On May 28, 1982, the same day the Umbrella Declaration was recorded, the parties caused to be recorded a “Correction Statutory Warranty Deed” to correct the legal description contained in the 1979 statutory warranty deed and Gold Creek Easement Agreement. In that correction deed, the Millers further agreed and covenanted that

when and if the property lying northerly of the Gold Creek, the legal description thereof is shown on Exhibit “B” attached herewith, is developed and improved by the Grantees in the event the Grantees acquire title thereto, the easement described herein will be made for the benefit of said land provided that this covenant shall be void and of no effect if the Grantees fail to acquire title or a Vendee’s interest in said land within 5 years from date of recorded this Deed.

(Defendant’s Ex. 12).

Thus, again on May 28, 1982, the parties set forth when and in what circumstances an easement could be created to encumber the Gold Creek South property for the benefit of the Gold Creek North property. This is the only reference in any deed to an easement over the Umbrella Property.

Also in 1982, and within months of Mr. Huber and Millers' execution of the Gold Creek Condominium Declaration and Umbrella Declaration, and their subsequent respective recordation, Mr. Huber began conveying condominium units to individuals. (See generally, Title Insurance Policies found at Defendant's Exs. 2-9). As is the case with condominiums, these individual bona fide purchasers took fee title to their respective condominium units along with a proportionate share in the common area defined in the Umbrella Declaration. (Plaintiffs' Ex. 8, Paragraphs 1.1.9 and 3.2). Title to their real property interest was made with necessary reference to these declarations and any and all provisions therein. (Defendant's Exs. 2-9).

At this time, the 1979 Purchase and Sale Agreement remained unrecorded. Additionally, the Umbrella Declaration, which was referenced in their conveying deeds, failed to reference any easement rights of Millers, except those reserved by virtue of the Umbrella

Declaration and Section 16.4 therein. (Defendant's Exs. 2-9). Thus, at the time of these conveyances, these individual real property owners took title to their property without actual, record, or constructive notice of any alleged easement rights of Millers over property which they purchased.

By 1985, Mr. Huber had developed the first phase - Gold Creek Condominiums, and the Umbrella Property. However, Mr. Huber ran into financial trouble. (RP I, 59). While Mr. Huber had successfully developed Phase I, the Gold Creek Condominiums and the Umbrella Property, the remaining phases of Gold Creek South remained undeveloped. Accordingly, in 1985, Citizens Federal Savings & Loan ("Citizens Federal"), which held the financing on the entire Gold Creek South property, assumed Mr. Huber's interest and paid off the balance due under Huber's Real Estate Contract with the Millers. (RP I, 59). Accordingly, Citizens Federal took over the entire Gold Creek South property, including the unsold units in Phase I. Of course, three years prior, the declarations for the Gold Creek Condominiums and the Umbrella Property had been executed and recorded. Accordingly, all subsequent conveyances occurred subject to the dictates, reservations, and conditions set forth in the Umbrella Declaration.

Millers state that on August 6, 1985, Citizens Federal, purportedly aware of or informed of the alleged "Sellers' Easement," requested the

Millers designate their proposed location. This request was consistent with the 1982 Umbrella Declaration requirement that the exact location of said easement be determined within a specific and limited time frame. Nevertheless, unready to develop the property, the parties instead allegedly executed a “Gold Creek Parcel A Stipulation” purporting to reaffirm the terms of 1979 Purchase and Sale Agreement. (Plaintiffs’ Ex. 11). This document was allegedly executed by an agent of Citizens Federal on October 2, 1985. Again, significantly, this document was not recorded following its execution, but was recorded by Mr. Miller six years later. (RP 85).

In 1985, Millers formally conveyed title to the entire Gold Creek South property (less Phase I) by a fulfillment statutory warranty deed. (Plaintiffs’ Ex. 14). Specifically, the deed provided that said conveyance was granted “[*i*n fulfillment]” of the 1979 Real Estate Contract between the Millers and Mr. Huber. This statutory warranty deed provided, in pertinent part:

This deed is given in (partial) fulfillment of that certain real estate contract between the parties hereto dated December 27, 1979, and conditioned for the conveyance of the above described property . . .

Of particular significance, the legal description attached to and incorporated in this fulfillment deed contained no reference to any

reserved easement interest of the Millers. While this fulfillment statutory warranty deed formally covered the entire Gold Creek South property not previously released, it came three years after the Umbrella Property was officially declared for condominium purposes and its declaration, or “master deed,” was recorded.

Also in 1985, Citizens Federal conveyed the Gold Creek South property (less Phase I), again by statutory warranty deed, to Towne and Patricia Collins (“Collins”). (Plaintiffs’ Ex. 13). The deed set forth that the conveyance was subject to the easements, covenants, conditions, and restrictions set forth in the attachments thereto. However, while the attachments do reference the separate reserved “Buyer’s Easement”, (RP 54, Plaintiffs’ Exs. 4 and 7) the attachments do not make any reference to the Millers’ alleged “Sellers’ Easement.” This deed was recorded in the Pierce County Auditor’s Office on October 29, 1985. (Plaintiffs’ Ex. 13). Again, said conveyance occurred three years after the recordation of the Gold Creek Condominium and Umbrella Declarations. Collins accordingly took title to the Gold Creek South property, except for Phase I. Additionally, Collins stepped into the shoes of Mr. Huber as the declarant under the Gold Creek Condominium and Umbrella Declarations.

In 1987, in accordance with the dictates and requirements set forth in the Umbrella Declaration, Collins formally deeded the Umbrella

Property to the Umbrella Association. (Plaintiffs' Ex. 32). This conveyance was a mere formality as Huber had deeded the property to the Umbrella Association in June 1982 (Defendant's Ex. 1), and the 1982 recorded Umbrella Declaration already established the condominium nature of the property.

In or around 1986, with Mr. Huber apparently unable to consummate his desired purchase of Gold Creek North, Millers began making some efforts on their own to begin to develop the northern parcels. At that time, the majority of the then current owners and residents at Gold Creek Condominium wrote the City of Tacoma Planning Department to register their objection to Millers' planned access through a designated open space. (Plaintiffs' Ex. 23). In that letter, the homeowners proclaim that they "question the legality of Mr. Miller's proposal to put an access road from his project into Gold Creek Condominium's private roadway." While the arguments then asserted by the Gold Creek Condominium homeowners differ in substance from those primarily being advanced here, they similarly arise due to the fact that the condominium residents at Gold Creek South believed that Millers had no valid and clearly reserved easement rights known to the residents who had purchased at Gold Creek. As the case was, no such rights were known when any of the approximately 44 homeowners purchased their real property interests.

Again in October of 1986, the President of the Gold Creek Homeowners Association, Phase I, George F. Katica, wrote the City of Tacoma voicing his objection to any claimed easement rights. (Plaintiffs' Ex. 28). Specifically, the President refuted that any such easement rights were ever granted by Mr. Huber.⁸ Mr. Katica stated that the association was "prepared to challenge, in the courts if necessary, Mr. Miller's so-called easement claims." Millers assumedly abandoned their development plans at that time.

At some point in the early 1990's, Millers apparently tried unilaterally to revitalize their lost easement rights under the 1979 Purchase and Sale Agreement. Apparently unsatisfied with the reservation in the 1982 Umbrella Declaration, and following the expiration of the option reserved therein, Millers took some late-stage remedial efforts to attempt to rehabilitate them. In 1991, nine years after the recordation of the Gold Creek Condominium Declaration and the Umbrella Declaration, and approximately six years after the umbrella property was conveyed to Collins, and four years after the property was ultimately formally conveyed to the Umbrella Association, Millers recorded both an incomplete copy of the 1979 Purchase and Sale Agreement and the

⁸ The 1979 Purchase and Sale Agreement remained unrecorded at this point, and to Defendant's knowledge was not disclosed to any of the condominium owners at Gold Creek. (RP 58).

“Stipulation” between the Millers and Citizens Federal. (RP 9-18, Plaintiffs’ Ex. 11). The Millers then re-recorded these documents in 1992. (Plaintiffs’ Ex. 3).

This recordation occurred after a significant lapse of time and the occurrence of numerous significant events. Importantly, this recordation took place nine years after the recording of the Umbrella Declaration, and, crucially, after numerous individuals took fee title to their condominium property free and clear, and without any record notice of any such encumbrance not reserved therein.

Decades after the transfer of property, and nearly 25 years after the Umbrella Property was created by the recording of its Declaration, Millers now seek to exercise their purported option to acquire an easement over the access road and adjoining property held by the Umbrella Association.

III. ARGUMENT

A. The Trial Court was in Error by Denying the Umbrella Association’s CR 41(b)(3) Motion to Dismiss at the end of the Millers’ Case and Granting the Millers their requested relief, without giving the Umbrella Association the Opportunity to Present its Case.

The trial court’s August 28, 2006 ruling denying the defendant Umbrella Association’s motion to dismiss, and granting the Millers their ultimate relief requested in the case was bizarre in several respects, but primarily due to the fact that he ruled against the Umbrella Association

before it was given the opportunity to present its case, which is a fundamental right under our judicial system. In addition, the legal basis for the judge's ruling, that the Millers had an easement pursuant to an "equitable covenant," was wholly inapplicable, and a theory that was never raised by either party. (Plaintiffs' Trial Brief, CP 603 - 626; Defendant's Trial Brief, CP 643 - 733). Also, in the Findings of Fact made by the court in support of its decision, the court cited several exhibits that had not been admitted at trial⁹.

On June 27, 2006, the Plaintiffs rested their case (RP II, p. 198).

At that time, the court acknowledged that the Umbrella Association intended to move to dismiss the Plaintiffs' claims pursuant to CR 41(b)(3):

[The Court] I understand that Mr. Casey was probably going to have a half-time motion, and I don't know if you want to present that now or wait until the morning

(RP II, p. 198). The court went on to note that he could not anticipate how he would rule on the motion, but that the Umbrella Association needed to have its witnesses prepared to testify the next morning after the motion was to be heard.

[The Court] Okay. Why don't we start with you in the morning. We will start with your motion. What I'm going

⁹ The Trial Court's Exhibit Record, which reflects exhibits offered and admitted at trial is found at CP 755 - 758. In the Trial Court's August 28, 2006 Decision, Finding paragraphs 7.a), b) and e) the court references Defense Exhibit Nos. 14 and 16, and Plaintiffs' Exhibit No. 38, in support of certain findings, none of which were offered or admitted at trial.

to ask is that – I can't crystal ball how I'm going to rule on the motion, so if you have witnesses tomorrow, I would have those witnesses prepared. We will be at recess until 9:30. Thank you.

(RP II, p. 199).

The Umbrella Association's Motion to Dismiss was heard on June 28, 2006. Volume 3 of the Report of Proceedings deals solely with that motion. At the end of the argument on the motion, the court took a brief recess and then returned to the bench. (RP III, p. 247). There was nothing in the concluding statements made by the court which would give any indication that the judge intended to do anything other than rule on the Motion to Dismiss.

[The Court] Thanks. Please be seated. Several things. One is I am not able to finish ruling on the motion to dismiss at this time, and in fact, I indicated to counsel at sidebar that there are some legal cases, some legal precedents I need to review and study, facts that I need to summarize, and then I need to apply the facts and the law and in that way decide whether or not the plaintiffs have met their burden. I think the motion clearly could be dispositive depending on how I rule on the motion and whether or not we need to go forward with any additional testimony or not.

...

So what we are going to do is we're going to recess, and I'll give notice to counsel through Ms. Meade about when I have a decision on the motion.

(RP III, p. 247-48).

When ruling on a CR 41(b)(3) motion, the court has three options: grant the motion and dismiss the plaintiffs case, deny the motion, or decline to render any judgment until the close of all of the evidence.¹⁰ On making the motion, the Umbrella Association in no way waived the right to present its case. It had witnesses prepared to testify, and exhibits to offer. One of the witnesses who was not given the opportunity to testify was Russell Tousley, a noted Seattle real estate attorney, who had drafted the Umbrella Declaration. (RP 19-21).

B. The Trial Court was in Error by Denying the Umbrella Association's Motion to Dismiss at the end of the Plaintiffs' Case.

Rather than remand this case for a new trial or to allow the Umbrella Association to present its case, in the interests of judicial economy, the Umbrella Association requests that this court review the evidence and the law, reverse the trial court and grant the Umbrella Association's motion to dismiss pursuant to CR 41(b)(3). Such action by the court will not work any prejudice on the Millers, as they have had an opportunity to fully present their case. They will also still have the opportunity to pursue their alternative easement claims.

¹⁰ CR 41(b)(3): "*Defendant's Motion After Plaintiff Rests*. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. . . . Unless the court in its order for dismissal otherwise specifies, a dismissal under this subsection operates as an adjudication upon the merits."

1. Millers' Claim to An Express Easement Fails.

Millers' claim to an express easement over the Umbrella Association's property fails. In particular, Millers fail to properly acknowledge the role they played in the formation and dedication of the Umbrella Property and the crucial role that plays in determining the rights of the parties and the rights of the individual condominium owners who took title subject to the contents and terms set forth in the Umbrella Declaration.

a. The Real Property at Issue is Subject to Washington Condominium Principles and Statutes.

As set forth in detail above, on May 28, 1982 the Umbrella Property was dedicated to condominium use and governance upon the recording of its Declaration. For purposes of reference, the Umbrella Declaration defines the "Umbrella Property" as "the Entire Property except the Phase Parcels" (Plaintiffs' Ex. 8, Art. 2); (RP I, 119-120) and thus includes the access road and designated open spaces.

As the Gold Creek Condominium and Umbrella Declaration were recorded in 1982, their formation is governed by Washington's Horizontal Property Regimes Act, ch. 64.32 RCW. *See* RCW 64.34.010. In Washington, real estate is subjected to the condominium form of ownership and a condominium is created upon the recordation of the condominium "declaration." RCW 64.32.090; *see* WILLIAM B. STOEUBUCK

& JOHN W. WEAVER, 18 WASHINGTON PRACTICE: REAL ESTATE: TRANSACTIONS § 12.2 (2004). The declaration is the principle condominium document and defines the rights among the condominium owners, the association created, the declarant, and any other signatories thereto. *See* 1 PATRICK J. ROHAN & MELVIN A. RESKIN, REAL ESTATE TRANSACTIONS: CONDOMINIUM LAW AND PRACTICE § 3.02 (2006); *see also Cantonbury Heights Condo. Ass'n, Inc. v. Local Land Dev., LLC*, 873 A.2d 898 (Conn. 2005) (declaration operates in the nature of a contract, in that it establishes the parties' rights and obligations).

In Washington, the declaration contains several required features such as the description of the land which any building or improvement are to be located, a description of the common areas and facilities, a statement of purpose, and any further details the declarant may deem desirable. *See* RCW 64.32.090; STOEBUCK & WEAVER, *supra*, § 12.3 (often referred to as a “master deed”). Recognizing the completeness with which the Declaration describes and governs the real property interests at play, Washington statutes governing the contents of deeds and conveyances of condominium property to individual owners requires only limited description in the deeds themselves. RCW 64.32.120. Instead it requires that such deeds may simply set forth a common street address and “the date of recording of the declaration and the volume and page or county

auditor's recording number of the recorded declaration." RCW 64.32.120(1). A legal description of the property is not required. *Id.* This statutory procedure evinces the controlling nature of the declaration and its central importance to all subsequent conveyances. This procedure is effective because all encumbrances and rights attendant to the property are required to be set forth in the declaration document itself.

The declaration is the core document for [any] home owner association. In a conceptual sense, all of the other documents merely support or implement the terms of the declaration. It is the role of the declaration to place of record all those restrictions, covenants, easements and liens that affect the home owner association plan, and thus serve as notice to future owners and encumbrancers of the property.

6 PATRICK J. ROHAN, REAL ESTATE TRANSACTIONS: HOME OWNER ASSOCIATIONS AND PLANNED UNIT DEVELOPMENTS § 4.02[3] (2006).¹¹ In sum, in Washington, a party to a declaration who wishes to reserve an encumbrance or easement over the declared property must do so in the declaration itself.

¹¹ The same principles apply to reservation by the Declarant. If the declarant intends to reserve any development or accompanying easement rights over the common property, he or she must do so explicitly. STOEBUCK & WEAVER, *supra*, § 12.8. In fact, a declarant's reserved "development rights" do not normally exist; "they exist only if they are reserved and described in the declaration, **which must also give a time limit for their exercise.**" STOEBUCK & WEAVER, *supra*, § 12.13, at 64; *cf.* RCW 64.34.020(16), -.216(1)(j) and (k) (Emphasis added). If such a power is exercised, commentators have suggested that, to become effective, "it will more or less necessitate an amendment to the declaration and a reallocation of the common elements." *Id.*

Applying this recognized Washington law, secondary authorities analyzing the importance of the declaration, recognize that it also controls the existence and extent of any reserved public or private easements. Such easements must be reserved in the text of the declaration. Commentators have suggested that failure to adequately reserve an easement interest in the property makes acquiring one later extremely burdensome.

The Declaration often expressly describes all grants of public and private easements in the common elements. Such easements may extend to utilities, governmental entities, [and] adjoining property owners If the declaration fails to grant a particular easement and there is no statutory provision allowing modification of the granting process, creating the easement may require unanimous consent of all owners, which is often impossible to obtain.

ROHAN & RESKIN, *supra*, § 7.05[2][d], at 7-23; *see also Commercial Wharf East Condo. Ass'n v. Waterfront Parking Corp.*, 552 N.E.2d 66 (Mass. 1990). The rationale for this explanation, describing the difficulty in later obtaining easement rights, is simple - after the recording of the declaration, each and every later purchaser and owner now has a real property interest in the common area property sought to be encumbered. Recognizing this unique characteristic, commentators have summarized the law as follows:

It has been held that condominium declaration is more than a mere contract delineating mutual rights

and obligations of the parties. Rather, it is said to assume the attributes of a covenant running with the land, circumscribing the extent and limits of the use and enjoyment of real property. Indeed, absent consent, or an amendment to the declaration, the enjoyment and use of the real property cannot be impaired or diminished.

4 THOMPSON ON REAL PROPERTY § 36.06(a), at 197 (David A. Thomas ed. 1994); *see also* 4 RICHARD R. POWELL & MICHAEL ALLAN WOLF, POWELL ON REAL PROPERTY § 34.11[1] (2005) (recognizing that “the granting of an easement over common areas” may affect “every unit owner’s property rights, and that the consent of every unit owner and mortgagee” may be required). In sum, a condominium or umbrella declaration serves to provide notice of the essential attributes in the real property common areas conveyed.

Recognizing the import and controlling nature of a condominium declaration, condominium law principles require that they be strictly enforced. This rule of construction has been imposed to protect individual purchasers.

A horizontal property regime’s master deed [i.e., the declaration] should be strictly enforced. . . . A declaration of condominium and its amendments should be strictly construed to assure investors that what a buyer sees the buyer gets.

15A AM. JUR. 2D *Condominiums and Cooperative Apartments* § 8 (2d ed. 2000); *see also Clampit v. Cambridge Phase II Corp.*, 884 S.W.2d 340, 345 (Mo. Ct. App. 1994). Like above, the rationale for this principle is to protect the real property interests and rights of individuals who purchase a condominium unit and the corresponding rights in the common area. To further advance this rationale, it is generally understood that any ambiguities in a declaration are resolved against the drafter/developer/declarant and in favor of the condominium unit buyers. *Cf. ROHAN & RESKIN, supra*, § 7.01, at 7-5 n.2.

As Millers affirmatively joined in dedicating the Umbrella Property to condominium use and governance the effect of their joinder becomes relevant in this litigation. The parties to a declaration, and any individual or entity joining therein, become bound by its terms and description of real property interests. One common scenario involves the rights of mortgagees in property subject to a recorded declaration. As a general rule, a mortgagee which records a mortgage which purports to encumber the entire project after the declaration has been filed will find that the mortgage lien is ineffective as the declaration will take priority over a subsequently recorded mortgage. *See, e.g., ROHAN & RESKIN, supra*, § 7.05[1][a].

Finally, it is important to remember the unique ownership interests at play in this case. It is well understood in Washington that a condominium association, or in this case, an umbrella association, is similar in form to a homeowners' association and "does not own the

common elements; these are owned by the unit owners as tenants in common.” STOEBUCK & WEAVER, *supra*, § 12.2. Stated another way, “[t]he common elements and limited common elements are owned by the unit owners, not by the condominium association or by anyone else. Owners have undivided interests in the common elements” *Id.* at § 12.8, at 45. Thus, the real property interests at stake in this case are those of the individual homeowners, whom the Umbrella Association represents, which are effected and impaired by any easement right of Millers.

b. Millers Joined in the Gold Creek Umbrella Declaration and Subordinated Their Interest in the Property Thereto.

Addressing the facts of this case, in or around May of 1982, Mr. Huber, along with Edward P. Miller, Juanita P. Miller, Deidra J. Miller, and Paul E. Miller, as well as several institutional entities, joined in and executed the Umbrella Declaration. (Plaintiffs’ Ex. 8). On May 28, 1982, this Umbrella Declaration was recorded in the Pierce County Auditor’s Office under recording number 8205280311. Millers affirmatively and unambiguously subjected their interest in the Umbrella Property to the terms of the declaration. Umbrella Declaration art. 24. (RP I, 69, 74-75, 119-120). Accordingly, any interest that Millers maintained in the Umbrella Property (which recall is a security interest in just a portion of the entire Gold Creek South property) or the “Entire Property” became “subject” to the rights, reservations, conditions, and easements reserved in the Umbrella Declaration.

Based on the above joinder of all their interests in the property, Millers' claim in this litigation to an express easement right over the Umbrella Property exists only to the extent the same was reserved in the Umbrella Declaration. In fact, as set forth above, the Declaration did in fact reserve easement rights in favor of Gold Creek North, defined in the Declaration as "Declarant's Other Parcel." *See* Umbrella Declaration § 16.4. (RP I, 69). Like the one sought by Millers, the Umbrella Declaration reserved an easement "for pedestrian and vehicular ingress and egress" and for all necessary utilities. This reservation was made "for the benefit of Declarant and any present and future owner of all or any portion" of the Gold Creek North property. (Umbrella Declaration, § 16.4). Recall, at the time, like now, Millers' were the "present owner[s]" of the Gold Creek North property. (RP I, 139-141).

However, the Declaration placed strict timelines on the establishment of this reserved easement option providing that "Declarant shall, as soon as reasonably possible, and in any event, within ten years of the recording of this Declaration, establish, of record, the location of all easements and related improvements arising out of this Section 16." The facts of this present litigation make it abundantly clear that the location of such easement and related improvements have never been conclusively established. In fact, any such establishment was required to have been completed by May 28, 1992.¹²

¹² Additionally, the terms of the Umbrella Declaration indicate that any reserved easement rights actually expired on May 28, 1987. The Declaration provides that "[t]his

Millers now seek to impose and locate this easement over 14 years after the explicit deadline for doing so has lapsed. The Umbrella Declaration's lone applicable easement reservation has since expired and thus Millers lack a valid reserved easement. Relevant here, condominium law principles require that such limitations and terms be strictly enforced. *See, e.g.*, 15A AM. JUR. 2D *Condominiums and Cooperative Apartments* § 8 ("A declaration of condominium . . . should be strictly construed to assure investors that what a buyer sees the buyer gets."). The terms of the Umbrella Declaration prohibit the establishment of an easement at this late stage.

It is clear from the text of the Umbrella Declaration that Millers, in joining the Umbrella Declaration, consented to this limited reservation of an easement right. The applicable provision, to which they consented, further provided that "[a]ll terms and provisions of [that] Section 16.4 shall . . . be binding upon each Person who has at any time an interest or estate in any part of the Greenbelt Area or Declarant's Other Parcel." *Id.* This explicitly refers to the Millers. Accordingly, any remaining interest of Millers in the Umbrella Property, as of recording of this document, existed only to the extent reserved in the Umbrella Declaration. Had Millers foreclosed on their security interest, they would have stepped into

Section 16.4, however, shall be void and of no effect, without any action by any Person, if Declarant fails to acquire, or record, fee title or a real estate contract vendee's interest in Declarant's Other Parcel within five years from the date hereof." Umbrella Declaration § 16.4.

the Declarant's (Huber's) shoes, just as a bank would do in such a situation.

While the text of Umbrella Declaration's reserved easement section applies, on its face, to "any present and future owner of all or any portion of Declarant's Other Parcel," thus clearly referencing the Millers, even if it was held to apply only to Mr. Huber, Millers still failed to reserve an easement interest. In fact if the section is deemed inapplicable to Millers, Millers will have reserved no easement rights over the Umbrella Property. Again, of great importance, Millers "join[ed] with Declarant in this Umbrella Declaration and . . . subject[ed] to this Umbrella Declaration any of their interest or interests in that Contract of Sale recorded February 26, 1980 . . . or any of their interest or interests in all or any of the Entire Property." Accordingly, the Umbrella Declaration became the governing document for any and all of their interests in the Gold Creek South property. As set forth above, in Washington, if a declarant or other joining party to a declaration intends to reserve development or accompanying easement rights over the common property attendant to a condominium, he or she must do so explicitly. *See* STOEBUCK & WEAVER, *supra*, § 12.8. The joining of the Millers in the dedication of the Umbrella Property to Washington condominium laws and common ownership, subjected their interest in the property, including any alleged unrecorded easement interest, to the Umbrella Declaration. Further, any ambiguity deemed to be present in Section 16, Article 24, or any other provision of the Umbrella Declaration should be resolved

against the Millers and in favor of the individual homeowners and the Umbrella Association which represents their interests here. *See cf.* ROHAN & RESKIN, *supra*, § 7.01.

The importance of the definitive nature of the Umbrella Declaration is reflected in the subsequent conveyances of real property interests to individual bona fide purchasers. Beginning first in 1982, and likely occurring sporadically from that time till present, individual condominium units were conveyed by deed to individual purchasers and homeowners. (Defendant's Exs. 2-9). These homeowners took title to their units and their respective share in the common area subject to and with reference to their respective condominium declaration and, of course, the Umbrella Declaration. These real property owners took title to their land with the well-grounded understanding that their interests in their unit and the common areas, including in this case the Umbrella Property and its access road and designated greenbelt and open spaces, could not be later impaired without their consent.

[A condominium declaration] is said to assume the attributes of a covenant running with the land, circumscribing the extent and limits of the use and enjoyment of real property. Indeed, absent consent, or an amendment to the declaration, the enjoyment and use of the real property cannot be impaired or diminished.

4 THOMPSON ON REAL PROPERTY § 36.06(a), at 197; *see also* 15A AM. JUR. 2D *Condominiums and Cooperative Apartments* § 8 (“A declaration of condominium and its amendments should be strictly construed to assure investors that what a buyer sees the buyer gets.”); *Clampit*, 884 S.W.2d at 345. These buyers were entitled under law to rely on the representations set forth in the Umbrella Declaration and the reserved interests of all parties executing and joining therein.

c. Millers’ Claimed Chain of Title Is Deficient.

Based on the foregoing argument and legal authority concerning condominiums and related real property jurisprudence, Millers’ claim to an express easement fails in this case. However, the Umbrella Association asserts that even under general real property principles, Millers’ claim to an express easement fails.

(1) The Purchase and Sale Agreement is Not in Proper Deed Form.

First, Millers’ claim to an express easement by means of and reference to the 1979 Purchase and Sale Agreement fails. Washington statute requires that every encumbrance of real estate or any interest therein shall be by deed. RCW 64.04.010. The following statutory section then proscribes that “[e]very deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person

authorized by this act to take acknowledgements of deeds.” RCW 64.04.020 (commonly referred to as the Statute of Frauds); *see also Beebe v. Swerda*, 58 Wn. App. 375, 379, 793 P.2d 442 (1990) (“An express conveyance of an easement, by grant or reservation, *must* be made by written deed.” (Emphasis added)).

Here, Millers’ claim to an express easement over the Umbrella Property arises from a provision in the 1979 Purchase and Sale Agreement (Plaintiffs’ Ex. 3) made by and between Millers and Mr. Huber, a nonparty. At its core, this claimed right is an encumbrance on the Umbrella Association’s real property. As set forth above, Washington law requires such an encumbrance to be in deed form, be in writing, signed, and acknowledged. RCW 64.04.010 - .020. It is undisputed that the 1979 Purchase and Sale Agreement was not in proper deed form and is unacknowledged. While an unacknowledged deed is typically held to be enforceable between the signatory parties (essentially a contractual right), it does not bind future interest holders. Simply stated, the document upon which the Millers principally rely is unacknowledged and thus, in Washington, invalid for the purposes of preserving the real property interest against subsequent holders of the property.

(2) Real Estate Contract Failed to Preserve Easement Rights.

Millers secondarily rely on the Real Estate Contract between the Millers and Mr. Huber evincing the financing related to the Gold Creek South property, recorded in February 1980 to establish their alleged easement right. (Plaintiffs' Ex. 6). This argument should fail. Millers have asserted that the short reference to the "Seller's Easement" in this financing document operated to preserve and provide constructive notice of their easement rights. This Court should reject this argument. First, even if adequately referenced in the Real Estate Contract, such reference does not change the inalterable nature of the 1979 Purchase and Sale Agreement as an unacknowledged and improperly formatted document. In other words, whether by direct application or indirect reference, Washington's real estate statute of frauds, RCW 64.04.020, remains operative and requires the alleged encumbrance abide by the statutory requirements. *See Beebe*, 58 Wn. App. at 379. In short, the cryptic reference in the Real Estate Contract does not cure the failings and infirmities of the 1979 Purchase and Sale Agreement with respect to the creation of an easement interest.

Secondarily, the truncated reference in the Real Estate Contract is insufficient as a matter of law to create an easement in its own right or to provide any constructive notice to any subsequent purchasers.

Subsequent parties may to some extent be charged with 'inquiry notice' by the contents

of a recorded document, i.e., with what further investigation beyond the record would show if the recorded document gives a clue that such investigation would show something significant to the state of title. . . . [However, i]n view of Washington's well known rule that a deed must describe land without resort to parol evidence, it may be doubted whether inquiry would have to be made beyond the public records.

STOEBUCK & WEAVER, *supra*, § 14.8, at 143-44 (emphasis added); (see also, *Berg v. Ting*, 125 Wn.2d 544, 553 (1995)). More to the point, given the periodic conveyances, beginning in 1982 and continuing to date, of individual condominium units to bona fide purchasers, a buried reference in a real estate financing document to an unrecorded document is not sufficient to put a reasonable person on notice, nor would reasonable inquiry likely lead anywhere.¹³

Thirdly, the 1985 Statutory Warranty Fulfillment Deed from Millers to Citizens Federal (Plaintiffs' Ex. 14), which made no reference to a reserved easement, extinguished any ability to claim an easement under the Real Estate Contract. In Washington "[a] deed made in full execution of a contract of sale of land merges the provisions of the underlying contract." *Barnhart v. Gold Run, Inc.*, 68 Wn. App. 417, 423,

¹³ This is especially true as, following 1985, Mr. Huber was no longer a party to any conveyances and there is no evidence that a reasonable person under the circumstances would have known who to make inquiries of.

843 P.2d 545 (1993) (quoting *Kunkel v. Meridian Oil, Inc.*, 54 Wn. App. 675, 678, 775 P.2d 470 (1989)).

Turning to the facts here, the fulfillment deed evincing the satisfaction of this Real Estate Contract did not preserve or otherwise indicate any remaining easement interest of Millers. In October of 1985, Citizens Federal satisfied all of Mr. Huber's obligations under the Real Estate Contract. In response, and evincing such satisfaction, Millers granted Citizens Federal a fulfillment deed executed by Millers on October 30, 1985. This statutory warranty deed stated:

This deed is given in (partial) fulfillment of that certain real estate contract between the parties hereto dated December 27, 1979, and conditioned for the conveyance of the above described property, and the covenants of warranty herein contained shall not apply to any title, interest or encumbrance arising by, through or under the purchaser in said contract, and shall not apply to any taxes, assessments or other charges levied, assessed or becoming due subsequent to the date of said contract.

In short, this deed imparts constructive notice to all interested parties, that the terms and conditions of the 1979 Real Estate Contract have been fulfilled. *Cf. Barnhart*, 68 Wn. App. at 423.

Finally, as set forth in detail above, any easement interest created in this Real Estate Contract was subordinated to those reserved in the Umbrella Declaration when Millers explicitly joined with Declarant and

“subject[ed] any of their interest or interests in that Contract of Sale recorded February 26, 1980 in the office of the Pierce County Recorder under Auditor’s File No. 2978048.” Umbrella Declaration art. 24. Based on Millers’ joinder, the subsequently recorded Umbrella Declaration takes precedence over any rights reserved by nature of this Real Estate Contract.

(3) Application of Washington’s Race-Notice Statutory Scheme.

Even if this Court were to overlook the improper form of the document relied upon, application of Washington race-notice recording statutory scheme instructs that Millers’ claim to an express easement here fails. In brief, the title which vested in the Umbrella Association, its predecessors in interest, and each and every homeowner who took title subject to the Umbrella Declaration, defeats any unrecorded or late-recorded claims of prior interest holders. Washington law provides that real property conveyances, in order to bind future owners, are to be recorded, setting forth:

A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is

first duly recorded. An instrument is deemed recorded the minute it is filed for record.

RCW 65.08.070. In general, when a prior conveyance or encumbrance is unrecorded, a subsequent bona fide purchaser takes title to the real property free and clear of any alleged encumbrance. *See, e.g., Paganelli v. Swedson*, 50 Wn.2d 304, 308, 310-11, 311 P.2d 676 (1957). Thus, while an unrecorded contractual agreement concerning real property may be valid between the signatory parties thereto, it is not binding on a subsequent bona fide purchaser who takes without notice.

The recorded history of the property at issue reveals that the Umbrella Association took title to the property without any record notice of Millers' purported rights under the 1979 Purchase and Sale Agreement. As set forth at length above, Mr. Huber, along with Millers, formally dedicated the Umbrella Property on May 28, 1982 by recording the Umbrella Declaration - often deemed the "master deed" - with the Pierce County Auditor's Office. This declaration dedicated the property to condominium use and governance and set forth all the real property restrictions, covenants and easements relevant thereto. In the subsequent years, title to all of Gold Creek South was twice conveyed, once from Citizens Federal to the Collins, and later, Collins formally conveyed the

Umbrella Property to the Umbrella Association. A summary timeline

follows:

DATE RECORDED	DOCUMENT	DESCRIPTION
February 26, 1980	Deed	Millers convey portion of Gold Creek South property to Don Huber by Statutory Warranty Deed
February 26, 1980	Real Estate Contract	Don Huber executes Real Estate Contract in favor of Millers for the financing of Gold Creek South
May 28, 1982	Umbrella Declaration	
May 28, 1982	Gold Creek Condominium Declaration	
Summer 1982 - Present	Multiple Deeds	Huber, as Declarant, began conveying condominiums to individual homeowners
October 29, 1985	Deed	Citizens Federal deeds subject property to Towne and Patricia Collins
October 2, 1987	Deed	Towne and Patricia Collins deed the subject property to the Gold Creek Umbrella Association
October 24, 1991	1979 Purchase and Sale Agreement and 1985 Stipulation	Millers record Gold Creek Parcel A Stipulation between Citizens Federal and the Millers and the 1979 Purchase and Sale Agreement
November 6, 1992	1979 Purchase and Sale Agreement and 1985 Stipulation	Millers re-record Gold Creek Parcel A Stipulation between Citizens Federal and the Millers and the 1979 Purchase and Sale Agreement

As the above record history exemplifies, the Umbrella Association's property was (1) dedicated to condominium use and governance by recording of the Umbrella Declaration and further (2) twice deeded before the Millers elected to record the 1979 Purchase and Sale Agreement. The record history of title to the Umbrella Association property plainly reveals that any attempt by the Millers to preserve or resurrect their rights to an easement came long after the recording of the

Declaration and after both Collins and the Umbrella Association took formal title to the property by deed.

Moreover, and of crucial importance in this case, numerous individual condominium owners also took title to their units beginning in the summer of 1982. (Defendant's Exs. 2-8). These homeowners, several of whom are still alive today and still reside in their same units, took title to their property, including their respective share in the common areas, subject only to the real property interests of record effecting their property. *See* RCW 65.08.070; *see also Paganelli*, 50 Wn.2d at 308, 310-11 (when a prior conveyance or encumbrance is unrecorded, a subsequent bona fide purchaser takes title to the real property free and clear of any alleged encumbrance).

Finally, there is no evidence in this case that back in 1982, when homeowners began purchasing their individual units and proportionate shares in the common area, that they had any actual notice of any claimed, but defective, easement interests of Millers.¹⁴

In sum, Millers recordation in 1991, and again in 1992, of the unacknowledged 1979 Purchase and Sale Agreement, under Washington

¹⁴ If relying on actual notice, Millers have the affirmative burden of proving such notice. Washington courts require that a party seeking to enforce their rights under an unrecorded instrument has the burden of proving the adverse party had actual or constructive notice of their interest. *Paganelli*, 50 Wn.2d at 308. Millers are not able to provide any evidence that the individual homeowners who purchased their interests in the condominium phases had any notice of Millers' purported property interest.

“race-notice” system is insufficient to defeat rights taken free and clear of such interest by bona fide purchasers. Accordingly, RCW 65.08.070 defeats Millers’ claim to an express easement,

2. Millers’ Action is Barred by the Doctrine of Comparative Innocence.

On occasions, Washington courts have recognized the doctrine of comparative innocence and applied it to prevent an innocent third party from suffering due to the negligence and failings of others. This is just such a unique case in which such a doctrine should apply. This court should hold that Millers’ failed efforts to adequately preserve any alleged real property easement interest, including but not limited to their late-stage efforts in 1991 and 1992 to rehabilitate and resurrect this alleged right, should be insufficient to encumber the Umbrella Property. This is especially true when hundreds of wholly innocent bona fide purchasers purchased individual condominium units and their respective proportionate share in the corresponding common areas without adequate, if any, notice of Millers’ alleged right.

In this very context, Washington courts have applied the doctrine of “comparative innocence” to shield a bona fide purchaser from obligations pursuant to an unrecorded document when the prior interest holder could have, but failed to record the pertinent document. *See, e.g., Paganelli, 50 Wn.2d at 310.* The Washington Supreme Court, in discussing the rationale behind this rule, explained that if the complaining party had simply recorded the deed therein, their rights would have been

preserved. *Id.* Similarly here, if Millers had simply preserved their now alleged rights in a proper document and recorded that document in a timely fashion, their rights would likely would have been preserved. Similarly, in this unique context, if Millers had merely reserved their easement interest in the Umbrella Declaration, and executed on the same in accordance with Washington law, again their rights would have been preserved. They did not. Accordingly, in Washington, our courts have held, based on equitable principles, that a later innocent party should not be held accountable or suffer because of the previous owner's failure to ensure the proper procedures were followed to convey or encumber real property.

C. The Trial Court Was in Error in Entering Findings of Fact.

In a typical appeal, the appellant would note each of the trial court's findings of fact that were in error. In this case, the trial court's error was so fundamental, that such an exercise would appear superfluous, but to comply with RAP 10.3(g), the Umbrella Association assigns error to each of the following Finding of Fact, and briefly explains the basis for the error. The Order Denying Defendant's Motion to Dismiss and Granting Equitable Relief is found in the Appendix.

1. Finding of Fact Nos. 1 and 2 were in Error.

The Trial Court found in Finding No. 1 that the Gold Creek Parcel "A" Real Estate Purchase and Sale Agreement, dated December 27, 1979

(Plaintiffs' Ex. 3), in section 8, created an "equitable covenant" providing road and utility access over Gold Creek South for the benefit of Gold Creek North. The Trial Court found in Finding No. 2 that Section 16.4 of the Umbrella Declaration (Plaintiffs' Ex. 8) also included an equitable covenant. Neither the Umbrella Association nor the Millers made such arguments at trial, and this theory noted by the Trial Court is wholly inapplicable. As explained by this court in Dickson v. Kates, 132 Wn. App. 724, 731 (2006), a covenant deals with a limitation placed on the manner in which one may use their land (such as a height limitation), while an easement gives the right to use the land of another. Clearly in the present case we are dealing with an easement (the Millers' claimed right to have road access over Gold Creek South) rather than a covenant. Accordingly, the theory of equitable covenants does not apply.

2. Finding of Fact No. 5 is in Error.

In Finding No. 5, the Trial Court found that the Millers were successors in interest to Declarant Donald Huber's interest in Gold Creek South. This is in error. The Millers sold Gold Creek South to Huber, both pursuant to a deed to Phase I (Plaintiffs' Ex. 5) and a real estate contract for the balance of Gold Creek South (Plaintiffs' Ex. 6).

3. Finding of Fact No. 6 is in Error.

The Trial Court was in error in making Finding No. 6 where it is inferred that the “Seller’s Easement” from Section 8 of the 1979 Real Estate Purchase and Sale Agreement (Plaintiffs’ Ex. 3) is incorporated by reference in the Statutory Warranty Deed dated October from Citizens Bank to Towne Collins(Plaintiffs’ Ex. 13). The Trial Court references in this finding the Amended Easement Agreement which was recorded at Auditor’s Fee No. 8103060132. This is reference is found in paragraph no. 5 of Exhibit “B” of the Deed (Plaintiffs’ Ex. 13). This Amended Easement Agreement amended that prior easement granted by the Millers to Huber dated December 27, 1979. (Plaintiffs’ Ex. 4). These easements granted access from Narrows Drive to Gold Creek Phase I which was purchased outright by Huber (Plaintiffs’ Ex. No. 5). The easement was over that portion of Gold Creek South which Huber did not own outright, but was purchasing pursuant to the Real Estate Contract. (Plaintiffs’ Ex. 6). This easement has no bearing on the easement claimed by the Millers in this case, and does not “incorporate by reference” Section 8 of the 1979 Purchase Agreement as stated in the Trial Court’s finding.

4. Finding of Fact No. 7 is in Error.

The Trial Court makes several errors in this Finding, to the effect that the Umbrella Association had record notice of the “covenant” burdening the property. Findings 7 a) and 7 b) are in error, first, because

they reference, erroneously, the same easements referenced in Finding No. 6; and second, the Trial Court is making findings about Defense Exhibits 14 and 16, neither of which were admitted at trial. (*See* Exhibit Record, CP 755 - 758).

In Finding 7 c), the Trial Court refers to the Real Estate Contract (Plaintiffs' Ex. 6) as imparting record notice of the "covenant". The issues involving this Real Estate Contract are addressed above in this brief.

Finding 7 d) is in error where it refers to a Correction Deed (Defendant's Ex. 12) as imparting record notice of the "covenant". This Correction Deed references the easements involved in Finding No. 6, and the reserved easement in the Declarant found in Section 16.4 of the Umbrella Declaration (Plaintiffs' Ex. 8), but it makes no reference to the alleged reserved easement in Section 8 of the 1979 Real Estate Purchase Agreement. (Plaintiffs' Ex. 3).

Finding 7 e) is in error in that it refers to Plaintiffs' Ex. 38, which was not offered or admitted at trial. (*See* Exhibit Record, CP 755 – 758).

Finding 7 f) is in error in that it refers to Plaintiffs Ex. 11 as imparting record notice of the alleged easement in the 1979 Real Estate Purchase Agreement to the Umbrella Association. As addressed above in this brief, this document was recorded in 1991, many years after the

individual condominium units were sold to individual purchasers, and the Umbrella Property was conveyed to the Umbrella Association.

D. In the Event this is Remanded to the Trial Court for a New Trial , the Case must be Assigned to a New Judge.

In the event this court vacates the trial court's ruling of August 28, 2006 and orders a new trial, the Umbrella Association respectfully requests that the court order that the case be reassigned to a new judge. Due to the extraordinary ruling by the trial court in adjudicating the case before the Umbrella Association put on its case, the impartiality of the trial court is reasonably questioned. If this case is remanded for a new trial, the Umbrella Association can not expect that the trial court will be open to its testimony and evidence in light of the fact that the court has pre-determined the result.

Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned. *Model Code Of Judicial Conduct*, Canon 3(D)(1) (1999). The party moving for recusal must demonstrate prejudice on the judge's part. In *re Marriage of Farr*, 87 Wn. App. 177, 188, 940 P.2d 679 (1997). Recusal is within the sound discretion of the trial court. *Wolfkill Feed & Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 840, 14 P.3d 877 (2000).

In re Parentage of J.H v. Robinson, 112 Wn App. 486, 496 (2002).

Under the circumstances, the Umbrella Association can show prejudice on

the trial court's part, and if remanded for a new trial, this case must be assigned to a new judge.

E. This Court Should Award Appellant Umbrella Association its Attorney Fees and Costs Related to this Appeal Pursuant to RAP 18.1 and RCW § 49.60 et seq. and RCW § 49.48 et seq.

RAP 18.1 provides that if applicable law grants a party the right to recover attorney fees or expenses on review, the party so entitled must make a request pursuant to RAP 18. RAP 18.1(b) requires the requesting party to devote a section of the brief to the request for fees or expenses. The Umbrella Association respectfully requests that this Court award it attorney fees and costs related to this appeal. Such fees and costs are authorized by Section 8.2 of the Umbrella Declaration (Plaintiffs' Ex. 8) to which the Millers and the Umbrella Association are parties.

IV. CONCLUSION

The Umbrella Association respectfully requests that this court reverse the trial court's Decision of August 28, 2006, and dismiss the Plaintiffs' case pursuant to CR 41(b)(3). In the alternative, the Umbrella Association requests that a mistrial be ordered, and the matter be remanded with an order for trial assignment before a different judge. The Umbrella Association further requests an award of its attorney fees on appeal.

RESPECTFULLY SUBMITTED this 8th day of May, 2007.

EISENHOWER & CARLSON, PLLC

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of May, 2007, I served Respondents with a copy of the foregoing document by depositing a true and correct copy of the foregoing Brief of Appellant, with ABC Legal Messengers to be delivered to the below-listed counsel:

Blake E. Marks-Dias
Riddell Williams P.S.
1001 4th Avenue, Suite 4500
Seattle, WA 98154-1065

DATED this 8th day of May, 2007.

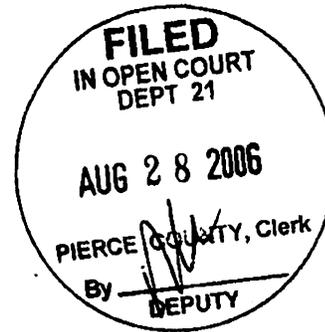

Kimberly S. Ruger

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STATE OF WASHINGTON
BY _____
DEPUTY

APPENDIX A



06-2-06029-1 26053719 ORDYMT 08-29-06



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

GOLD CREEK NORTH LIMITED PARTNERSHIP,
Plaintiff(s) ,

Cause No: 06-2-06029-1

vs.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND GRANTING EQUITABLE RELIEF

GOLD CREEK UMBRELLA ASSOCIATION,
Defendant(s)

FINDINGS OF FACT

1. The Gold Creek Parcel "A" Real Estate Purchase and Sale Agreement entered into December 27, 1979, between Plaintiffs Miller and Don Huber created an equitable covenant. The Covenant at Section 8 provides for a conditional future interest in the form of an easement burdening the servient estate, Gold Creek South.

The covenant provides for both reasonable road and utility access to the dominant estate, Gold Creek North.

The covenant further provides in relevant part "[T]he Seller's easement shall be granted and defined only in accordance with the following conditions:

...(iii) Sellers shall have no right to establish, define or use Seller's easement until written notice is given that Sellers will be commencing substantial development of their property...within six months"; and

1 "... (v) The location of Seller's easement shall be determined by mutual reasonable
2 agreement of Sellers, Buyers and the City..."

3 2. The Umbrella Agreement dated 5/18/82, Pierce County Auditor Recording no.
4 8205280311, includes an equitable covenant at Section 16.4 whereby an easement was
5 reserved for the benefit of Gold Creek North, including the right to "connect into and
6 branch off of the roadway improvements of the roadway parcel." The Umbrella
7 Agreement also provides utility easement bordering the surface and subsurface of the
8 Umbrella Property.

9
10 3. The Declarant Huber, d/b/a Gold Creek Limited Partnership, held an interest in
11 and rights to acquire Gold Creek North. Also joining in the Umbrella Declaration were
12 the Umbrella Association and Plaintiffs Miller. By joining the Umbrella Agreement
13 plaintiffs agreed at Article 24 of the Agreement to subordinate their interest in that
14 certain Gold Creek Real Estate Contract dated 12/27/79 and recorded 2/26/80,
15 Recording no. 2978048. (Plaintiff's Exhibit no. 6)

16 The Real Estate Contract provides in relevant part that the Buyer shall provide
17 the Seller an easement in accordance with Section 8 of the Gold Creek Real Estate
18 Purchase and Sale Agreement.

19
20 4. The easement reserved in favor of Huber at Section 16.4 of the Umbrella
21 Agreement expressly runs to his successors in interest and assigns, including Plaintiff
22 Miller who retained ownership of Gold Creek North. Under the Umbrella Agreement
23 Section 16.4 is a covenant running with the land and shall inure to the benefit of each
24 person who has at any time an interest or estate in Declarant's other parcel.

1 5. Declarant Huber's successors in interest to the Gold Creek South parcels
2 including the Millers, Citizens Federal Savings & Loan and Collins Condominium
3 Corporation as well as the Umbrella Association itself were burdened by the covenants
4 including the easement reserved in Section 16.4 of the Umbrella Agreement.

5 Article 2 of the Agreement provides that "...the covenants, conditions,
6 restrictions, reservations and easements stated in this Umbrella Declaration...shall be
7 deemed to run with the land."

8
9 6. Both Collins and Citizens Federal Savings & Loan acknowledged the reservation
10 of easement. The 10/25/85 Statutory Warranty Deed from Citizens Federal Savings &
11 Loan to Towne Collins recorded 10/29/85, Recording no. 8510290317, specifically
12 references that certain Amended Easement Agreement No. 8103060132 further
13 incorporating by reference the covenant originally granting Seller's easement at Section
14 8 of the 1979 Real Estate Purchase and Sale Agreement.

15 7. Defendants Umbrella Association had actual and constructive notice of the
16 covenant burdening their property. Evidence of defendant's notice includes but is not
17 limited to:

- 18 a) Defense exhibit no. 14 – Statutory Warranty Deed Conveyance to
19 Sweet dated 04/05/05: "Covenant set forth in instrument recorded
20 under Recording no. 8205280310, which amends instruments
21 recorded under Recording nos. 2978050 and 8103060132, that
22 easement described therein will be made for the benefit of the land
23 lying northeasterly of the northeasterly line of the within described
24 property, upon the fulfillment of certain conditions.
25

- 1 b) Defense exhibit no. 16 – Statutory Warranty Deed Conveyance to
2 Rawnsley, dated 9/11/98
3 Exceptions noted in Exhibit "A"
4 "Covenant set forth in instrument recorded under Auditor's nos.
5 2978050 and 8103060132 that the easement described therein will
6 be made for the benefit of the land lying northeasterly of the
7 northeasterly line of the within described property, upon the
8 fulfillment of certain conditions."
9
10 c) Real Estate Contract dated 12/27/79 recorded 2/26/80 no. 2978048
11 Referencing "Seller's Easement" per Section 8 of the Gold Creek
12 Real Estate Purchase and Sale Agreement.
13 d) Correction Deed from Miller to Huber dated 5/28/82 recorded
14 5/28/82, no. 8205280310, Exhibit "A" includes reference to "Seller's
15 Easement."
16 e) See also, Plaintiff's Exhibit no. 38, correspondence from attorney
17 Doug V. Alling representing Collins' Condominium Corporation
18 affirming reservation by plaintiff to access Gold Creek North.
19 f) Stipulation between plaintiff and Citizens Federal dated 8/21/85,
20 recorded 10/24/91 and recorded 11/6/92, no. 9110240445 reaffirm
21 "Seller's Easement" and other terms of 1979 Real Estate Purchase
22 and Sale Agreement between Miller and Huber.
23

24 8. Representatives of the Umbrella Association have opposed development of Gold
25 Creek North property since 1986.

1 6. The intent of the parties, as a matter of contract interpretation applying the
2 Hudesman v. Berg context rule, requires the parties and the City of Tacoma to agree on
3 the actual location of the easement. Plaintiff's partial non-performance of this condition
4 precedent is excused under the doctrine of futility.

5 7. Although Defendant Huber failed to acquire or record fee title to Gold Creek
6 North, this condition was performed by plaintiff's successors in interest within the five-
7 year period prescribed in Section 16.4 of the Umbrella Agreement.
8

9 **ORDER**

10 Therefore, it is ORDERED:

11 Defendant's motion for directed verdict is DENIED.

12 Plaintiffs shall consult the City of Tacoma and within 180 days from the date of
13 this order shall identify the exact location of easement(s) and obtain agreement of
14 defendant Umbrella Association, which shall not be unreasonably withheld.

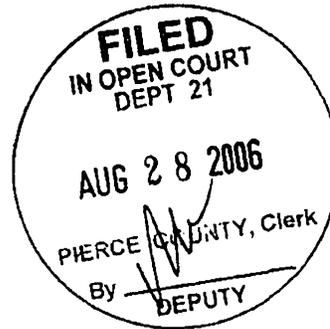
15 In the event the parties are unable to reach agreement on the actual location of
16 the easements, the parties shall pursue binding arbitration within 30 days after the
17 180-day negotiation period referenced above. Each party shall submit the name of an
18 arbitrator and unless the parties agree on one of the two, the two proposed arbitrators
19 shall nominate a third person to conduct binding arbitration regarding the actual location
20 of easements.
21
22
23
24
25

1 Defendants are permanently enjoined from interfering with plaintiff's good faith
2 attempts to quiet title in easements burdening the Gold Creek greenbelt parcels.

3 The affirmative defenses of laches, comparative innocence and joinder are
4 denied.

5 DATED this 28th day of August, 2006.

6 
7 JUDGE FRANK CUTHBERTSON



APPENDIX B

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085 REC 650

Filed for Record at Request of
and After Recording Return to

Russell F. Tousley, Esq.
Haggard, Tousley & Brain
1700 Daon Building
720 Olive Way
Seattle, WA 98101

RA
RONALD A. NIELSEN
PIERCE COUNTY WASH
DEPUTY

82 MAY 28 P 4: 00

RECORDED

GOLD CREEK

UMBRELLA DECLARATION

AND

COVENANTS, CONDITIONS, RESTRICTIONS,

EASEMENTS AND RESERVATIONS

8205280311

Table of Contents

	<u>Page</u>
ARTICLE 1. DEFINITIONS	1
Section 1.1 Words Defined	1
Section 1.2 Form of Words	3
Section 1.3 Inflationary Increase in Dollar Limits	3
ARTICLE 2. SUBMISSION OF ENTIRE PROPERTY TO UMBRELLA DECLARATION	3
ARTICLE 3. DESCRIPTION AND USE OF UMBRELLA PROPERTY AND IMPROVEMENTS	4
Section 3.1 Description	4
Section 3.2 Use	4
Section 3.3 Conveyance to Umbrella Association	5
ARTICLE 4. USE OF UMBRELLA PROPERTY	5
Section 4.1 Recreational Vehicle Parking Area Use and Restrictions	5
Section 4.2 Roadway Parcel Use and Restriction	5
Section 4.3 Umbrella Property Use and Restrictions	6
Section 4.4 Effect on Insurance	6
Section 4.5 Alteration of Umbrella Properties and Signs	6
Section 4.6 Pets	6
Section 4.7 Trees	7
ARTICLE 5. UMBRELLA ASSOCIATION	7
Section 5.1 Form of Association	7
Section 5.2 Membership	7
Section 5.3 Number of Votes	7
Section 5.4 Casting of Votes	8
Section 5.5 Annual and Special Meetings	8
Section 5.6 Audits	8
Section 5.7 Books and Records	9
Section 5.8 Bylaws of Umbrella Association	9
ARTICLE 6. NOTICES FOR ALL PURPOSES	9
Section 6.1 Form and Delivery of Notice	9
ARTICLE 7. ADMINISTRATION OF UMBRELLA PROPERTY; RIGHTS RETAINED BY DECLARANT	10
Section 7.1 Umbrella Transition Date	10
Section 7.2 Declarant's Powers until Umbrella Transition Date	10
Section 7.3 Transfer of Administration	11
ARTICLE 8. AUTHORITY OF THE UMBRELLA BOARD	11
Section 8.1 Adoption of Rules and Regulations	11

8205280311

	<u>Page</u>
Section 8.2 Enforcement of Umbrella Declaration, Etc.	12
Section 8.3 Goods and Services	12
Section 8.4 Managing Agent	13
Section 8.5 Protection of Umbrella Property	13
Section 8.6 Other Umbrella Board Powers	13
Section 8.7 Manager's Residence	13
ARTICLE 9. BUDGET AND ASSESSMENT FOR UMBRELLA EXPENSES	14
Section 9.1 Fiscal Year; Preparation of Budget	14
Section 9.2 Monthly Assessments	15
ARTICLE 10. LIEN AND COLLECTION OF ASSESSMENTS	16
ARTICLE 11. FAILURE OF UMBRELLA BOARD TO INSIST ON STRICT PERFORMANCE NO WAIVER	17
ARTICLE 12. LIMITATION OF LIABILITY	17
ARTICLE 13. INDEMNIFICATION	18
ARTICLE 14. INSURANCE	18
Section 14.1 Coverage Required	18
Section 14.2 Hazard Insurance	19
Section 14.3 Comprehensive Public Liability Insurance	19
Section 14.4 Additional Policy Provisions	20
Section 14.5 Fidelity Bonds	20
ARTICLE 15. DAMAGE AND REPAIR OF DAMAGE TO UMBRELLA PROPERTY	20
Section 15.1 Definitions	21
Section 15.2 Board Determination	21
Section 15.3 Notice of Damage	21
Section 15.4 Execution of Repairs	22
ARTICLE 16. EASEMENTS AND RESERVATIONS	22
Section 16.1 Nonexclusive Easements	22
Section 16.2 Construction and Sales Related Easements and Rights Reserved by Declarant	23
Section 16.3 Trail Linkage Easements	24
Section 16.4 Reservation of Access and Utilities Easements Related to Declarant's Other Parcel	24
Section 16.5 Reservation of Greenbelt Area Recreational Easement	25
ARTICLE 17. MERGER	27
ARTICLE 18. COVENANTS, CONDITIONS, RESERVATIONS AND EASEMENTS RUN WITH LAND AND ARE NOT EXTINGUISHABLE	27
ARTICLE 19. RESERVATION OF EASEMENT AND RIGHTS	28
ARTICLE 20. AMENDMENTS	28
ARTICLE 21. SEVERABILITY	29
ARTICLE 22. EFFECTIVE DATE	29
ARTICLE 23. SUBORDINATION BY EXISTING LIENORS	29
ARTICLE 24. JOINDER BY REAL ESTATE CONTRACT VENDORS AND SUBORDINATION BY VENDOR'S ASSIGNEE	29

8205280311

RECITALS

Declarant owns certain property in the City of Tacoma, Washington upon which it intends to develop condominium apartments and other improvements. Declarant envisions developing such apartments in four phases, the first of which has been completed.

Declarant for itself, its successors and assigns, including the condominium apartment owner associations now or hereafter created in connection with, and for the benefit of, any phase of the property, wishes hereby to vest in the Umbrella Association (as hereinafter defined) the power and responsibility to operate, preserve, maintain, repair, replace, manage and otherwise deal with certain areas and facilities located outside the properties dedicated to particular phases, for the benefit of the owners and occupants of all phases.

NOW, THEREFORE, Declarant declares as follows:

ARTICLE 1. DEFINITIONS

Section 1.1 Words Defined. For purposes of this Declaration and any amendments hereto, the following terms shall have the following meanings:

1.1.1 Condominium Act shall mean the Horizontal Property Regimes Act of the state of Washington, Laws of 1963, Chapter 156, presently codified in Chapter 64.32, Revised Code of Washington, as now or hereafter amended.

1.1.2 Condominium Apartment shall mean an apartment established by a Condominium Declaration on a Phase Parcel.

1.1.3 Condominium Association shall mean an Association of Apartment Owners created by and pursuant to a Condominium Declaration subjecting a Phase Parcel to the Condominium Act.

1.1.4 Condominium Declaration shall mean a Declaration subjecting a Phase Parcel to the Condominium Act.

1.1.5 Declarant shall mean Gold Creek Limited Partnership, a Washington Limited Partnership and its successors and assigns.

1.1.6 Declarant's Other Parcel shall mean the land described on Exhibit C.

1.1.7 Entire Property shall mean the land described on Exhibit A as the "Entire Property" and shall include the Phase Parcels and the Umbrella Property.

1.1.8 Greenbelt Area shall mean the Umbrella Property except (i) the Recreational Vehicle Parking Area, (ii) the Roadway Parcel and (iii) any landscaped area in the vicinity of the Recreational Vehicle Parking Area or the Roadway Parcel.

1.1.9 Owner shall mean the record holder of fee title, whether one or more persons, to (i) a Condominium Apartment located on a Phase Parcel subjected to the Condominium Act or (ii) in the case of any Phase Parcel not at the time subjected to the Condominium Act, the Phase Parcel, provided that if such apartment or Phase Parcel has been sold on contract, the contract purchaser shall exercise the rights of the record title holder for purposes of the Umbrella Declaration, the Umbrella Association and the Umbrella Board except as otherwise stated herein.

1.1.10 Phase Parcel shall mean the several parcels of land described on Exhibit B as Phase Parcel I, Phase Parcel II, Phase Parcel III, or Phase Parcel IV.

1.1.11 Person shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

1.1.12 Property shall mean the land and the buildings and all improvements and structures now or hereafter placed on the land described in Exhibit A.

1.1.13 Recreational Vehicle Parking Area means the portion of the Umbrella Property legally described on Exhibit B hereto.

1.1.14 Roadway Parcel shall mean the portion of the Umbrella Property legally described on Exhibit B as the Roadway Parcel.

1.1.15 Umbrella Association shall mean the Gold Creek Umbrella Association, a Washington non-profit

corporation.

1.1.16 Umbrella Board shall mean the board of directors of the Umbrella Association.

1.1.17 Umbrella Bylaws shall mean the bylaws of the Umbrella Association.

1.1.18 Umbrella Declaration shall mean this Gold Creek Umbrella Declaration and Covenants, Conditions, Restrictions, Easements and Reservations.

1.1.19 Umbrella Property shall mean the Entire Property except the Phase Parcels.

1.1.20 Umbrella Transition Date shall have the meaning set forth in Section 7.1.

Section 1.2 Form of Words. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and neuter pronouns shall be used interchangeably. The locative adverbs "herein", "hereunder", "hereto", "hereby", "hereinafter", etc., whenever used herein shall mean and refer to this Umbrella Declaration in its entirety and not to any specific Article, Section or other part thereof.

Section 1.3 Inflationary Increase in Dollar Limits. The dollar amounts specified in Articles 8, 14 and 15 and Section 4.6 may, in the discretion of the Board, be increased proportionately by the increase in the CPI from the base period to adjust for any inflation in the value of the dollar. "CPI" means the Seattle area consumer price index for All Urban Consumers, all items, prepared by the United States Department of Labor, or if the All Urban Consumers index is discontinued, then the closest successor or supplanting index selected by the Board in its discretion. "Base period" shall be the period during which this Declaration is recorded.

ARTICLE 2. SUBMISSION OF ENTIRE PROPERTY TO UMBRELLA DECLARATION

Declarant, being the sole Owner of the Entire Property, makes this Declaration for the purpose of submitting and subjecting the Entire Property to this Umbrella Declaration. Declarant hereby declares that the

Entire Property is and shall be held, used, conveyed, encumbered, leased, occupied, rented, and improved subject to the covenants, conditions, restrictions, reservations, and easements stated in this Umbrella Declaration, all of which are declared and agreed to be in furtherance of the interests of the Owners and occupants of improvements now or hereafter on the Phase Parcels and shall be deemed to run with the land and be a burden and benefit to Declarant, its successors, and assigns, and all Persons, including Owners, who now or hereafter own or acquire an interest in any Phase Parcel or any part thereof, including a Condominium Apartment, and their grantees, successors, heirs, executors, administrators, and assigns.

ARTICLE 3. DESCRIPTION AND USE OF UMBRELLA PROPERTY AND IMPROVEMENTS

Section 3.1 Description. The Umbrella Property and Improvements consist of the following:

3.1.1 The land described in Exhibit A, except the Phase Parcels described on Exhibit B.

3.1.2 The roadways on or about the Roadway Parcel which provide vehicular access to and from the Phase Parcels and Narrows Drive.

3.1.3 The security guard kiosk.

3.1.4 The sidewalks on or about the Roadway Parcel which provide pedestrian access to and from the Phase Parcels and Narrows Drive.

3.1.5 The Recreational Vehicle Parking Area.

3.1.6 The Greenbelt Area, including trails, picnic and other recreational facilities now or hereafter located therein or thereon.

3.1.7 The lawns located on the Entire Property outside the Phase Parcels.

Section 3.2 Use. Each Owner, his agents, servants, tenants, family members, invitees, and licensees shall have the right to use the Umbrella Property and Improvements in common with all other Owners, subject to and in accordance with this Umbrella Declaration, the

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Umbrella Bylaws, and the rules and regulations established by the Umbrella Board from time to time. No Owner or Condominium Association shall by act or omission seek to abandon, partition, divide, subdivide, encumber, sell or transfer the Umbrella Property and improvements to any other Person whatsoever.

Section 3.3 Conveyance to Umbrella Association. Declarant hereby covenants to convey the Umbrella Property to the Umbrella Association by an instrument recorded before the first sale or conveyance of any Condominium Apartment or Phase Parcel I.

ARTICLE 4. USE OF UMBRELLA PROPERTY

Section 4.1 Recreational Vehicle Parking Area Use and Restrictions. The Umbrella Board shall establish rules and regulations for use of the Recreational Vehicle Parking Area by Owners. All automobiles, trucks, boats, trailers, recreational vehicles or any other kind of motorized or non-motorized vehicle, item or equipment may be parked and kept in the Recreational Vehicle Parking Area only in accordance with and subject to the rules and regulations established by the Umbrella Board. The Umbrella Board shall have the right to impose, charge and collect fees for use of the Recreational Vehicle Parking Area. The fees and charges imposed by the Umbrella Board may be flat or variable as the Umbrella Board sees fit in its full and complete discretion from time to time, and may be collected monthly in advance. All fees and charges imposed in connection with the Recreational Vehicle Parking Area shall belong to the Umbrella Association as part of its general funds and shall be taken into consideration in establishing budgets and assessments pursuant to this Declaration. The Umbrella Board may upon ten days written notice require removal of any inoperative vehicle or any unsightly vehicle or any other equipment or item improperly found in the Recreational Vehicle Parking Area. A written notice affixed to the vehicle, item or equipment shall be considered notice in addition to and irrespective of any other notice. If the vehicle, item or equipment is not removed within 72 hours after the written notice is affixed to the vehicle or otherwise delivered to the Owner, the Umbrella Board may cause removal at the expense and risk of the Owner thereof.

Section 4.2 Roadway Parcel Use and Restrictions. The Roadway Parcel shall be used only for vehicular and

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pedestrian ingress and egress and no vehicle (including, without limitation, automobiles or other kinds of motorized or non-motorized vehicles described in Section 4.1) shall be parked on or about the Roadway Parcel. The Umbrella Board may, without notice, cause removal of any such vehicle at the expense and risk of the Owner thereof.

Section 4.3 Umbrella Property Use and Restrictions. Subject to other applicable provisions of this Umbrella Declaration, each Owner shall have the right to use the Umbrella Property and improvements thereon for their intended use provided that the use and enjoyment hereof shall be controlled and governed by the Umbrella Board and the rules and regulations established by the Umbrella Board in connection therewith from time to time.

Section 4.4 Effect on Insurance. Nothing shall be done or kept on in or about the Umbrella Property which will increase the rate of insurance on the Umbrella Property, or which would result in cancellation of insurance on any of the Umbrella Property, or which would be in violation of any applicable law, without the prior written consent of the Umbrella Board.

Section 4.5 Alteration of Umbrella Properties and Signs. Nothing shall be altered, installed, placed or constructed in, on or about, or removed from, any Umbrella Property or improvements, except with the prior written consent of the Umbrella Board. No sign of any kind shall be displayed to the public view on any Umbrella Property without the prior written consent of the Umbrella Board. This section shall not apply to Declarant.

Section 4.6 Pets. No pet, which term includes without limitation livestock, domestic or other animals, poultry, reptiles or living creatures of any kind, shall be raised, bred, or kept in, on or about any Umbrella Property. Any pet on the Umbrella Property shall be on a leash at all times that it is in, on or about the Umbrella Property and shall at all times be subject to rules and regulations adopted by the Umbrella Board, or Bylaws adopted by the Umbrella Association. Pets shall at all times be kept away from plants, flowers, shrubs, hedges, lawns, trees, etc., of the Umbrella Property. No Owner will allow a pet to relieve itself on Umbrella Property, including the Greenbelt Area. If an Owner violates the provisions hereof with respect to pet relief, the Umbrella

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Board may, in its discretion, designate the particular pet a nuisance and impose a \$100 per month charge against the Owner of the designated pet which assessments shall be chargeable against the Owners' Apartment as an additional special assessment under Section 19.1 of the Phase Parcel Condominium Declaration applicable to the Owner's Apartment and any such special pet assessment shall, for purposes of this Umbrella Declaration, be fully chargeable and enforceable against the Apartment under Article 19 of the applicable Phase Parcel Declaration as if such amount were a regular monthly assessment under said Article 19. The Umbrella Board may also at any time require the removal of any pet which it finds is disturbing other Owners or tenants unreasonably, in the Board's determination, and may exercise this authority for specific pets even though other pets are permitted to remain.

Section 4.7 Trees. No trees or other plants located in the Greenbelt Area shall be planted, topped, cut or removed by any Owner or Condominium Association without the prior written consent of the Umbrella Board.

ARTICLE 5. UMBRELLA ASSOCIATION

Section 5.1 Form of Association. The Umbrella Association will be a nonprofit corporation formed by Declarant under the laws of the state of Washington.

Section 5.2 Membership. The members of the Umbrella Association shall be the Condominium Association of each Phase Parcel having a Condominium Association or the Owner (as defined in Section 1.1.7(ii) hereof), including Declarant, of any Phase Parcel not subjected to the Condominium Act. If any Phase Parcel, or any portion thereof, is removed from the Condominium form of ownership and use, other than through condemnation or eminent domain proceedings, the Owners of any interest in such removed real property shall be members of the Umbrella Association and shall have all responsibilities and duties of such membership.

Section 5.3 Number of Votes. The total voting power of the Umbrella Association shall be 100 votes. Each member of the Umbrella Association shall have the following votes:

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<u>Phase Parcel</u>	<u>Votes</u>
I	42.00
II	18.00
III	20.00
IV	20.00
Total	100.00

The voting power of each member of the Umbrella Association shall always remain as aforesaid regardless of anything set forth in the Condominium Declaration as now or hereafter in effect for the particular Phase Parcel.

Section 5.4 Casting of Votes. The vote for each Phase Parcel must be cast as a unit and such votes shall not be otherwise cast. In the event that all votes for a Phase Parcel are cast otherwise than as a unit, none of said votes shall be counted and said votes shall be deemed void with regard to the matter for which the votes were cast.

Section 5.5 Annual and Special Meetings. There shall be an annual meeting of the members of the Umbrella Association in the first quarter of each fiscal year of the Umbrella Association at such reasonable place and time as may be designated by written notice from the Umbrella Board delivered to the members no less than 30 days before the meeting. Special meetings of the members of the Umbrella Association may be called at any time, in the manner provided in the Bylaws, for any purpose for which the approval of the Umbrella Association is required, or for any other reasonable purpose.

Section 5.6 Audits. At the annual meeting, there shall be presented an audit, prepared within 90 days following the end of the preceding fiscal year by a certified or licensed public accountant who is not a member of the Umbrella Board or an Owner, of the expenses, itemizing receipts and disbursements for such fiscal year and the allocation thereof to each Phase Parcel, and a presentation of the estimated Umbrella Property expenses for the current fiscal year. The Umbrella Board at any time, or Persons having 45% of the voting power of the Umbrella Association, may require that an audit of the Umbrella Association and management books be presented at

any special meeting. An Owner, at his expense, may at any reasonable time conduct an audit of the books of the Umbrella Board and the Umbrella Association.

Section 5.7 Books and Records. The Umbrella Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures of the Umbrella Association, in a form that complies with generally accepted accounting principles. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers, and other records of the Umbrella Association shall be available for examination by the Owners, Condominium Apartment Mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.

Section 5.8 Articles and Bylaws of the Umbrella Association. Before the Umbrella Transition Date Declarant will adopt articles of incorporation and, under its authority to act as the Umbrella Board, will adopt the Umbrella Bylaws to supplement this Declaration and to provide for the administration, management and operation of the Umbrella Association and the Umbrella Property and for such other purposes as are not inconsistent with this Umbrella Declaration. Declarant may, without the necessity of obtaining the consent of any Owner, amend the Umbrella Articles and Umbrella Bylaws from time to time until the Transition Date. After the Umbrella Transition Date the Umbrella Bylaws may be amended by the Umbrella Board, provided that no provision of the Umbrella Bylaws may be adopted which is inconsistent with this Umbrella Declaration.

ARTICLE 6. NOTICES FOR ALL PURPOSES

Section 6.1 Form and Delivery of Notice. All notices given under the provisions of this Umbrella Declaration or the Bylaws or rules or regulations of the Umbrella Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third day of regular mail delivery after a copy has been deposited in the United States mail, first class, postage prepaid, addressed to the Person entitled to such notice at the most recent address known to the Umbrella Board. Notice to the Owner of any Condominium

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Apartment shall be sufficient if mailed or delivered to the apartment if no other mailing address has been given to the Umbrella Board.

ARTICLE 7. ADMINISTRATION OF UMBRELLA PROPERTY; RIGHTS RETAINED BY DECLARANT

Section 7.1 Umbrella Transition Date. The "Umbrella Transition Date" shall be the date control of the Umbrella Property passes from Declarant to the Umbrella Association. The Umbrella Transition Date will be the earlier of either (i) the date designated by Declarant in a written notice to Owners, which date may at Declarant's election be any date after this Umbrella Declaration has been recorded; or (ii) the 120th day after all Phase Parcels have been subjected to the Condominium Act and, in the case of each Phase Parcel, control of the Phase Parcel Condominium has passed from Declarant to the Phase Parcel Owners' Association, determined in accordance with the provisions of each Phase Parcel Condominium Declaration; or (iii) seven years from the date this Umbrella Declaration is recorded.

Section 7.2 Declarant's Powers until Umbrella Transition Date. Until the Umbrella Transition Date, Declarant shall have the full power and authority to exercise all of the rights, duties, and functions of the Umbrella Board and the officers of the Umbrella Association, including but not limited to the adoption of rules and regulations, contracting for the purchase of goods and services, buying insurance, and collecting and expending all assessments and other Umbrella Association funds. Declarant shall have the power to contract with an experienced professional managing agent (the "Managing Agent") and delegate to the Managing Agent all of the powers and duties of the Umbrella Board that the Umbrella Board is authorized to delegate under Section 8.4. All such management contracts made by Declarant shall be subject to the same requirements as are set forth in Section 8.4 for management contracts made by the Umbrella Board. Declarant may at such times as it deems appropriate select and from time to time replace an interim board of three to five directors, who need not be Owners, who shall have all the powers, duties, and functions of the Umbrella Board. Any contract made by Declarant, its Managing Agent, or the interim board (including management contracts) that would otherwise

extend beyond the Umbrella Transition Date shall be terminable by the Umbrella Board after the Transition Date upon 30 days' notice.

Section 7.3 Transfer of Administration. On the Umbrella Transition Date the authority and responsibility to administer and manage the Umbrella Association and the Umbrella Property, subject to this Declaration and the Bylaws, shall pass to the Umbrella Association. The Umbrella Association shall be governed by a Board (that is, the first Board elected by the Owners on or after the Umbrella Transition Date) consisting of nine Persons, each of whom, except as provided herein, is a member of a Board of Directors of Condominium Associations of Phase Parcels subjected to the Condominium Act but between the Umbrella Transition Date and the subjection of a Phase Parcel to the Condominium Act, the Owner of the Phase Parcel shall appoint its representatives to the Umbrella Board. Each Owner of a Phase Parcel or Phase Parcel Condominium Association shall provide two persons to serve upon the Umbrella Board and those eight members of the Umbrella Board shall select, from the Phase Parcel Condominium Associations Boards of Directors, the ninth member of the Umbrella Board. Should any Phase Parcel be removed from the Condominium form of ownership and use, the members of the Board of the Umbrella Association for that particular Phase Parcel shall be selected by the Owners of such Phase Parcel.

ARTICLE 8. AUTHORITY OF THE UMBRELLA BOARD

Section 8.1 Adoption of Rules and Regulations. The Umbrella Board is empowered to adopt, amend, and revoke on behalf of the Umbrella Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Umbrella Declaration and to promote the comfortable use and enjoyment of the Umbrella Property by Phase Parcel Owners. The rules and regulations of the Umbrella Association shall be binding upon all Phase Parcel Owners and occupants and all other Persons claiming any interest in the Umbrella Property or a Phase Parcel. The Umbrella Board shall operate, preserve, maintain, repair, replace and manage the Umbrella Association and the Umbrella Property in accordance with this Umbrella Declaration and shall have all of the powers, authority, duty and responsibilities

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set forth in this Umbrella Declaration, including, but not limited to, those requirements relating to rules and regulations, enforcement of this Umbrella Declaration, providing goods and services, obtaining a managing agent, protecting the Umbrella Property, audits, books and records, inspection of documents, reserve funds and annual reports.

Section 8.2 Enforcement of Umbrella Declaration, Etc. The Umbrella Board (or Declarant, or Declarant's Managing Agent, or the interim board of directors until the Umbrella Transition Date) shall have the power and the duty to enforce the provisions of this Umbrella Declaration, the Umbrella Articles, the Umbrella Bylaws, and the rules and regulations of the Association for the benefit of the Umbrella Association. The failure of any Owner to comply with the provisions of this Umbrella Declaration, the Umbrella Articles, the Umbrella Bylaws, or the rules and regulations of the Umbrella Association will give rise to a cause of action in the Umbrella Association (acting through the Umbrella Board) and any aggrieved Owner for recovery of damages, or injunctive relief, or both. If a legal action is brought to interpret or enforce compliance with the provisions of this Umbrella Declaration, the Umbrella Articles, the Umbrella Bylaws, or the rules or regulations of the Umbrella Association, the prevailing party shall be entitled to judgement against the other party for its reasonable expenses, court costs, and attorney's fees in the amount awarded by the Court.

Section 8.3 Goods and Services. The Umbrella Board shall acquire and pay for as common expenses of the Umbrella Association all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Umbrella Association and the Umbrella Property. The goods and services shall include (by way of illustration and not limitation) utility services, policies of insurance and fidelity bonds; legal and accounting services; maintenance, repair, landscaping, gardening, and general upkeep of the Umbrella Property, and all supplies, materials, fixtures, and equipment that are in the Umbrella Board's judgment necessary or desirable for the operation of the Umbrella Property and enjoyment of it by the Phase Parcel Owners. The Umbrella Board may hire such full-time or part-time employees as it considers necessary.

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Section 8.4 Managing Agent. The Umbrella Board may, but shall not be required to, contract with an experienced professional Managing Agent to assist the Umbrella Board in the management and operation of the Umbrella Property and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. Only the Umbrella Board and not its Managing Agent, however, can approve an annual budget or a supplemental budget or impose a special assessment on a Condominium Apartment or authorize foreclosure of an assessment lien. Any contract with a Managing Agent shall have a term no longer than one year (but may be renewable by agreement of the parties for successive one-year periods) and shall be terminable by the Umbrella Board without payment of a termination fee, either for cause on 30 days' written notice or without cause on not more than 90 days' written notice.

Section 8.5 Protection of Umbrella Property. The Umbrella Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Umbrella Property, settle claims, or otherwise act in what it considers to be the best interests of the Phase Parcel Owners or the Umbrella Association, including granting easements to utility companies or other third parties, regardless of whether any such easement benefits the Umbrella Property, a Phase Parcel, or otherwise.

Section 8.6 Other Umbrella Board Powers. The Umbrella Board may, from common funds of the Association, acquire and hold in the name of the Umbrella Association, for the benefit of the Owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise; and the beneficial interest in such property shall be owned by the members in the same proportion as their respective voting rights in the Umbrella Association, and such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Umbrella Association as the Umbrella Board may direct.

Section 8.7 Manager's Residence. The Umbrella Board may elect, pursuant to its powers under Section 8.6, to acquire a Condominium Apartment or other residence hereafter located in Phase Parcel IV which residence

05/18/82
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shall, for so long as it is owned by the Umbrella Association, be used only as a residence for the Umbrella Association's duly appointed general manager of property now or hereafter under the control of the Umbrella Board, under whatever arrangements are acceptable to the Umbrella Board in its discretion.

ARTICLE 9. BUDGET AND ASSESSMENT FOR UMBRELLA EXPENSES

Section 9.1 Fiscal Year; Preparation of Budget.
The Umbrella Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year. Within thirty (30) days prior to the beginning of each fiscal year, the Umbrella Board shall estimate the charges (including common expenses, and any special charges for particular Owners of Phase Parcels) to be paid during such year; shall make provision for creating, funding and maintaining reasonable reserves for contingencies and operations, as well as for repair, replacement and acquisition of Umbrella Property improvements; and shall take into account any expected income and any surplus available from the prior year's operating fund. "Common expenses" includes but is not limited to (i) expenses of administration, maintenance, operation, repair or replacement of the Umbrella Property and improvements, including security guards and other employees, (ii) premiums on all insurance policies required by this Declaration, (iii) all real property and other taxes and assessments on the Umbrella Property or improvements, and (iv) expenses agreed upon as common expenses by the Umbrella Association or the Umbrella Board. Without limiting the generality of the foregoing but in furtherance thereof, the Umbrella Board shall create and maintain from regular monthly assessments a reserve fund for maintenance and repairs and for replacement of those Umbrella Property improvements which can reasonably be expected to require replacement prior to the end of the useful life of all Phase Parcel buildings. The Umbrella Board shall calculate the contributions to said reserve fund so that there are sufficient funds therein to replace each improvement or betterment covered by the fund at the end of its estimated useful life. The Declarant or initial Umbrella Board may at any suitable time establish the first such estimate. If the sum estimated and budgeted at any time proves inadequate for any reason (including non-payment for any reason of any

Owner's assessment), the Board may at any time levy a further assessment, which shall be assessed to the members in like proportions. Notwithstanding any provisions of this Article 9, until all Phase Parcels have been subjected to the Condominium Act, Declarant may elect to collect neither the full budgeted assessment for each month or any assessments for reserve funds or working capital funds and instead may collect and expend only the actual costs of operation of the Umbrella Property improvements.

Section 9.2 Monthly Assessments.

9.2.1 The sums required by the Umbrella Association for expenses as reflected by the annual budget and any supplemental budgets shall be divided into equal installments to be paid each month over the period of time covered by the budget or supplemental budget. Each member of the Umbrella Association shall be responsible for that portion of the Umbrella Association's budget which represents the percentage of votes such member has in the Umbrella Association. Such amount of the common expenses for which each member of the Umbrella Association is responsible shall be a common expense of that member and, if a member's Phase Parcel is hereafter subjected to the Condominium Act, shall also be assessed against the Condominium Apartment Owners of that member in accordance with the assessment provisions of the member's Condominium Declaration. In addition, the Umbrella Association may make a special assessment against a member to the extent it renders service to or in connection with the Common Areas and Facilities, including trees, on or about the Phase Parcel of a member; any such special assessment shall, a member's Phase Parcel is hereafter subjected to the Condominium Act, also be assessed against the Condominium Apartment Owners of that member in accordance with the assessment provisions of member's Condominium Declaration. If any Phase Parcel is removed from the condominium form of ownership and use, such amount of common expenses or special assessments attributable to such Phase Parcel shall be assessed against all Owners of that Phase Parcel. Any failure of the Umbrella Association to make a budget or assessment shall not be deemed a waiver or modification with respect to the Umbrella Association or a release of any member of the Umbrella Association from the obligations to pay assessments.

05/18/82

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ARTICLE 10. LIEN AND COLLECTION OF ASSESSMENTS

The lien for Umbrella Association and Umbrella Property expense assessments and special assessments shall be enforceable by the Umbrella Association against its members as well as by each Condominium Association of any Phase Parcel for those assessments made by the Umbrella Association against its members. Collection of such assessments by the Umbrella Association shall be in accordance with the provisions (including limitations with respect to a First Mortgagee (as defined in the applicable Phase Parcel Condominium Declaration) of a Condominium Apartment) for collection of assessments set forth in the Condominium Declaration subjecting the Phase Parcel to the Condominium Act regardless of whether the Phase Parcel or portion has been removed from the condominium form of ownership and use. The Umbrella Board and the Umbrella Association shall for purposes hereof, have all of the rights of the Board of a Phase Parcel of a Condominium Association set forth in Article 19 of the applicable Phase Parcel Condominium Declaration the provisions of which are incorporated by reference as if fully here set forth. Should any Phase Parcel or portion thereof be removed from the condominium form of ownership and use, the assessments of the Umbrella Association shall constitute a lien against the removed real property, from the date of assessment. If the ownership of such removed property is divided among various Owners, such lien shall be against the interests in the real property which each such Owner shall have. The rights and powers of the Umbrella Association to bring suit for unpaid assessments and to assert and foreclose liens against real property subject to the Umbrella Declaration which does not become subjected to or becomes removed from the condominium form of ownership and use shall not be affected by the real property's such non-subjection or removal, and the rights and powers of the Umbrella Association shall remain against the non-subjected or removed real property and the Owners thereof (i) in the case of removed real property, as if the real property had not been removed from the condominium form of ownership and use, and (ii) in the case of non-subjected real property as if the real property had in fact been subjected to the Phase Parcel I Condominium Declaration concurrently recorded herewith and were subject to Article 19 thereof, the terms and provisions of which Article 19 are incorporated by

05/18/82
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reference as if fully here set forth, and for purposes of this Umbrella Declaration, any reference in the said Article 19 to "apartment owner" shall mean an Owner as defined herein. The Umbrella Board may from time to time establish late charges and a rate of interest to be charged on assessments that may thereafter be delinquent in the absence of another established, non-usurious rate, delinquent assessments shall bear interest at the rate of 12% per annum. In any action to collect delinquent assessments, the prevailing party shall be entitled to recover as a part of its judgement a reasonable sum for attorneys' fees and all costs and expenses reasonably incurred in connection with the prosecuting of the action, in addition to costs permitted by law. The remedies provided herein are cumulative and the Umbrella Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

ARTICLE 11. FAILURE OF UMBRELLA BOARD TO INSIST ON STRICT PERFORMANCE NO WAIVER

The failure of the Umbrella Board in any instance to insist upon the strict compliance with this Umbrella Declaration or the Umbrella Bylaws or rules and regulations established by the Umbrella Board, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Umbrella Board of payment of any assessment from a member of the Umbrella Association or from an Owner, with knowledge of any breach by the member or the Owner, shall not be a waiver of the breach. No waiver by the Umbrella Board of any requirement shall be effective unless expressed in writing and signed for the Umbrella Board. This Article also extends to the Declarant, Declarant's Managing Agent, and the interim board of directors, exercising the power of the Umbrella Board before the Umbrella Transition Date.

ARTICLE 12. LIMITATION OF LIABILITY

So long as an Umbrella Board member, or Umbrella Association committee member, or Umbrella Association officer, or Declarant or the Managing Agent has acted in good faith, without willful or intentional misconduct,

upon the basis of such information as is then possessed by such Person, then no such Person shall be personally liable to any Owner, or to any other Person, including the Umbrella Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such Person; provided, that this section shall not apply where and to the extent the consequences of such act, omission, error, or negligence are covered by insurance obtained by the Umbrella Board.

ARTICLE 13. INDEMNIFICATION

Each Umbrella Board member and Association committee member and Association officer, and Declarant and the Managing Agent shall be indemnified by the Umbrella Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in such cases wherein such Person is adjudged guilty of willful misfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification shall apply only when the Umbrella Board approves such settlement and reimbursement as being for the best interests of the Umbrella Association.

ARTICLE 14. INSURANCE

Section 14.1 Coverage Required. The Umbrella Board shall cause the Umbrella Association to purchase and maintain at all times as a common expense, with such deductible provisions as the Umbrella Board deems advisable, a policy or policies and bonds necessary to provide hazard insurance (more fully described in Section 14.2); comprehensive liability insurance (more fully described in Section 14.3); fidelity bonds (more fully described in Section 14.4); workmen's compensation insurance to the extent required by applicable laws; insurance against loss of personal property of the Umbrella Association by fire, theft, or other causes; insurance, if available, for the protection of the Umbrella Association's directors, officers, and

representatives from personal liability in the management of the Umbrella Association's affairs; and such other insurance as the Umbrella Board deems advisable. The Umbrella Board shall review the adequacy of the Umbrella Association's insurance coverage at least annually.

Section 14.2 Hazard Insurance. The hazard insurance policy shall be a blanket multi-peril type policy covering all property of any type now existing or hereafter constructed, reconstructed, repaired or acquired. It shall, at a minimum, consist of a standard form fire insurance policy, in an amount equal to the full replacement cost (i.e., 100% of current replacement cost exclusive of land, foundation, excavation, and other items normally excluded from coverage) of all buildings, fixtures and equipment belonging to the Umbrella Association with an "Agreed Amount Endorsement" or its equivalent, and an "Increased Cost of Construction Endorsement" or its equivalent, "Demolition and Contingent Liability from Operation of Building Laws Endorsement" or its equivalent, an "Earthquake Damage Endorsement" or its equivalent, as the Umbrella Board deems necessary and are available. In addition to protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, the policy shall provide protection against loss or damage from sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as are customarily covered with respect to improvements of similar construction in the greater Tacoma area.

Section 14.3 Comprehensive Public Liability Insurance. The comprehensive policy of public liability insurance shall insure the Umbrella Board, the Umbrella Association, the Phase Owners, Declarant, and the Managing Agent, and cover all of the Umbrella Property and improvements, with a "Severability of Interest Endorsement" or equivalent coverage which would preclude the insurer from denying the claim of any Owner or other Person, including Condominium Association because of the negligent acts of the Umbrella Association, or of another Condominium Association or Owner, and shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to projects of similar construction in the greater Tacoma area. The limits of liability shall be not

less than five million dollars for all claims for personal injury and/or property damage arising out of a single occurrence.

Section 14.4 Additional Policy Provisions. Any insurance obtained pursuant to Sections 14.2 and 14.3 above shall contain the following provisions and limitations:

14.4.1 The named insured shall be the Umbrella Association.

14.4.2 Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all insured named therein and to each Condominium Association.

14.4.3 A waiver of subrogation by the insurer as to any and all claims against the Umbrella Association and any Condominium Association Owner, and/or their respective agents, employees, or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

Section 14.5 Fidelity Bonds. The required fidelity bonds shall afford coverage to protect against dishonest acts on the employees of the Umbrella Association or the Managing Agent and all other Persons who handle or are responsible for handling funds of the Umbrella Association and be in an amount equal to at least 150% of the estimated annual operating expenses of the Umbrella Association and Umbrella Property, including reserves. All such fidelity bonds shall name the Umbrella Association as an obligee, contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression, and provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all insureds named therein, including the Umbrella Association, and each Condominium Association.

ARTICLE 15. DAMAGE AND REPAIR OF DAMAGE TO UMBRELLA PROPERTY

05/18/82
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Section 15.1 Definitions. As used in this Article 15, the following terms shall have the following meanings:

15.1.1 "Damage" shall mean all kinds of damage, whether of slight degree or total destruction.

15.1.2 "Repair" shall mean restoring the improvements to substantially the same condition in which they existed before they were damaged, subject to modifications to conform to applicable governmental rules and regulations or available means of construction.

Section 15.2 Board Determination. In the event of damage to any part of the Umbrella Property, the Umbrella Board shall promptly, and in all events within 30 days after the date of damage, make the following determinations with respect thereto, employing such advice as the Umbrella Board deems advisable:

15.2.1 The nature and extent of the damage, together with an inventory of the improvements and Property directly affected thereby.

15.2.2 A reasonably reliable estimate of the cost to repair the damage, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

15.2.3 The expected insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.

15.2.4 The amount, if any, by which the estimated cost of repair exceeds the expected insurance proceeds and the amount of the assessments that would have to be made against each member of the Umbrella Association if the excess cost were to be paid as a maintenance expense and specially assessed against all the members in proportion to their respective votes in the Umbrella Association.

Section 15.3 Notice of Damage. The Umbrella Board shall promptly, and in all events within 30 days after the date of damage in excess of \$100,000, provide each Owner of a Condominium Apartment with a written

notice describing the damage and summarizing the Umbrella Board's determinations made under Section 15.2. The Umbrella Board shall, for this purpose, be entitled to rely upon information provided to it by each of its Phase Parcel members as to Apartment Owners and their addresses.

Section 15.4 Execution of Repairs.

15.4.1 The Umbrella Board shall promptly repair the damage and use any available insurance proceeds therefor. If the cost of repair exceeds available insurance proceeds, the Umbrella Board shall impose a special assessment against all members in proportion to their respective votes in the Umbrella Association.

15.4.2 The Umbrella Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others, and to take such other action as is reasonably necessary to effectuate the repair. Contracts for the repair work shall be awarded when the Umbrella Board, by means of insurance proceeds and sufficient assessments, has made provision for the cost thereof. The Umbrella Board may further authorize the insurance carrier to proceed with the repair work if the Umbrella Board is satisfied that such work will be satisfactorily carried out, and such authorization does not contravene any other agreement to which the Umbrella Association may be a party or any requirement of applicable law.

ARTICLE 16. EASEMENTS AND RESERVATIONS

Section 16.1 Nonexclusive Easements. Subject to limiting provisions (i) of the Umbrella Declaration or (ii) set forth in or arising out of a Phase Parcel Condominium Declaration or the Condominium Act and having to do with the restricted use of limited Common Areas (as defined in any Condominium Declaration): Declarant hereby grants, reserves and declares for the benefit of the present and future Owners, including Declarant, of all or any part of the Entire Property, and each of their grantees, successors, heirs, executors, administrators, and assigns the following nonexclusive easements:

- (i) An easement to use, for ingress and egress, all roadways, walkways and pathways as they now exist or are hereafter constructed or

05/18/82
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modified (provided, however, that they shall not be so modified as to preclude their convenient use for ingress and egress); and

- (ii) An easement to use for their intended purposes, the recreational, maintenance, public parking, and other areas and facilities on the Entire Property as they now exist or are hereafter constructed or modified (provided, however, that they shall not be so modified as to preclude their convenient use for their intended purposes); and
- (iii) An easement to have access to and to tie into and utilize any water, sanitary sewer, storm sewer, electricity, gas, telephone, cable television and other utility lines as they now exist or are hereafter constructed or modified (provided, however, that they shall not be so modified as to preclude their convenient use for their intended purposes and provided further that the rights granted and reserved hereby in connection with utilities shall not be exercised in a manner that will overload or materially impair the use and enjoyment thereof).

Section 16.2 Construction and Sales Related Easements and Rights Reserved by Declarant. In addition to all other easements and rights enjoyed by Declarant as a result of the other provisions of this Declaration, Declarant hereby reserves an easement over, across and through the roadways of the Umbrella Property for the purpose of constructing buildings and related improvements, including, without limitation, Condominium Apartments on all or any of Phase Parcel II, Phase Parcel III, or Phase Parcel IV, completing the same, and exhibiting or preparing the same for sale. Declarant also reserves the right to use improvements constructed by Declarant on any Phase Parcel as a sales or administrative office or model apartment or other purposes reasonably necessary or convenient for Declarant's sales program until such time as Declarant has developed Condominium Apartments on all Phase Parcels and no longer owns and holds for sale Condominium Apartments on any Phase Parcel.

Section 16.3 Trail Linkage Easements.

Development of the Entire Property arises, in part, out of that certain Concommitant Zoning Agreement dated August 23, 1979 and recorded with the Pierce County Auditor under File No. 2974214 which agreement provides in part:

"If the planned trail linkage between Titlow and Point Defiance Parks is established, the Applicant shall grant an easement to the City for such trail across the westerly portion of the site. If required by the City, the Applicant shall also allow a public easement for a walking trail from Narrows Drive through the gulch to the Point Defiance - Titlow trail."

As a material inducement to Declarant to convey the Umbrella Property to the Umbrella Association and to enter into and record this Declaration, the Umbrella Association agrees, on request of the City of Tacoma in accordance with and pursuant to the Concommitant Zoning Agreement, or on request of Declarant, to execute and deliver to the City of Tacoma, without cost to or payment by the City of Tacoma, the easements required by the Concommitant Zoning Agreement.

Section 16.4 Reservation of Access and Utilities Easements Related to Declarant's Other Parcel. Declarant owns or has the right to acquire Declarant's Other Parcel, which lies in a northerly direction from the Umbrella Property. Declarant hereby reserves for itself, its successors and assigns, an easement for pedestrian and vehicular ingress and egress to and from Narrows Drive and Declarant's Other Parcel, including the right to connect into and branch off of the roadway improvements on the Roadway Parcel, and an easement to use the surface and subsurface of the Umbrella Property for utilities, including, without limitation, water, sanitary sewer, storm sewer, electricity, gas, telephone, cable television and other utilities in Declarant's discretion. Declarant also hereby reserves for the benefit of Declarant's Other Parcel, an easement for a storm water line to run from the Declarant's Other Parcel to a location acceptable to Declarant and located approximately on the cliff of the Greenbelt Area above Puget Sound, including the right to discharge storm water directly into a collection system meeting the requirements of applicable law. Declarant

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shall, as soon as reasonably possible, and in any event, within ten years of the recording of this Declaration, establish, of record, the location of all easements and related improvements arising out of this Section 16. All easements reserved and granted under this Section 16.4 are for the benefit of Declarant and any present and future Owner of all or any portion of Declarant's Other Parcel, including their respective grantees, successors, heirs, executors, administrators and assigns and shall include perpetually the right of access to improve, repair, restore, and relocate any of the roadway, utility or storm water lines provided only that after any such invasion of the surface or subsurface of the easement area, the surface shall be restored to its condition immediately before such invasion. All terms and provisions of this Section 16.4 shall be deemed covenants running with the land and shall bind the Greenbelt Area as the servient tenement in favor of the Declarant's Other Parcel as the dominant tenement and shall at times inure to the benefit of and be binding upon each Person who has at any time an interest or estate in any part of the Greenbelt Area or Declarant's Other Parcel. This Section 16.4, however, shall be void and of no effect, without action by any Person, if Declarant fails to acquire, or record, fee title or a real estate contract vendee's interest in Declarant's Other Parcel within five years from the date hereof.

Section 16.5 Reservation of Greenbelt Area Recreational Easement. Declarant reserves, for itself its successors and assigns, the right to grant to the present and future Owners, including Declarant, all or any of Declarant's Other Parcel the right to use the Greenbelt Area and any improvements therein or thereon from time to time, for recreational purposes, to the same extent that any Owner or occupant of a Phase Parcel could use the Greenbelt Area. Declarant may make such election, if at all, by duly executing and recording with the Pierce County Recording Office, within ten years from the date hereof, an instrument manifesting such election. Declarant's election shall be deemed a covenant (i) on its own behalf and on behalf of all Persons who then or thereafter acquire an interest in Declarant's Other Parcel or any part thereof, that they submit themselves to, and agree to be bound by, this Umbrella Declaration, the Umbrella Articles and Umbrella Bylaws and all duly adopted rules and regulations of the Umbrella Board as they now or

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hereafter exist and (ii) to pay to the Umbrella Association its prorata share of all costs and expenses of operation and maintenance of the Greenbelt Area, including, without limitation, common expenses and real estate taxes and assessments, the intent being that any cost or expense which the Umbrella Association could impose upon any Owner or occupant of a Phase Parcel shall be paid, prorata, by the Owners and occupants of Declarant's Other Parcel enjoying the benefits of the Greenbelt Area. For this purpose, "prorata share" shall be determined by the number of single family living units (however denominated, and including, without limitation, condominium apartments, apartments, houses, duplexes, triplexes, and the like) on the Phase Parcels compared to the number of single family living units on Declarant's Other Parcel as of the first day of each fiscal year of the Umbrella Association. Living units under construction shall be disregarded. Declarant's rights under this section are expressly conditioned upon Declarant's Other Parcel being subjected to an Owners' association (the "Declarant's Other Parcel Homeowners' Association") which will for all purposes hereof act as an intermediary for collection and other purposes between the Umbrella Association and the Owners and occupants of Declarant's Other Parcel. The Owners and occupants of Declarant's Other Parcel shall have the right to enjoy the use of the Greenbelt Area only if and for so long as such Declarant's Other Parcel Homeowners' Association continues to exist and timely pays to the Umbrella Association the full and complete prorata share of Greenbelt Area costs as hereinabove set forth. The Declarant's Other Parcel Homeowners' Association shall pay its annual prorata charge to the Umbrella Association in monthly installments on the first day of each calendar month, in advance, in an amount estimated by the Umbrella Board. Within 90 days of the end of each fiscal year, the Umbrella Association shall furnish to the Declarant's Other Parcel Homeowners' Association a certified statement in reasonable detail of the actual costs and expenses paid or incurred by the Umbrella Association during such period with respect to the Greenbelt Area, which statement shall be prepared in accordance with generally accepted accounting principles by the Umbrella Association's accountant and thereupon there shall be an adjustment between Declarant's Other Parcel Homeowners' Association and the Umbrella Association, with payment to or repayment by the Umbrella Association, as the case may require. Such statement so

05/18/82
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certified shall be conclusive between the parties. If, for any reason whatsoever, the Declarant's Other Parcel Homeowners' Association fails to pay the amount due to the Umbrella Association within ten days of notice, the Umbrella Association may at any time thereafter by notice to the Declarant's Other Parcel Homeowners Association terminate all rights of the Owners and occupants of Declarant's Other Parcel to use the Greenbelt Area for recreational purposes pursuant to this Section 16.5. No such termination shall effect the easements reserved or arising out of Section 16.4 hereof. All terms and provisions of this Section 16.5 shall be deemed covenants running with the land and shall bind and benefit the Declarant's Other Parcel and the Greenbelt Area, and all persons who have an interest or estate in any part thereof. This Section 16.5, however, shall be void and of no effect, without action by any Person, if Declarant fails to acquire, or record, fee title or a real estate contract vendee's interest in Declarant's Other Parcel within five years from the date hereof.

ARTICLE 17. MERGER

Should the Phase Parcels (except such portions as may be taken by condemnation or eminent domain proceedings for public purposes) become incorporated into a single condominium under one Horizontal Property Regime with one Association of Apartment Owners, either through merger, expansion, or other means, then the Covenants, Conditions, Restrictions, Easements and Reservations granted, reserved and declared in this Umbrella Declaration shall be merged into the ownership of the one surviving Horizontal Property Regime Condominium and shall have no independent existence.

ARTICLE 18. COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS RUN WITH LAND AND ARE NOT EXTINGUISHABLE

The Covenants, Conditions, Restrictions, Reservations and Easements granted, reserved and declared in this Umbrella Declaration shall run with the land described in Exhibit A, shall at all times inure to the benefit of and be binding upon each Person who has at any time an interest or estate in any part of the real property described on Exhibit A, and shall not be extinguished by the removal of any Phase Parcel from the

05/18/82
0961B

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Condominium form of ownership and use.

ARTICLE 19. RESERVATION OF EASEMENT AND RIGHTS

Declarant expressly reserves the easements and rights reserved by Declarant in the Condominium Declaration for Phase Parcel I concurrently recorded herewith as well as the right to grant and reserve similar easements and rights in connection with any Condominium Declaration subsequently recorded on any other Phase Parcel.

ARTICLE 20. AMENDMENTS

Any member of the Umbrella Association may propose amendments to this Umbrella Declaration. Amendments shall be submitted in writing designating the amendment proposed. Such amendments shall be submitted to the members of the Umbrella Association for their consideration at a meeting called for such purpose. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of Persons entitled to vote, after notice has been given to all Persons (including Mortgagees) entitled to receive notice of a meeting of the Association. The unanimous consent of all and certain members of the Umbrella Association and all Condominium Apartment Owners in each Phase Parcel and all Institutional Holders of First Mortgages on Phase Parcel Condominium Apartments shall be required for adoption of an amendment altering the voting power of the members of the Umbrella Association. All other amendments shall be adopted if approved by 60% of the voting power of the Umbrella Association. Notwithstanding the foregoing, however, no amendment to this Umbrella Declaration shall be allowed if it violates any provision of a Phase Parcel Condominium Declaration of record at the time. In addition, the prior written approval of 75% of the Institutional Holders of First Mortgages (determined on the basis of the number of Mortgages held) on Condominium Apartments will be required for any material amendment of this Umbrella Declaration. Once an amendment has been adopted by the Umbrella Association and any necessary approval of Mortgagees has been obtained, the amendment will become effective when a certificate of the amendment, executed by two officers of

the Umbrella Association, has been recorded in the public records. The terms "Mortgage", "First Mortgage", "Mortgagee" and "Institutional Holder" shall have the meaning set forth in the Phase I Condominium Declaration concurrently recorded herewith.

ARTICLE 21. SEVERABILITY

The provisions of this Umbrella Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder as covenants, effect the common plan.

ARTICLE 22. EFFECTIVE DATE

This Umbrella Declaration shall take effect upon recording.

ARTICLE 23. SUBORDINATION BY EXISTING LIENORS

For and in consideration of Ten Dollars (\$10.00) and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, (i) Citizens Federal Savings and Loan Association of Seattle ("Citizens") and Peninsula Savings and Loan, Inc. ("Peninsula") hereby subordinate their respective interests as beneficiary of the Deed of Trust recorded March 26, 1981 in the Office of the Pierce County Recorder under Auditor's File No. 8103260114 as partially assigned pursuant to instrument dated October 25, 1981 and recorded under Auditor's File No. 8111030003 in the Office of the Pierce County Recorder, to this Umbrella Declaration, and (ii) Citizens also hereby subordinates its interest as beneficiary of the Deed of Trust recorded February 8, 1981 in the Office of the Pierce County Recorder under Auditor's File No. 8102080176, to this Umbrella Declaration. Citizens' and Peninsula's herein subordinations are binding upon each of them and their successors and assigns.

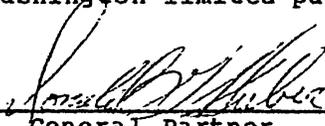
ARTICLE 24. JOINDER BY REAL ESTATE CONTRACT VENDORS AND SUBORDINATION BY VENDORS' ASSIGNEE

For and in consideration of Ten Dollars (\$10.00) and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, Edward P. Miller and

Juanita J. Miller, husband and wife, and Diedra J. Miller, as her separate estate, and Paul E. Miller, as his separate estate, each of whom has a real estate contract vendor's interest in portions of the Entire Property, for each of themselves, their heirs, successors and assigns, hereby joins with Declarant in this Umbrella Declaration and hereby subject to this Umbrella Declaration their or any of their interest or interests in that Contract of Sale recorded (February 26, 1980) in the office of the Pierce County Recorder under Auditor's File No. 2978048 and their or any of their interest or interests in all or any of the Entire Property. For and in consideration of Ten Dollars (\$10.00) and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, North Pacific Bank, for itself, its successors and assigns, hereby subordinates to this Umbrella Declaration its interest as assignee of the interest of Edward P. Miller, Juanita J. Miller, Diedra J. Miller and Paul E. Miller in portions of the Entire Property, pursuant to that certain Assignment of Contract and Deed recorded April 23, 1982 in the Office of the Pierce County Recorder under Auditor's File No. 8204230006.

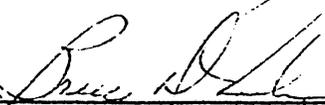
DECLARANT

Gold Creek Limited Partnership
a Washington limited partnership

By 
General Partner

CITIZENS

CITIZENS FEDERAL SAVINGS AND
LOAN ASSOCIATION OF SEATTLE,
a Washington corporation,

By 
VICE PRESIDENT

05/18/82

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GCN 00084

PENINSULA

PENINSULA SAVINGS AND LOAN, INC.

BY [Signature]
AUTHORIZED REPRESENTATIVE

MILLERS AND NORTH PACIFIC

BY [Signature]
Edward P. Miller

BY [Signature]
Juanita J. Miller
~~attorney in fact for~~

BY [Signature]
Diedra J. Miller by [Signature]
attorney in fact for [Signature]
Diedra J. Miller

BY [Signature]
Paul E. Miller

NORTH PACIFIC BANK
a Washington Corporation,

BY [Signature]
S.V.P.

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EXHIBIT A TO UMBRELLA DECLARATION

Legal Description Of Entire Property

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 27;

THENCE NORTH 01°55'47" EAST, 745.44 FEET ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER TO A POINT OF INTERSECTION WITH THE SOUTH LINE PROJECTED EASTERLY, OF TRACT 48 OF THE PLAT OF "THE NARROWS", ACCORDING TO PLAT RECORDED IN BOOK 1 OF PLATS AT PAGE 84, AND THE TRUE POINT OF BEGINNING.

THENCE NORTH 88°04'13" WEST, 30.00 FEET ALONG SAID SOUTH LINE PROJECTED TO THE SOUTHEAST CORNER OF SAID TRACT 48;

THENCE CONTINUING NORTH 88°04'13" WEST, 330.00 FEET ALONG THE SOUTH LINE OF SAID TRACT 48 TO THE SOUTHWEST CORNER THEREOF;

THENCE NORTH 01°55'47" EAST, 132.00 FEET ALONG THE WEST LINE OF SAID TRACT 48 TO THE NORTHWEST CORNER THEREOF;

THENCE CONTINUING NORTH 01°55'47" EAST, 20.00 FEET ALONG THE NORTHERLY PROJECTION OF SAID WEST LINE TO THE SOUTHEAST CORNER OF TRACT 46 OF SAID PLAT;

THENCE NORTH 88°04'13" WEST, 330.00 FEET ALONG THE SOUTH LINE OF SAID TRACT 46 TO THE SOUTHWEST CORNER THEREOF;

05/18/82
0961B

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THENCE NORTH $01^{\circ}55'47''$ EAST, 132.00 FEET ALONG THE WEST LINE OF SAID TRACT 46 TO THE NORHTWEST CORNER THEREOF;

THENCE CONTINUING NORTH $01^{\circ}55'47''$ EAST, 20.00 FEET ALONG THE NORTHERLY PROJECTION OF SAID WEST LINE TO THE SOUTHWEST CORNER OF TRACT 39 OF SAID PLAT;

THENCE CONTINUING NORTH $01^{\circ}55'47''$ EAST, 132.00 FEET ALONG THE WEST LINE OF SAID TRACT 39 TO THE NORTHWEST CORNER THEREOF;

THENCE CONTINUING NORTH $01^{\circ}55'47''$ EAST, 20.00 FEET ALONG THE NORTHERLY PROJECTION OF SAID WEST LINE TO THE SOUTHEAST CORNER OF TRACT 35 OF SAID PLAT;

THENCE NORTH $88^{\circ}04'13''$ WEST, 330.00 FEET ALONG THE SOUTH LINE OF SAID TRACT 35 TO THE SOUTHWEST CORNER THEREOF;

THENCE NORTH $01^{\circ}55'47''$ EAST, 132.00 FEET ALONG THE WEST LINE OF SAID TRACT 35 TO THE NORTHWEST CORNER THEREOF;

THENCE CONTINUING NORTH $01^{\circ}55'47''$ EAST, 20.00 FEET ALONG THE NORTHERLY PROJECTION OF SAID WEST LINE TO THE SOUTHEAST CORNER OF TRACT 32 OF SAID PLAT;

THENCE NORTH $88^{\circ}04'13''$ WEST, 436.17 FEET ALONG THE SOUTH LINE OF TRACTS 32 AND OF SAID PLAT TO A POINT ON THE SOUTHEASTERLY LINE OF THE BURLINGTON NORTHERN RAILROAD (ALSO KNOWN AS NORTHERN PACIFIC RAILWAY) RIGHT-OF-WAY;

THENCE NORTH $24^{\circ}54'53''$ EAST, 1155.76 FEET ALONG SAID RIGHT-OF-WAY LINE TO A POINT ON THE SOUTH LINE OF TRACT 4 OF SAID PLAT;

THENCE NORTH $88^{\circ}04'13''$ WEST, 4.91 FEET ALONG SAID RIGHT-OF-WAY LINE AND SOUTH LINE OF SAID TRACT 4;

THENCE NORTH $01^{\circ}55'47''$ EAST, 132.00 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE NORTH LINE OF SAID TRACT 4;

THENCE SOUTH $88^{\circ}04'13''$ EAST, 60.90 FEET ALONG SAID RIGHT-OF-WAY LINE AND NORTH LINE OF SAID TRACT 4;

THENCE NORTH $24^{\circ}54'53''$ EAST, 10.86 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE CENTERLINE OF THAT 20 FOOT STRIP ADJOINING AND NORTHERLY OF SAID TRACT 4;

THENCE SOUTH $88^{\circ}04'13''$ EAST, 36.62 FEET ALONG SAID CENTERLINE TO A POINT OF INTERSECTION WITH THE CENTERLINE OF GOLD CREEK;

THENCE ALONG SAID CENTERLINE OF CREEK THE FOLLOWING COURSES AND DISTANCES:

05/18/82
0961B

SOUTH 44° 58' 53" EAST, 54.88 FEET;
SOUTH 41° 48' 36" EAST, 87.91 FEET;
SOUTH 22° 43' 52" EAST, 94.30 FEET;
SOUTH 28° 06' 27" EAST, 145.79 FEET;
SOUTH 44° 55' 02" EAST, 104.01 FEET;
SOUTH 22° 23' 31" EAST, 116.28 FEET;
SOUTH 62° 24' 44" EAST, 109.41 FEET;
SOUTH 45° 23' 07" EAST, 140.81 FEET;
SOUTH 34° 03' 32" EAST, 140.18 FEET;
SOUTH 53° 31' 13" EAST, 149.30 FEET;
SOUTH 29° 38' 32" EAST, 95.69 FEET;
SOUTH 47° 00' 57" EAST, 127.60 FEET;

AND SOUTH 24° 45' 58" EAST, 38.42 FEET TO A POINT ON THE EAST
LINE OF SAID SOUTHEAST QUARTER OF SECTION 27;

THENCE LEAVING SAID CENTERLINE OF CREEK, SOUTH 01° 55' 47" WEST, 337.40
FEET ALONG SAID EAST LINE TO A POINT ON THE EASTERLY PROJECTION OF THE
NORTH LINE OF THE SOUTH 10 FEET OF THE 20 FOOT STRIP LYING BETWEEN
TRACTS 37 AND 38 OF SAID PLAT;

THENCE NORTH 88° 04' 13" WEST, 360.00 FEET ALONG SAID NORTH LINE AND THE
EASTERLY PROJECTION THEREOF TO A POINT OF INTERSECTION WITH THE WEST
LINE OF SAID TRACT 38 PROJECTED NORTHERLY;

THENCE SOUTH 01° 55' 47" WEST, 10.00 FEET ALONG SAID WEST LINE PROJECTED
NORTHERLY TO THE NORTHWEST CORNER OF SAID TRACT 38;

THENCE CONTINUING SOUTH 01° 55' 47" WEST, 132.00 FEET ALONG THE WEST
LINE OF SAID TRACT 38 TO THE SOUTHWEST CORNER THEREOF;

THENCE CONTINUING SOUTH 01° 55' 47" WEST, 10.00 FEET ALONG SAID WEST
LINE PROJECTED SOUTHERLY TO A POINT ON THE NORTH LINE OF THE SOUTH 10
FEET OF THE 20 FOOT STRIP LYING BETWEEN TRACTS 38 AND 47;

THENCE SOUTH 88° 04' 13" EAST, 360.00 FEET ALONG SAID NORTH LINE AND THE
EASTERLY PROJECTION THEREOF TO A POINT ON SAID EAST LINE OF THE
SOUTHEAST QUARTER;

THENCE SOUTH 01° 55' 47" WEST, 294.00 FEET ALONG SAID EAST LINE TO THE

05/18/82

TRUE POINT OF BEGINNING.

EXCEPT TRACT 3, "THE NARROWS", ACCORDING TO PLAT RECORDED IN BOOK 1 OF PLATS AT PAGE 84 AND THE NORTH 10 FEET OF THE 20 FOOT STRIP LYING BETWEEN SAID TRACT 3 AND TRACT 4 OF SAID PLAT.

TOGETHER WITH THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 21 NORTH, RANGE 2 EAST OF W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26;

THENCE NORTH $01^{\circ}55'47''$ EAST, 665.86 FEET ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26 AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH $01^{\circ}55'47''$ EAST, 862.98 FEET ALONG SAID WEST LINE TO AN INTERSECTION WITH THE CENTERLINE OF GOLD CREEK;

THENCE ALONG SAID CENTERLINE OF CREEK THE FOLLOWING COURSES AND DISTANCES:

SOUTH $24^{\circ}45'58''$ EAST, 203.20 FEET;

SOUTH $21^{\circ}33'22''$ EAST, 173.79 FEET;

SOUTH $26^{\circ}05'03''$ EAST, 166.96 FEET;

SOUTH $19^{\circ}19'22''$ EAST, 158.81 FEET;

SOUTH $28^{\circ}30'50''$ EAST, 123.75 FEET;

SOUTH $28^{\circ}52'22''$ EAST, 130.99 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER;

THENCE LEAVING SAID CENTERLINE OF CREEK, NORTH $87^{\circ}49'09''$ WEST, 407.41 FEET ALONG SAID SOUTH LINE TO THE TRUE POINT OF BEGINNING.

ALSO TOGETHER WITH LOT 1, BLOCK A, "MILLER'S SKYLINE TERRACE 7TH ADDITION", ACCORDING TO PLAT RECORDED IN BOOK 42 OF PLATS AT PAGES 7 TO 10, INCLUSIVE.

ALSO TOGETHER WITH THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 21 NORTH, RANGE 2 EAST OF W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26;

THENCE NORTH $01^{\circ}55'47''$ EAST, 665.86 FEET ALONG THE WEST LINE OF SAID

SOUTHWEST QUARTER TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 26;

THENCE SOUTH $87^{\circ}49'09''$ EAST, 407.41 FEET ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER TO A POINT OF INTERSECTION WITH THE CENTERLINE OF GOLD CREEK AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH $87^{\circ}49'09''$ EAST, 128.27 FEET ALONG SAID SOUTH LINE TO A POINT ON THE WESTERLY LINE OF THE PLAT OF "MILLER'S SKYLINE TERRACE 7TH ADDITION", ACCORDING TO PLAT RECORDED IN BOOK 42 OF PLATS AT PAGES 7 TO 10, INCLUSIVE;

THENCE NORTH $17^{\circ}21'00''$ WEST, 310.15 FEET ALONG THE WESTERLY LINE OF SAID PLAT;

THENCE NORTH $16^{\circ}40'49''$ EAST, 30.00 FEET ALONG SAID WESTERLY LINE TO A POINT ON THE NORTH LINE OF THE SOUTH 321.35 FEET AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER;

THENCE NORTH $87^{\circ}49'09''$ WEST, 181.86 FEET ALONG SAID NORTH LINE TO A POINT ON THE CENTERLINE OF GOLD CREEK;

THENCE SOUTH $18^{\circ}19'22''$ EAST, 100.80 FEET ALONG SAID CENTERLINE;

THENCE SOUTH $28^{\circ}30'50''$ EAST, 123.75 FEET ALONG SAID CENTERLINE;

THENCE SOUTH $20^{\circ}52'22''$ EAST, 130.99 FEET ALONG SAID CENTERLINE TO THE TRUE POINT OF BEGINNING.

ALSO TOGETHER WITH TRACT 38, "THE NARROWS", ACCORDING TO PLAT RECORDED IN BOOK 1 OF PLATS AT PAGE 84.

ALSO TOGETHER WITH THAT PORTION OF THE SOUTH 10 FEET OF THE 20 FOOT STRIP LYING BETWEEN TRACT 37 AND TRACT 38, ABUTTING TRACT 38 ON THE NORTH.

THAT PORTION OF THE NORTH 10 FEET OF THE 20 FOOT STRIP LYING BETWEEN TRACT 38 AND TRACT 47, ABUTTING TRACT 38 ON THE SOUTH. THAT PORTION OF THE 30 FOOT STRIP LYING WITHIN AND ALONG THE EAST BOUNDARY OF "THE NARROWS", ACCORDING TO PLAT RECORDED IN BOOK 1 OF PLATS AT PAGE 84, WHICH IS EAST OF AND ADJACENT TO TRACT 38 AND WHICH LIES BETWEEN THE MIDLINE OF THE 20 FOOT STRIP LYING BETWEEN TRACTS 37 AND 38 EXTENDED EAST AND THE MIDLINE OF THE 20 FOOT STRIP LYING BETWEEN TRACTS 38 AND 47 EXTENDED EAST. ALL IN "THE NARROWS", ACCORDING TO PLAT RECORDED IN BOOK 1 OF PLATS AT PAGE 84.

(ALL IN PIERCE COUNTY, WASHINGTON)

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EXHIBIT B TO UMBRELLA DECLARATION

(1) Legal Description Of Phase Parcel I

That portion of the SE 1/4 of Section 27, T. 21 N., R. 2 E., W.M., City of Tacoma, County of Pierce, State of Washington, more particularly described as follows:

BEGINNING at the SE corner of Tract 35 of the plat of "Narrows Subdivision" as recorded in Book 1 of Plats, Page 84, Records of Pierce County, Washington;

THENCE N 88°04'13" W, 289.00 feet along the South line of said Tract 35;

THENCE N 36°10'00" E, 355.00 feet;

THENCE N 04°25'00" E, 114.00 feet;

THENCE N 35°50'00" E, 259.00 feet;

THENCE S 55°40'00" E, 249.00 feet;

THENCE S 29°46'50" W, 133.09 feet;

THENCE S 38°33'06" E, 92.90 feet;

THENCE S 05°45'34" W, 228.21 feet;

THENCE S 02°22'53" W, 72.88 feet;

THENCE N 88°04'13" W, 252.69 feet to the POINT OF BEGINNING.

Containing 4.89 acres (212,884 S.F.), more or less.

(2) Legal Description Of Phase Parcel II

That portion of the SE 1/4 of Section 27, T. 21 N., R. 2 E., W.M., City of Tacoma, County of Pierce, State of Washington, more particularly described as follows:

COMMENCING at the SE corner of Tract 35 of the plat of "Narrows Subdivision" as recorded in Book 1 of Plats, Page 84, Records of Pierce County, Washington;

THENCE S 88°04'13" E, 252.69 feet;

THENCE N 02°22'53" E, 72.88 feet to the TRUE POINT OF BEGINNING;

THENCE N 05°45'34" E, 228.21 feet;

THENCE N 38°33'06" W, 92.90 feet;

THENCE N 29°46'50" E, 133.09 feet;

THENCE N 79°20'00" E, 100.00 feet;

THENCE S 53°20'00" E, 170.00 feet;

THENCE S 38°50'00" E, 157.00 feet;

THENCE S 14°14'54" W, 186.84 feet to a point of curvature;

THENCE Northwesterly 152.29 feet along the arc of a non-tangent curve to the left, having a radius of 123.99 feet, the radius point of which bears S 52°56'50" W, through a central angle of 70°22'34" to a point of tangency;

THENCE S 72°34'15" W, 138.45 feet to a point of curvature;

THENCE Southwesterly 59.43 feet along the arc of a tangent curve to the left, having a radius of 119.00 feet, through a central angle of 28°36'42" to the TRUE POINT OF BEGINNING.

Containing 2.51 acres (109,280 square feet), more or less.

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(3) Legal Description Of Phase Parcel III

That portion of the SE $\frac{1}{4}$ of Section 27, T 21 N, R 2 E, W.M., City of Tacoma, County of Pierce, State of Washington, more particularly described as follows:

BEGINNING at the SE corner of Tract 35 of the Plat of "Narrows Subdivision" as recorded in Book 1 of Plats, Page 84, Records of Pierce County, Washington;

THENCE S 88°04'13" E, 252.69 feet;

THENCE N 02°22'53" E, 15.25 feet;

THENCE S 73°47'57" E, 7.54 feet to a point of curvature;

THENCE Northeasterly 83.18 feet along the arc of a non-tangent curve to the right, having a radius of 84.00 feet, the radius point of which bears S 74°10'00" E, through a central angle of 56°44'15" to a point of tangency;

THENCE N 72°34'15" E, 138.45 feet to a point of curvature;

THENCE Southeasterly 126.01 feet along the arc of a tangent curve to the right, having a radius of 88.99 feet, through a central angle of 81°07'40";

THENCE S 23°10'45" E, 116.67 feet;

THENCE S 83°45'00" W, 151.23 feet;

THENCE S 33°25'00" W, 297.06 feet to the South line of Tract 46 of said plat;

THENCE N 88°04'13" W, 297.00 feet along said South line of Tract 46 to the SW corner thereof;

THENCE continuing N 01°55'47" E, 132.00 feet along the West line of said Tract 46 to the NW corner thereof;

THENCE continuing N 01°55'47" E, 20.00 feet along the Northerly projection of said West line to the SW corner of Tract 39 of said plat;

THENCE continuing N 01°55'47" E, 132.00 feet along the West line of said Tract 39 to the NW corner thereof;

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THENCE continuing N 01°55'47" E, 20.00 feet along the Northerly projection of said West line to the POINT OF BEGINNING.

Containing 3.50 acres (152,572 square feet), more or less.

(4) Legal Description Of Phase Parcel IV

That portion of the SE 1/4 of Section 27, T. 21 N., R. 2 E., W.M., and of the SW 1/4 of Section 26, T. 21 N., R. 2 E., W.M., City of Tacoma, County of Pierce, State of Washington, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 27;

THENCE N 01°55'47" E, 745.44 feet along the East line of the Southeast quarter of said Section 27 to a point of intersection with the South line projected Easterly, of Tract 48 of the plat of "The Narrows", according to plat recorded in Book 1 of Plats at Page 84, and the TRUE POINT OF BEGINNING;

THENCE N 88°04'13" W, 30.00 feet along said South line projected to the Southeast corner of said Tract 48;

THENCE continuing N 88°04'13" W, 330.00 feet along the South line of said Tract 48 to the Southwest corner thereof;

THENCE N 01°55'47" E, 132.00 feet along the West line of said Tract 48 to the Northwest corner thereof;

THENCE continuing N 01°55'47" E, 20.00 feet along the Northerly projection of said West line to the Southeast corner of Tract 46 of said plat;

THENCE N 88°04'13" W, 33.00 feet along the South line of said Tract 46;

82052803

THENCE N 33°25'00" E, 297.06 feet;

THENCE N 83°45'00" E, 151.23 feet;

THENCE S 23°10'45" E, 66.93 feet to a point of curvature;

THENCE Southeasterly 199.97 feet along the arc of a non-tangent curve to the left, having a radius of 1040.38 feet, the radius point of which bears N63°41'55" E, through a central angle of 11°00'45" to a point on said curve;

THENCE S 61°00'00" W, 74.54 feet;

THENCE S 29°00'00" E, 64.36 feet;

THENCE S 12°41'33" W, 108.59 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH that portion of the SE 1/4 of Section 27, T. 21 N., R. 2 E., W.M., and of the SW 1/4 of Section 26, T. 21 N., R. 2 E., W.M., City of Tacoma, County of Pierce, State of Washington, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 27;

THENCE N 01°55'47" E, 745.44 feet along the East line of the Southeast quarter of said Section 27 to a point of intersection with the South line projected Easterly, of Tract 48 of the plat of "The Narrows", according to plat recorded in Book 1 of Plats at Page 84;

THENCE N 12°41'33" E, 108.59 feet to the TRUE POINT OF BEGINNING;

THENCE N 29°00'00" W, 64.36 feet;

THENCE N 61°00'00" E, 74.54 feet to a point of curvature;

THENCE Southeasterly 36.19 feet along the arc of a non-tangent curve to the left, having a radius of 1040.38 feet, the radius point of which bears N 52°41'10" E, through a central angle of 01°59'36" to a point of compound curvature;

THENCE Southeasterly 22.74 feet along the arc of a tangent curve to the left, having a radius of 271.48 feet, through a central angle of 04°47'59" to a point of reverse curvature;

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THENCE Southerly 33.85 feet along the arc of a tangent curve to the right, having a radius of 20.00 feet, through a central angle of $96^{\circ}58'55''$ to a point of compound curvature;

THENCE Southwesterly 52.25 feet along the arc of a tangent curve to the right, having a radius of 83.00 feet, through a central angle of $36^{\circ}04'10''$ to a point of tangency;

THENCE S $88^{\circ}56'40''$ W, 20.70 feet to the TRUE POINT OF BEGINNING.

Containing 3.23 acres (140,651 square feet), more or less.

(5) Legal Description Of Recreational Vehicle Parking Area

That portion of the SW 1/4 of Section 26, T. 21 N., R. 2 E., W.M., City of Tacoma, County of Pierce, State of Washington, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 26;

THENCE N $01^{\circ}55'47''$ E, 665.86 feet along the West line of said SW 1/4 to the SW corner of the NW 1/4 of the SW 1/4 of the SW 1/4 of said Section 26 and the TRUE POINT OF BEGINNING.

THENCE continuing N $01^{\circ}55'47''$ E, 79.58 feet along said West line to the South line projected Easterly of Tract 48 of the plat of "The Narrows" according to plat recorded in Book 1 of Plats, at Page 84, Records of Pierce County, Washington;

THENCE N $12^{\circ}41'33''$ E, 73.59 feet;

THENCE N $88^{\circ}56'40''$ E, 29.02 feet to a point of curvature;

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THENCE Northeasterly 89.63 feet along the arc of a tangent curve to the left, having a radius of 117.00 feet, through a central angle of $43^{\circ}53'33''$ to a point of reverse curvature;

THENCE Easterly 26.54 feet along the arc of a tangent curve to the right, having a radius of 20.00 feet, through a central angle of $76^{\circ}02'31''$ to a point of reverse curvature;

THENCE Southeasterly 4.75 feet along the arc of a tangent curve to the left, having a radius of 271.48 feet, through a central angle of $01^{\circ}00'07''$ to a point of compound curvature;

THENCE Southeasterly 22.48 feet along the arc of a tangent curve to the left, having a radius of 116.00 feet, through a central angle of $11^{\circ}06'10''$ to a point on said curve;

THENCE S $27^{\circ}36'12''$ E, 211.87 feet to the South line of the NW 1/4 of the SW 1/4 of the SW 1/4 of said Section 26;

THENCE N $87^{\circ}49'09''$ W, 275.70 feet along said South line to the TRUE POINT OF BEGINNING.

Containing 0.88 acres (38,235 square feet), more or less.

(6) Legal Description Of Roadway Parcel

That portion of the SE 1/4 of Section 27, T. 21 N., R. 2 E., W.M., and of the SW 1/4 of Section 26, T. 21 N., R. 2 E., W.M., City of Tacoma, County of Pierce, State of Washington, being more particularly described as follows:

COMMENCING at the NE corner of Lot 1, Block 'A' of "Miller's Skyline Terrace 7th Addition" as recorded in Book 42, Pages 7 through 10 of Plats, Records of Pierce County, Washington AND as shown on that Record of Survey recorded in Volume 32 of Surveys, Page 90, Records of Pierce County, Washington;

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THENCE Southerly along the Easterly line of said Lot 1, 26.00 feet along the arc of a non-tangent curve to the left, having a radius of 2239.32 feet, the radius point of which bears S 87°06'18" E, through a central angle of 00°39'55" to the TRUE POINT OF BEGINNING;

THENCE N 87°30'00" W, 89.83 feet to a point of curvature;

THENCE Northwesterly 99.67 feet along the arc of a tangent curve to the right, having a radius of 81.00 feet, through a central angle of 70°30'00" to a point of tangency;

THENCE N 17°00'00" W, 50.00 feet to a point of curvature;

THENCE Westerly 186.93 feet along the arc of a tangent curve to the left, having a radius of 119.00 feet, through a central angle of 90°00'00" to a point of tangency;

THENCE S 73°00'00" W, 22.65 feet to a point of curvature;

THENCE Westerly 34.27 feet along the arc of a tangent curve to the right, having a radius of 63.00 feet, through a central angle of 31°10'00" to a point of tangency;

THENCE N 75°50'00" W, 82.95 feet to a point of curvature;

THENCE Northwesterly 40.16 feet along the arc of a tangent curve to the right, having a radius of 63.00 feet, through a central angle of 36°31'34" to a point of tangency;

THENCE N 39°18'26" W, 20.40 feet to a point of curvature;

THENCE Northwesterly 225.95 feet along the arc of a tangent curve to the right, having a radius of 995.38 feet, through a central angle of 13°00'21" to a point of tangency;

THENCE N 26°18'05" W, 183.33 feet to a point of curvature;

THENCE Northwesterly 175.56 feet along the arc of a tangent curve to the left, having a radius of 123.99 feet, through a central angle of 81°07'40" to a point of tangency;

THENCE S 72°34'15" W, 138.45 feet to a point of curvature;

THENCE Southwesterly 59.43 feet along the arc of a tangent curve to the left, having a radius of 119.00 feet, through a central angle of $28^{\circ}36'42''$ to a point on said curve;

THENCE S $02^{\circ}22'53''$ W, 57.63 feet;

THENCE S $73^{\circ}47'57''$ E, 7.54 feet to a point of curvature;

THENCE Northeasterly 83.18 feet along the arc of a non-tangent curve to the right, having a radius of 84.00 feet, the radius point of which bears S $74^{\circ}10'00''$ E, through a central angle of $56^{\circ}44'15''$ to a point of tangency;

THENCE N $72^{\circ}34'15''$ E, 138.45 feet to a point of curvature;

THENCE Southeasterly 126.01 feet along the arc of a tangent curve to the right, having a radius of 88.99 feet, through a central angle of $81^{\circ}07'40''$;

THENCE S $23^{\circ}10'45''$ E, 183.60 feet to a point of curvature;

THENCE Southeasterly 236.16 feet along the arc of a non-tangent curve to the left, having a radius of 1040.38 feet, the radius point of which bears N $63^{\circ}41'55''$ E, through a central angle of $13^{\circ}00'21''$ to a point of compound curvature;

THENCE Southeasterly 22.74 feet along the arc of a tangent curve to the left, having a radius of 271.48 feet, through a central angle of $04^{\circ}47'59''$ to a point of reverse curvature;

THENCE Southerly 33.85 feet along the arc of a tangent curve to the right, having a radius of 20.00 feet, through a central angle of $96^{\circ}58'55''$ to a point of compound curvature;

THENCE Southwesterly 52.25 feet along the arc of a tangent curve to the right, having a radius of 83.00 feet, through a central angle of $36^{\circ}04'10''$ to a point of tangency;

THENCE S $88^{\circ}56'40''$ W, 20.70 feet;

THENCE S $12^{\circ}41'33''$ W, 35.00 feet;

THENCE N 88°56'40" E, 29.02 feet to a point of curvature;

THENCE Northeasterly 89.63 feet along the arc of a tangent curve to the left, having a radius of 117.00 feet, through a central angle of 43°53'33" to a point of reverse curvature;

THENCE Easterly 26.54 feet along the arc of a tangent curve to the right, having a radius of 20.00 feet, through a central angle of 76°02'31" to a point of reverse curvature;

THENCE Southeasterly 4.75 feet along the arc of a tangent curve to the left, having a radius of 271.48 feet, through a central angle of 01°00'07" to a point of compound curvature;

THENCE Easterly 95.34 feet along the arc of a tangent curve to the left, having a radius of 116.00 feet, through a central angle of 47°05'31" to a point of tangency;

THENCE N 73°00'00" E, 64.00 feet to a point of curvature;

THENCE Southeasterly 131.95 feet along the arc of a tangent curve to the right, having a radius of 84.00 feet, through a central angle of 90°00'00" to a point of tangency;

THENCE S 17°00'00" E, 50.00 feet to a point of curvature;

THENCE Southeasterly 142.73 feet along the arc of a tangent curve to the left, having a radius of 116.00 feet, through a central angle of 70°30'00" to a point of tangency;

THENCE S 87°30'00" E, 90.27 feet to the Easterly line of said Lot 1, Block 'A' of "Miller's Skyline Terrace 7th Addition", and a point of curvature;

THENCE Northerly 35.00 feet along the arc of a non-tangent curve to the right, having a radius of 2239.32 feet, the radius point of which bears S 88°39'57" E, through a central angle of 00°53'44" to the TRUE POINT OF BEGINNING.

EXHIBIT C TO UMBRELLA DECLARATION

Legal description of Declarant's Other Parcel

PARCEL A:
 THAT PORTION OF "THE NARROWS", ACCORDING TO PLAT RECORDED IN BOOK 1 OF PLATS AT PAGE 84, LYING EASTERLY OF THE SOUTHEASTERLY LINE OF THE NORTHERN PACIFIC RAILWAY COMPANY RIGHT OF WAY AND NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE TO WIT:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., THENCE NORTH 01°55'47" EAST, 862.98 FEET ALONG THE WEST LINE OF SAID SUBDIVISION TO AN INTERSECTION WITH THE CENTERLINE OF GOLD CREEK AND THE TRUE POINT OF BEGINNING FOR THIS LINE DESCRIPTION; THENCE ALONG SAID CENTERLINE OF CREEK THE FOLLOWING COURSES AND DISTANCES: NORTH 24°45'58" WEST, 38.42 FEET; NORTH 47°00'57" WEST, 127.60 FEET; NORTH 29°38'32" WEST, 95.69 FEET; NORTH 53°31'13" WEST, 149.30 FEET; NORTH 34°03'32" WEST, 140.18 FEET; NORTH 45°23'07" WEST, 140.81 FEET; NORTH 62°24'44" WEST, 109.41 FEET; NORTH 22°23'31" WEST, 116.28 FEET; NORTH 44°55'02" WEST, 104.01 FEET; NORTH 28°06'27" WEST, 145.79 FEET; NORTH 22°43'52" WEST, 94.30 FEET; NORTH 41°48'36" WEST, 87.91 FEET; NORTH 44°58'53" WEST, 54.88 FEET TO THE NORTH LINE OF THE SOUTH 10 FEET OF THE 20 FOOT STRIP LYING BETWEEN LOTS 3 AND 4 OF SAID PLAT; THENCE ALONG SAID NORTH LINE OF SAID SOUTH 10 FEET TO INTERSECT AN EXTENSION SOUTH OF THE WEST LINE OF LOT 2 OF SAID PLAT; THENCE NORTH ALONG SAID EXTENDED WEST LINE TO THE NORTH LINE OF SAID PLAT AND THE END FOR THIS LINE DESCRIPTION.

EXCEPT FROM SAID PORTION OF PLAT, LOTS 5 AND 6, THEREOF; THE SOUTH 10 FEET OF THE 20 FOOT STRIP LYING BETWEEN LOTS 1 AND 2 AND LOTS 5 AND 6; THE NORTH 10 FEET OF THE 20 FOOT STRIP LYING BETWEEN LOTS 7 AND 8 AND LOTS 5 AND 6; AND ALSO

EXCEPT THAT PORTION OF THE 30 FOOT STRIP LYING WITHIN AND ALONG THE EAST BOUNDARY OF SAID PLAT, WHICH IS ADJACENT TO AND EAST OF LOT 6 THEREOF; LYING NORTH OF THE MIDLINE OF THE 20 FOOT STRIP BETWEEN LOTS 6 AND 7 THEREOF EXTENDED EAST TO THE EAST LINE OF THE PLAT AND SOUTH OF THE MIDLINE OF THE 20 FOOT STRIP BETWEEN LOTS 1 AND 6 THEREOF EXTENDED EAST TO THE EAST LINE OF THE PLAT.

PARCEL B:
 THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., LYING WEST OF THE WESTERLY LINE OF MILLER'S SKYLINE TERRACE 7TH ADDITION, ACCORDING TO PLAT RECORDED IN BOOK 42 OF PLATS AT PAGES 7 TO 10, INCLUSIVE, AND NORTHERLY OF THE FOLLOWING DESCRIBED LINE TO WIT:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 26, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M.; THENCE NORTH 01°55'47" EAST, 665.86 FEET ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST

QUARTER OF SAID SECTION 26; THENCE CONTINUING NORTH $01^{\circ}55'47''$ EAST, 862.98 FEET ALONG SAID WEST LINE TO AN INTERSECTION WITH THE CENTERLINE OF GOLD CREEK AND THE TRUE POINT OF BEGINNING FOR THIS LINE DESCRIPTION; THENCE ALONG SAID CENTERLINE OF CREEK THE FOLLOWING COURSES AND DISTANCES: SOUTH $24^{\circ}45'58''$ EAST, 203.20 FEET; SOUTH $21^{\circ}33'22''$ EAST, 173.79 FEET; SOUTH $26^{\circ}05'03''$ EAST, 166.96 FEET; SOUTH $18^{\circ}19'22''$ EAST, 58.01 FEET; THENCE LEAVING SAID CENTER LINE OF CREEK AND TRAVELING ALONG THE NORTH LINE OF THE SOUTH 321.35 FEET OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION; NORTH $87^{\circ}49'09''$ WEST 181.86 FEET TO THE WESTERLY LINE OF SAID MILLER'S SKYLINE TERRACE 7TH ADDITION AND THE END FOR THIS LINE DESCRIPTION.

PARCEL C:

THAT PORTION OF LOT 2, SECTION 27, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., LYING SOUTH OF THE PLAT OF NARROWS NECK, ACCORDING TO PLAT RECORDED IN BOOK 42 OF PLATS AT PAGES 11 AND 12; AND EAST OF THE EAST LINE OF A 200 FOOT WIDE STRIP, SAID STRIP ABUTTING AND LYING EASTERLY OF THE NORTHERN PACIFIC RAILWAY COMPANY RIGHT OF WAY.

PARCEL D:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., THENCE EAST ALONG THE SOUTH LINE OF SAID SUBDIVISION TO THE SOUTHEAST CORNER OF SAID SUBDIVISION; THENCE NORTH ALONG THE EAST LINE OF SAID SUBDIVISION TO INTERSECT A LINE 200 FEET SOUTH OF THE SOUTH LINE OF BLOCK D, MILLER'S VIEW RIDGE ADDITION, ACCORDING TO PLAT RECORDED IN BOOK 17 OF PLATS AT PAGE 75; THENCE WEST 77 FEET, MORE OR LESS, ALONG THE SOUTH LINE OF PREMISES CONVEYED TO GERALD A. CASSINO AND SALLY A. CASSINO, HUSBAND AND WIFE, BY DEED RECORDED FEBRUARY 27, 1978 UNDER AUDITOR'S FEE NO. 2802085 TO THE SOUTHWEST CORNER OF SAID CASSINO PREMISES; THENCE WESTERLY 175 FEET PARALLEL TO THE SOUTH LINE OF SAID BLOCK D, AND ALONG THE SOUTH LINE OF PREMISES CONVEYED TO GILBERT B. LINDEN AND RHEA R. LINDEN, HUSBAND AND WIFE, BY DEED RECORDED UNDER AUDITOR'S FEE NO. 8012100268 TO THE SOUTHWEST CORNER OF SAID LINDEN PREMISES; THENCE NORTH 200 FEET TO THE SOUTH LINE OF SAID BLOCK D; THENCE WEST 82.54 FEET ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF LOT 1, BLOCK D AT A POINT ON THE EAST LINE OF PREMISES CONVEYED TO CLIFFORD OLSON AND ANNE OLSON, HUSBAND AND WIFE, BY DEED RECORDED SEPTEMBER 5, 1978 UNDER AUDITOR'S FEE NO. 2849838; THENCE ALONG THE WESTERLY LINE OF SAID LOT 1 EXTENDED SOUTHERLY AND THE EASTERLY LINE OF SAID OLSON PREMISES TO A POINT 20 FEET SOUTH OF THE SOUTHERLY LINE OF SAID LOT 1, AS MEASURED PERPENDICULAR TO SAID SOUTHERLY LINE, AND BEING THE SOUTHEAST CORNER OF SAID OLSON PREMISES; THENCE WEST 120 FEET PARALLEL TO SAID SOUTHERLY LINE AND ALONG THE SOUTH LINE OF SAID OLSON PREMISES TO THE SOUTH AND MOST EASTERLY CORNER OF LOT 8 OF NARROWS NECK, ACCORDING TO PLAT RECORDED IN BOOK 42 OF PLATS AT PAGES 11 AND 12; THENCE SOUTHERLY AND WESTERLY ALONG THE SOUTH LINE OF SAID LOT 8 AND A PORTION OF THE SOUTH LINE OF LOT 7 OF SAID PLAT THE FOLLOWING COURSES AND DISTANCES: NORTH $86^{\circ}32'10''$ WEST 43.20 FEET; THENCE SOUTH $58^{\circ}56'00''$ WEST 191.72 FEET; THENCE NORTH $66^{\circ}58'43''$ WEST 9.93 FEET TO THE WEST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE SOUTH ALONG SAID WEST LINE TO THE POINT OF BEGINNING. (ALL IN PIERCE COUNTY, WASHINGTON)

05/18/82
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