

NO. 35556-6-II

COURT OF APPEALS

STATE OF WASHINGTON

BY *yn*

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WILLIAM HOLDNER; RANDAL HOLDNER;
HOLDNER FARMS, a partnership;
HOLDNER FARMS WASHINGTON, a partnership,

Appellants,

v.

PORT OF VANCOUVER, USA,
a Washington municipal corporation,

Respondent.

PORT OF VANCOUVER, USA,
a Washington municipal corporation,

Respondent,

v.

WILLIAM HOLDNER and RANDAL HOLDNER,
d/b/a HOLDNER FARMS, a partnership,

Appellants.

BRIEF OF APPELLANTS

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A. INTRODUCTION

Appellants William Holdner and Randal Holdner d/b/a Holdner Farms had a long-term lease with the Port of Vancouver for a period of 10 years with 10 one-year renewal periods for over 500 acres located in Clark County. Holdner Farms raised Sedan grass on the parcel for grazing, harvesting, and then feeding it to 800 head of cattle, also kept on the property. When Holdner Farms took over the land in 1997, the property contained old tires and dilapidated structures, which were removed. The Holdner Farms cattle operation on the parcel was a successful agricultural operation that benefited the Port as well as Holdner Farms.

The lease contained two provisions permitting the Port early access to the property. One was a provision permitting the Port to enter the premises to inspect the condition of the premises and the Holdner Farms operation. The second allowed the Port to terminate the lease “at any time the Port needs said premises to carry on its industrial development or other Port activities.”

In May 2006, after Holdner Farms’ Sedan grass crop was planted, the Port demanded to sink 14 monitoring wells on the property. The wells would have damaged the crop. The Port did not have the right to sink wells on the leasehold under the terms of the lease. Holdner Farms declined the Port access without more assurance of compensation for the

damage to the farming operation. Instead of negotiating, the Port evicted Holdner Farms and gave them 90 days to vacate. The Port also sought a preliminary injunction for immediate access to the property, but the trial court denied it. Again, Holdner Farms offered to negotiate a resolution. The Port ignored the offer and sued for unlawful detainer. The trial court granted the Port summary judgment and a writ of restitution.

The Port breached the lease and it retaliated against Holdner Farms when it terminated the lease without having a need to retake the parcel. The trial court erred in issuing a writ of restitution and granting summary judgment to the Port, particularly where the immediate cessation of agricultural/cattle operations on the parcel by Holdner Farms represented an onerous imposition by the Port on Holdner Farms. Summary judgment on such hotly disputed issues as retaliation, contract interpretation, and commercial unreasonability was inappropriate.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in granting the Port's motion for partial summary judgment in its wrongful detainer action and awarding damages to the Port.

2. The trial court erred in entered judgment against Holdner Farms in its action.

3. The trial court erred in granting the Port a writ of restitution on summary judgment.

(2) Issues Pertaining to Assignments of Error

1. Did Holdner Farms properly refuse the Port entry to sink wells that would have damaged crops, when the lease specifically gave the Port authority to enter only to conduct inspections?

2. Did the Port retaliate when it sued Holdner Farms for unlawful detainer after the trial court denied the Port's initial request for a preliminary injunction?

3. Did the Port breach the lease when it evicted Holdner Farms in the absence of a need to do so?

4. Under these circumstances, was requiring Holdner Farms to vacate within 90 days a commercially reasonable interpretation of the lease, when the terms of the lease required "at least" 90 days?

5. The lease envisioned early termination if the Port needed the property for light industrial development, but that type of development is no longer possible because of a separate settlement agreement between the Port and an environmental group as to the use of neighboring property. Also, the Port did not need to retake the entire 500-acre property in order to sink 14 wells. Is lease termination under these circumstances contrary to the parties' intentions when they signed the lease?

C. STATEMENT OF THE CASE

William Holdner and his son, Randal Holdner, formed a partnership known as Holdner Farms. CP 3. Holdner Farms' chief business is raising and selling cattle. CP 92.

In 1997, Holdner Farms entered into a lease with the Port of Vancouver. The leased land was on Lower River Road in Clark County and consisted of five hundred (500) acres. CP 44-45; VRP October 16, 2006 at 74.¹ The lease contained a number of important terms:

1. The term of the lease was ten (10) years. As part of the consideration for entering into the lease, Holdner Farms was given the right to ten (10) additional one (1) year option terms thereafter. (Section 1)
2. Holdner Farms was restricted in the use of the property to agricultural and farming purposes. (Section 3)
3. Holdner Farms was obligated to maintain and repair the structures. However, it had the right to remove or demolish some of the structures that were located on the property. It was also allowed to make improvements on the property. (Section 4 and 5)
4. The lease prohibited Holdner Farms from creating any sort of nuisance on the property. (Section 9)

CP 34-41.²

¹ The property is commonly referred to as "Parcels 4 and 5." It is distinguished from an adjacent "Parcel 3" also owned by the Port. CP 119.

² The lease was prepared by the Port. CP 102. It is attached at Appendix A.

Section 5 of the lease allows Holdner Farms to make improvements to the property, but nothing in the lease reserved to the Port the right to make any improvements on the property during the lease term. In fact, the Port's only ability to enter the property under the lease was for "inspection." Paragraph 12 of the lease allows the Port to enter the property for inspection:

12. INSPECTION: It shall be lawful for the Port and/or the Port's servants, agents, and employees to enter into or upon the lease premises at any reasonable time for the purpose of examining the condition thereof the performance by LESSEE of the terms and provisions of this agreement.

CP 40. This provision allowed the Port to access the property, but not to alter it. The lease made no mention of, or allowance for, the Port to construct improvements or sink wells on the property. CP 34-41. Paragraph 15 of the lease allows the Port to evict Holdner Farms if it needs the property:

15. EARLY TERMINATION BY THE PORT: It is understood and agreed that this Lease may be terminated by the PORT at any time the PORT needs said premises to carry on its industrial development or other PORT activities. The PORT shall give at least ninety (90) days written notice to the LESSEE of its intention to terminate said Lease and in addition, shall give the LESSEE an opportunity to remove all of its growing crops or in lieu thereof, the PORT shall pay the LESSEE the value of said crops which cannot be harvested by reason of the early termination of said Lease.

Holdner Farms took possession of the property in 1997. CP 42. There was a great deal of cleanup required to make the property useable. Holdner Farms moved 800 head of cattle onto the premises after it took possession and improved the property. CP 96-98. The Port was pleased with the improvements. CP 107. Holdner Farms grew a crop of Sedan grass on approximately half of the property, CP 93,³ and harvested the grass in late September or early October and used it to feed the cattle. The remainder of the property was used to breed, raise, and graze cattle. CP 97, 324. Cows were impregnated and gave birth to calves on the premises. CP 92. At any one time there were upwards of four hundred pairs of cows and calves. CP 98.

At the time the parties entered into the lease, they knew that the Port would eventually apply the property to light industrial/industrial park use, but it was not anticipated that this would occur “for many years.” CP 34. In the 1990’s, the Port decided to dedicate Parcels 3, 4, and 5 to industrial development for a project it referred to as Columbia Gateway. CP 119. The Port’s Environmental Impact Statement on the potential development was due in July of 2004. CP 123. The Columbia Gateway project met with environmental opposition. CP 165. One of the Port’s

³ Sedan grass is the crop that Holdner Farms grows for its cattle. It is typically planted in April and May and harvested in the first weeks of September. It is then used to feed the cattle throughout the remainder of the year. CP 93, 324.

chief antagonists was Columbia River Alliance for Nurturing the Environment (CRANE). CP 165. CRANE was concerned that Columbia Gateway would irreparably damage habitat crucial to health of Sandhill cranes in particular and the ecosystem of the lower-Columbia region generally. CP 165-66. On October 2003, CRANE and the Port entered into a complex settlement agreement. CP 165-82. The Port could develop Parcel 3 for industrial use, but no development of any kind could occur on the Holdner's leasehold, Parcels 4 and 5. CP 166.

In May 2006, the Port decided to place fourteen (14) wells on the property leased to Holdner Farms "for the purposes of its plan to develop and convert the property to other uses." CP 31. Port personnel requested an emergency meeting with William Holdner on May 5, 2006, to request access for the placement of the monitoring wells. CP 31. The Port provided Holdner Farms with a map showing the location. CP 7. The Port knew that the project would interfere with Holdner Farm's operation. CP 51, 59-60. The plan called for placing wells on the area where the Sedan grass crop was growing. CP 51, 60. Although the drilling of the wells would damage the crop, at this meeting the Port made no initial offer of compensation for this interference with the use of the leased property. CP 324. The Port also knew that the project would interfere with calving and was occurring at a very busy time of year for farming. CP 376. Due

to the potential damage to their crops and substantial interference with its farming operation, Holdner Farms would not allow the project to proceed without further discussion. CP 324.⁴

The Port immediately gave notice to Holdner Farms under paragraph 15 to terminate the lease:

To proceed with the development of Columbia Gateway, as per the Port's preferred alternative, the Port has completed several environmental studies. One of these studies requires the Port to drill 14 monitoring wells to determine the existing water table to determine the existing water table for development of future wetlands. On Friday, May 5, 2006, staff from the Port of Vancouver and its consultants traveled to the Portland office of Holdner, Baxter, Baum & Company to discuss the Port's need to drill the monitoring wells with you. You were given a map of the proposed location of the wells and asked to cooperate in providing the consultant with access to the Holdner Farms Leaseholder for the purpose of installing the monitoring wells. At that time, you refused the Port's request for access ...

As a result of your refusal to allow the Port to install the monitoring wells on the Holdner Farms Leasehold and the Port's need to continue with the installation of the monitoring wells as part of its development of Columbia Gateway, THE PORT HEREBY GIVES YOU NOTICE of its intent to terminate the lease agreement dated November 26, 1997, between the Port of Vancouver and William Holdner and Randal William Holdner dba Holdner Farms ("Lease"). PURSUANT TO THE LEASE, the effective

⁴ This was not the first time Holdner Farms was asked for placement of similar types of materials on the leasehold. Olympic Pipeline previously made a similar request. It gave a number of months of advance notice; worked with Holdner Farms on mitigating the effects of the operation; and agreed to pay compensation for the problems it caused. The program went well for all concerned. CP 60-61.

date of termination is August 15, 2006, ninety days from the date of this notice (“the Termination Date”).

CP 23.⁵ The notice made no reference to paragraph 12 of the lease. Although the notice discussed compensation for crops, it did not acknowledge or offer compensation for the substantial burden that such a rapid eviction would place on a large farming operation.

After the notice was sent, Holdner Farms commenced suit against the Port on May 25, 2006 in *Holdner v. Port of Vancouver* (Clark County Superior Court No. 06-2-02694-6). The complaint questioned the Port’s legal right to terminate the lease under the circumstances, and sought damages. CP 3-4.

The Port sought a preliminary injunction requiring Holdner Farms to give it access to the property for the placement of the monitoring wells. CP 55. The motion relied heavily on paragraph 12, the “inspection” clause of the lease, arguing that the installation of wells amounted to nothing more than an inspection of the property. CP 56-62. The trial court denied the Port’s request for a preliminary injunction. CP 377.

Despite this initial legal victory, after the preliminary injunction order issued, Holdner Farms advised the Port that it would allow the monitoring wells on the leased property if suitable compensation could be

⁵ The termination notice is attached at Appendix B.

arranged for crop damage and disturbance to the farming and grazing operations. CP 381-82. The Port did not reply.

The Port instead filed an action for unlawful detainer against the Holdners and Holdner Farms in Cause No. 06-2-04327-1 in August 2006 seeking a writ of restitution. CP 347-49. The two actions were consolidated. CP 383-84. The trial court granted summary judgment to the Port in its unlawful detainer action and granted it a writ of restitution. CP 325-28. The trial court granted the Port's motion, issuing a partial judgment certified under CR 54(b). CP 330.⁶ Holdner Farms filed a timely notice of appeal to this Court. CP 333-34.

D. SUMMARY OF ARGUMENT

Summary judgment is only appropriate when reasonable minds could reach only one conclusion on the evidence presented, and when there are no disputed issues of material fact. In this case, legitimate legal and factual disputes abound. Summary judgment was not proper.

⁶ In order for Holdner Farms to stay on the property and avoid further damages, it offered to post a supersedeas bond during appeal. However, the terms of the bond were more than monetary; Holdner Farms was severely restricted in its ability to use the property. This onerous burden made it impossible for Holdner Farms to post the bond, and the Port reentered the property. Because the Port has already reentered, any challenge to the supersedeas order has been rendered moot.

Parties to a commercial lease, like parties to any commercial contract, must abide by the terms of the agreement, act in good faith, and execute the contract in a commercially reasonable manner. If there is a disagreement about the meaning of a term, any ambiguity must be construed against the drafter.

The Port attempted to violate the lease when it demanded to enter the Holdner Farms property, disrupt operations, damage crops, and install and monitor wells under a lease term that allowed for “inspection.” Holdner Farms was within its rights under the lease to refuse entry, and the trial court initially agreed. The Port acted in bad faith when it terminated the lease without a proper basis to do so, and without negotiating in good faith to settle the matter in a commercially reasonable manner. The Port also rendered the contract illusory by terminating it without a legitimate reason, and allowing Holdner Farms only the bare minimum of time to vacate contemplated under the lease, which violated the intent of the parties.

E. ARGUMENT

(1) Standard of Review on Summary Judgment

Review of a grant of summary judgment is de novo. *Korlund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005). Summary judgment is proper if there is no genuine issue as to any

material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Korlund*, 156 Wn.2d at 177. Facts and reasonable inferences therefrom are viewed most favorably to the nonmoving party; summary judgment is proper if reasonable minds could reach only one conclusion from the evidence presented. *Id.*

(2) Washington Law on the Interpretation of a Contract

The lease between the parties is subject to the normal rules of construction of any lease, including rules about ambiguities. Since leases are contracts, contract construction rules apply. *Seattle-First Nat'l Bank v. Westlake Park Assocs.*, 42 Wn. App. 269, 272, 711 P.2d 361 (1985), *review denied*, 105 Wn.2d 1015 (1986). Any ambiguity in a lease document will be construed against the drafter. *Diversified Realty, Inc. v. McElroy*, 41 Wn. App. 171, 173, 703 P.2d 323 (1985). The Port drafted the lease, so any ambiguity, specifically in Paragraph 15, must be construed against the Port.

When the meaning of a term is uncertain, the context presented by the parties' negotiations at the time the contract was formed and their discussions may provide guidance. *Berg v. Hudesman*, 115 Wn.2d 657, 667, 801 P.2d 222 (1990); *Olympia Police Guild v. City of Olympia*, 60 Wn. App. 556, 559, 805 P.2d 245 (1991). When one interpretation of contractual language would make the contract unreasonable and another

would make it reasonable, the latter construction must be adopted. *Patterson v. Bixby*, 58 Wn.2d 454, 458, 364 P.2d 10 (1961); *McIntyre v. Fort Vancouver Plywood Co., Inc.*, 24 Wn. App. 120, 124, 600 P.2d 619 (1979).

This lease must be interpreted in a commercially reasonable manner to effectuate the parties' intentions. The touchstone of any contract is the intentions of both parties. *Tanner Elec. Coop. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996); *William Dickson Co. v. Pierce County*, 128 Wn. App. 488, 493, 116 P.3d 409 (2005). Because this lease involves two commercial entities and a commercial agreement, it must be interpreted in a commercially reasonable manner. *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 705, 952 P.2d 590 (1998).

Finally, Washington law implies a duty of good faith and fair dealing in the implementation of a contract. *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569, 807 P.2d 356 (1991). That duty obligates parties to "cooperate with one another so that each may obtain the full benefit of performance. *Metro. Park Dist. of Tacoma v. Griffith*, 106 Wn.2d 425, 437, 723 P.2d 1093 (1986).

(3) There Was a Reasonable Dispute About the Term “Inspection” and Whether It Authorized the Port to Enter the Premises and Sink Monitoring Wells, and the Port Retaliated By Terminating the Lease and By Filing an Unlawful Detainer Action

Under paragraph 12 of the lease dealing with Port inspection of the property, Holdner Farms was not obligated to permit the Port access to the property for sinking monitoring wells, as the trial court ruled when it denied the Port a preliminary injunction. Paragraph 12 only authorized the Port to enter the premises for inspection. When Holdner disputed the Port’s interpretation of “inspection” as encompassing drilling and damage to the Property, the Port terminated the lease in retaliation. The Port’s notice to terminate the lease specifically referenced the well issue. CP 23. There is a genuine issue of law and of material fact about whether the Port improperly retaliated in terminating the lease as a response to Holdner Farms’ proper exercise of its rights. Summary judgment on this issue was not appropriate.

“Inspection” was not defined in the contract. Absent an agreed definition, an undefined term within a contract must be given its ordinary meaning. *Lynott v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 123 Wash.2d 678, 699, 871 P.2d 146 (1994). A word’s ordinary meaning is determined by looking to standard English dictionaries. *Estate of Jordan v. Hartford Accident & Indem. Co.*, 120 Wash.2d 490, 502, 844 P.2d 403 (1993).

“Inspect” means to “view closely in critical appraisal: look over.” “Inspection” means “the act of inspecting.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 647-48 (11th ed. 2003). The Port attempted to argue that the term “inspection” encompassed the drilling, but the trial court disagreed. After prevailing on the initial issue of whether the Port could unilaterally enter the leasehold to drill well, Holdner Farms was within its rights to ask for further negotiations regarding the wells.

But after the trial court denied the Port’s preliminary injunction request, the Port retaliated by suing Holdner for unlawful detainer instead of negotiating. This was improper conduct that damaged the Holdner’s farming operations. In *Port of Longview v. Int’l Raw Materials, Ltd.*, 96 Wn. App. 431, 979 P.2d 917 (1999), the Port terminated a month-to-month tenancy of a commercial tenant after its president wrote a letter to the *Longview Daily News* expressing his view that the Port should construct proper facilities to insure environmentally safe discharge of coal tar pitch, a hazardous substance. When International Raw Materials did not leave the premises, the Port instituted unlawful detainer proceedings. *Longview*, 96 Wn. App. at 434-35. International Raw Materials defended on the basis that the Port’s termination of its tenancy was done in retaliation for its president’s exercise of free speech rights. *Longview*, 96 Wn. App. at 435-36. This Court held that a governmental landlord could

not terminate a tenancy because of the tenant's exercise of free speech rights if the speech related to the subject property and the tenant was not otherwise in breach of the lease agreement.

Although this is a case of exercising contract rights rather than free speech rights, the analysis is apt. Instead of accepting Holdner Farms' commercially reasonable offer – to allow the wells in exchange for compensation for the lost grass crop and other damage to its farming operations – the Port sued for unlawful detainer. This was retaliation against Holdner Farms for the proper exercise of its rights under the lease.

The trial court did not have a proper basis for deciding that the Port's actions were not retaliatory as a matter of law. The court's reasoning on that issue was that the Port had not retaliated because it acted consistent with the lease terms:

Affirmative defenses are raised of whether the – whether the Port was acting in retaliation. The Port was acting consistent with the lease provisions although both parties were entitled to exercise their rights under the lease and have done so through this court process.

The court does not find a basis to determine that there is an argument for retaliation. And with respect to unclean hands, again a similar analysis, that the parties were exercising rights pursuant to this lease.

RP (10/16/05):75.

The trial court misapplied the law. Whether the Port breached the lease is a separate issue from whether the Port acted on the lease in retaliation. The *Longview* court did not hold that terminating a lease in retaliation for exercising rights is only wrong if the terms of the lease are breached. Breach of contract is a completely separate legal issue from retaliation. The trial court erred in concluding that if the Port followed the letter of the lease, its actions were not retaliatory.

The trial court also erroneously presumed that Holdner Farms was obligated to provide *unconditional* access to its leasehold to avoid eviction, despite contrary terms in the lease:

The court concludes as a matter of law that that correspondence ... did not establish unconditional access.

...[T]he negotiations cannot be characterized as an unconditional backing down from the previous position taken on denial of access. The only reasonable interpretation was that it constituted negotiations continuing or suggested between the parties.

So the court finds that access had been denied and that the correspondence did not permit access to the property for the purposes in question.

RP (10/16/06):73.

The lease clearly states that Holdner Farms was *not* obligated to provide unconditional access, but only access for inspection. The lease

also clearly states that the Port did not have unfettered discretion to terminate the lease for any reason or no reason.

There has been no trial here; Holdner Farms had not had a chance to present its case on the Port's retaliation. The trial court erred when it entered summary judgment on this issue, as the Port's retaliation and its duties under the lease were disputed, genuine issues of material fact.

(4) Under Paragraph 15 of the Lease the Port Had to Demonstrate Some Necessity Connected Its Industrial Development or Activities In Order to Terminate the Lease

The Port attempted to terminate the lease for a reason not permitted by the express terms paragraph 15. The Port's actions constitute breach of contract and a violation of its duty to perform on the contract in a commercially reasonable manner. Summary judgment was inappropriate.

Under the terms of paragraph 15, termination is allowed only when the Port "needs" the property for industrial development or other activities. The term "need" is not defined in the lease, so again, the dictionary meaning is consulted. As a noun, the work "need" is defined as a "necessity." As a verb, the word "need" is defined "to have need of; require." WEBSTER'S NEW WORLD COMPACT DESK DICTIONARY (Second Edition), Page 323 (2001).

Even if the term “need” is ambiguous, that ambiguity must be construed against the Port as drafter of the lease. *Diversified*, 41 Wn. App. at 173. The Port controlled the terms of the lease. It could have allowed itself greater flexibility in the manner of lease termination. It did not. Holdner Farms signed the lease in good faith, and was entitled to rely on that strong language.

Consistent with the Port’s own choice of words in the lease, the trial court should have required the Port to show some necessity for terminating the lease. Mere whim or convenience does not suffice. The Port drafted this lease, and completely controlled its terms. It could have allowed itself unconditional reentry for no reason whatsoever. It did not.⁷ The Port is bound by the language it drafted. The court below, acting on summary judgment, was bound to interpret those terms and the evidence in the light most favorable to Holdner Farms.

But the trial court again erred in analyzing this issue. The court framed the issue as whether the “desire for the digging of wells for environmental assessment purposes constitute a sufficient basis within the lease provision to carry on industrial development or other Port activities.” RP (10/16/06):73. The court then noted that it “appears from the record,

⁷ The record reflects that the Port was “pleased” to have Holdner Farms as a lessee, because the tenancy benefited the Port in many ways. CP 101. It is not surprising, then, that the Port chose to include reasonable terms of reentry in the lease.

both from the record of this litigation as well as the statements of the Port in terms of pursuing their project, that this was a significant step in the procedure in order to pursue the overall development plan.” *Id.* at 74. Again, the trial court mistakes the summary judgment burden and ignores evidence presented *by the Port* that it did not “need” to sink the wells.

The Port’s own notice also showed that the monitoring wells were not a “necessity.” That notice stated that the Port is seeking placement of the monitoring wells to proceed with the development of Columbia Gateway “as per the Port’s preferred alternative.” CP 23. This language makes it clear that other alternatives are available that presumably do not involve the placement of monitoring wells on the property occupied by Holdner Farms. If other alternatives existed, there was no necessity.

The Port’s own pleadings called into question the need to evict Holdner Farms in May 2006. In its motion for preliminary injunction in June 2006, the Port stated:

Time is of the essence. According to our consultants, it is imperative that the groundwater wells be installed in June so as to capture the seasonal fluctuation between wet and dry seasons. If the wells are not installed this month, the Port will be delayed an entire year in order to capture the unique data available during this season.

CP 6.⁸

⁸ It is important to note the Port alone was responsible for the time pressure it experienced. The first time Holdner Farms heard about the Port’s need to sink the wells was in the beginning of May. CP 5-7.

The Port's eviction notice, dated May 12, 2006, gave the minimum 90 days notice to Holdner Farms. The Port knew then that by the time 90 days had passed, the need to reenter quickly would be extinguished. Eviction of Holdner Farms in May 2006 was not a necessity, it was mere retaliation for Holdner's lack of prompt acquiescence to unreasonable demands.

The trial court's analysis of this issue was faulty in another respect. The court focused on whether the Port "needed" to sink the wells in order to monitor the groundwater. RP (10/16/06):74. That was not the issue. The issue was whether the Port "needed" to evict a long-term agricultural leaseholder, who would be severely damaged by the eviction, and who had *offered* to negotiate a commercially reasonable resolution, in order to sink 14 wells that the Port admitted were useless until Spring 2007. There was documentary evidence in the record to suggest that the Port had other alternatives, including negotiation with the Holdners. The Court's resolution of this dispute on summary judgment was in error. Interpretation of the ambiguous term "need" in these circumstances was not a proper subject for summary judgment, and there was plenty of evidence to raise a genuine issue of material fact.

(5) The Port Acted in a Commercially Unreasonable Manner By Failing to Negotiate With Holdner Farms and By Providing Only the Bare Minimum of Time to Move a Substantial Farming Operation

Under paragraph 15 of the lease, the Port was obligated to compensate Holdner Farms for any lost crops, and to supply a *minimum* of 90 days notice. When Holdner Farms offered to allow the wells after the preliminary injunction hearing, but requested compensation, the Port did not reply. The Port then terminated the lease, giving Holdner Farms only the bare minimum of time to vacate a large farming and grazing operation. This was commercially unreasonable.

“Commercial reasonability” assumes that terms in a contract between business entities must be interpreted consistent with the commercial purposes underlying them. For example, in *Wilson Court*, a dispute arose over whether a commercial lease guaranty obligated the signor in his individual capacity. Although the terms of the guaranty clearly obligated the signor individually, his signature line included his corporate title, “President.” *Wilson Court*, 134 Wn.2d at 696-97. Thus, the signor’s obligation under the contract was ambiguous. Although the court acknowledged that contracts to obligate a party in debt must be strictly construed, the commercial context changed the analysis. Contracts between commercial entities, the court said, must be construed in a

commercially reasonable manner. Based on the language in the body of the Guaranty, the court held the signor individually liable as a matter of law. *Wilson Court*, 134 Wn.2d at 704-05. To hold otherwise would have rendered the guaranty redundant, because the corporation was already liable for the obligation under the terms of a separately signed lease. *Wilson Court*, 134 Wn.2d at 708. Commercial reasonability is the standard by which commercial parties to commercial contracts are judged.

Given the circumstances, it was commercially unreasonable for the Port refuse to negotiate, and then to give Holdner Farms only the bare minimum of time allowed under the lease terms. Paragraph 15 allows for “at least” 90 days notice, a minimum amount of time. The Port explained its intentions in crafting paragraph 15:

I mean, as I said we were candid from the beginning that we had other plans for this property eventually and we would give him notice in ample time. And in fact, if he had a crop growing in the field, we’d be sure he had time to harvest it and we would expect to know in advance and let him know.

CP 105.

The parties’ intentions, as expressed by the Port, were to allow ample time for Holdner Farms to vacate, depending on the agricultural circumstances in play at the time. That is apparently why the lease provided for “at least” 90 days notice.

It is patently commercially unreasonable to ask a 10-year agricultural leaseholder to: find new suitable property; move 800 plus cattle and the attendant operations without a new property on which to resituate; abandon a valuable crop that has not completed growth and is the source of grazing for its cattle; clear any improvements which Holdner Farms had a right to remove under the lease;⁹ all within 90 days. It was especially unreasonable when, by the Port's own admission, time was not of the essence. The trial court erred as a matter of law when granted summary judgment to the Port.

(6) Requiring Holdner Farms to Vacate Under These Circumstances Was Contrary to the Parties' Intentions as Expressed in the Lease

The lease states, in the initial declarations¹⁰ and in paragraph 15, that the parties intended to end the lease when the Port needed the property for light industrial uses or other "Port activities." The Port can point to no language that allows for termination without explanation or connection to such development. Because the CRANE settlement agreement prohibits development of the Holdner parcels, the Port cannot prove any such connection.

⁹ Paragraph 5 of the lease allows Holdner Farms to remove added leasehold improvements.

¹⁰ The third initial declaration of the lease states, "WHEREAS, the PORT intends eventual use of the property to be consistent with it light industrial/industrial park zoning, but such use is not anticipated for many years. . . ." CP 34.

As explained in section (5), the trial court erred when it concluded that there were no disputed issues of material fact as to whether the Port needed to evict Holdner Farms. To simply allow the Port, for unarticulated reasons, to terminate the Holdner Farms lease because it felt like doing so breached the lease and rendered it illusory. This was plainly not the parties' intent in 1997, as reflected in the agreement's plain language, drafted by the Port. The Port violated its duty under the lease to act in good faith and in a commercially reasonable manner, and summary judgment on this issue was inappropriate.

(7) Holdner Farms Is Entitled to Its Costs on Appeal Based on Equitable Principles Stated in *Pearsall-Stipek*

Under RAP 18.1, Holdner Farms respectfully requests an award of attorney fees on appeal. Attorney fees can be awarded as part of the costs of litigation based on a contract, statute, or recognized equitable principles. *Hsu Ying Li v. Tang*, 87 Wn.2d 796, 797-98, 557 P.2d 342 (1976). A court may award attorney fees if the losing party's conduct constitutes bad faith. *Matter of Pearsall-Stipek*, 136 Wash.2d 255, 266-67, 961 P.2d 343 (1998).

The Port acted in bad faith when it terminated the Holdner Farms lease precipitously, and seriously damaged its business. Termination of the lease was in breach of its terms, was retaliatory, and was totally

unnecessary when other options were available. Attorney fees on appeal are appropriate.

F. CONCLUSION

The trial court erred in granting summary judgment to the Port. The Port had no basis for sinking monitoring wells on the Holdner Farms land under the guise of “inspecting” the property pursuant to paragraph 12 of the lease, and the trial court erroneously concluded that Holdner was required to furnish unconditional access to the property under the lease.

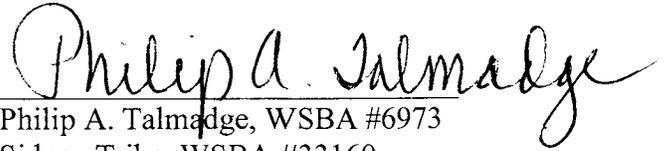
To compound its inappropriate conduct, the Port also terminated the parties’ long term lease without authority. The Port did not establish any necessity for industrial development and related activities. Paragraph 15 of the lease required the Port to do so.

The Port’s conduct in terminating a long-term lease for a cattle operation with a crop in the ground was high-handed and breached the duty of good faith and reasonableness.

This Court should reverse the trial court’s judgment, and vacate the writ of restitution. In the alternative, this court should remand for an award of damages for Holdner Farms’ economic losses incurred by the hasty order to vacate. Costs on appeal should be awarded to Holdner Farms.

Dated this 16th day of April, 2007.

Respectfully submitted,

A handwritten signature in black ink that reads "Philip A. Talmadge". The signature is written in a cursive style with a large, prominent initial "P".

Philip A. Talmadge, WSBA #6973

Sidney Tribe, WSBA #33160

Talmadge Law Group PLLC

18010 Southcenter Parkway

Tukwila, WA 98188-4630

(206) 574-6661

Attorneys for Appellants

APPENDIX

A

LEASE AGREEMENT

THIS AGREEMENT OF LEASE, made and entered into by and between the PORT OF VANCOUVER, a municipal corporation of the State of Washington, hereinafter referred to as the "PORT", and WILLIAM HOLDNER and RANDALL WILLIAM HOLDNER, dba HOLDNER FARMS, hereinafter referred to as "LESSEE".

WHEREAS, the PORT has previously leased the property to others for dairy and crop growing operations; and

WHEREAS, the PORT intends eventual use of the property to be consistent with its light industrial/industrial park zoning, but such use is not anticipated for many years; and

WHEREAS, HOLDNER FARMS (LESSEE) is willing to accept the property "as is" so long as PORT will be responsible for removal of stockpiled tires located throughout the premises; and

WHEREAS, HOLDNER FARMS is willing to make repairs to houses on the property in an amount of at least TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000) for which the PORT is willing to reduce rent equivalent to a ten (10) year amortization of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000); and

PAGE 1 LEASE AGREEMENT
HOLDNER FARMS

Exhibit A
Page 1 of 15

WHEREAS, the PORT reserves the right to audit expense records of improvement to the houses referenced above;

NOW, THEREFORE, the PORT and LESSEE enter into the following agreement:

W I T N E S S E T H:

For and in consideration of the payment unto it by LESSEE of the rental hereinafter specified and the performance by LESSEE of the covenants and obligations herein provided to be kept and performed by LESSEE, the PORT does hereby lease, demise and let unto the LESSEE all of that certain tract of real property situated within said Port District n the City of Vancouver, County of Clark, State of Washington, and more particularly described in the attached Exhibit "A", together with the appurtenances thereto.

The conditions of this Lease are as follows:

1. **TERM:** The initial term of this Lease shall be for ten (10) years subject to termination by the PORT as provided for in paragraph 15.

As part of the consideration for this Lease, the PORT hereby grants LESSEE the right to renew this Lease for an additional ten one-year (1) periods upon the same terms and conditions, save rent which is to be negotiated by the parties to establish comparable market rent for similar property, excluding the value of all improvements made by LESSEE. Notice of LESSEE's intention to

PAGE 2 LEASE AGREEMENT
HOLDNER FARMS

Exhibit A
Page 2 of 15

exercise the option to renew shall be given in writing, by certified or registered mail, not less than ninety (90) days prior to the expiration of the initial term of this Lease. LESSEE shall forfeit the right to exercise this option to renew if it has been in default of any of the terms and conditions of this Lease and failed to cure the default in the times provided for such cure.

2. **RENT:** LESSEE agrees to pay monthly rental for said premises in the following amounts: ONE THOUSAND FIVE HUNDRED SIXTY-SEVEN (\$1,567.00) DOLLARS, plus applicable leasehold taxes (presently 12.84%), commencing November 1, 1997 through October 31, 2002. LESSEE agrees to pay an amount agreed by the parties as representing the comparable market value of similar property, excluding the value of all improvements made by LESSEE for the period November 1, 2002 to October 31, 2007 less TWO HUNDRED FORTY-THREE DOLLARS (\$243) per month for that time period, but not less than previously paid. Leasehold taxes shall be paid on the lease payments plus any reductions allowed for LESSEE improvements.

3. **USE OF PREMISES:** The LESSEE shall use the premises solely for agricultural and farming purposes.

4. **MAINTENANCE AND REPAIR:** The LESSEE, at its sole expense, agrees to maintain all fences, houses (as repaired pursuant to this Lease) and other buildings located on the leased premises, and not subject to demolition as agreed to between the parties, in substantially the same condition as they are now or after repair, subject to reasonable wear and tear. In addition, the LESSEE shall be responsible at its sole expense to control noxious weeds.

LESSEE shall not be responsible for any damage to the dikes caused by flooding or other causes not under the control of the LESSEE.

5. **ALTERATIONS AND IMPROVEMENTS:** The LESSEE shall have the privilege of adding special leasehold improvements to the agricultural facilities and other improvements on said property, subject to the approval of the PORT which shall not be unreasonably withheld. The LESSEE shall be entitled to remove all or any of the improvements placed on said property by the LESSEE upon the termination of this Lease or any extension thereof. LESSEE shall have the further right to remove or demolish structures on the premises with the exception of the "Scherruble" painted barns and other structures as shown on the attached, Exhibit "C", and subject to advance approval by the PORT, which shall not be unreasonably withheld.

6. **INSURANCE AND RENTAL SECURITY:** LESSEE shall, upon execution of this Lease and Agreement, procure comprehensive public liability insurance coverage against claims for bodily injury or death of person(s) or damage to or destruction of property occurring on or about the leased premises or arising out of the LESSEE's use of said leased premises with limits of not less than \$500,000 for injury to any one person in any one accident or occurrence and \$1,000,000 property damage. LESSEE shall provide the PORT with certificates of the liability and/or indemnity policies to establish the LESSEE's insurance obligations have been met and that the policies are not subject to cancellation without at least thirty (30) days advance written notice to the PORT. In addition the PORT shall be named as an additional insured on

all insurance policies. LESSEE shall also provide the PORT a surety bond or such other acceptable security as may be acceptable to the Port Commission, all in accordance with RCW 53.08.085, as amended. The form and term of the bond or security shall be subject to the approval of the PORT, and shall extend for a period of sixty (60) days subsequent to the termination of the Lease. The surety bond or such other acceptable security shall be the equivalent of one year's rent. Failure to provide such security or to maintain it throughout the term of this Lease (and sixty (60) days thereafter) shall cause this lease to be in default.

7. **INDEMNIFICATION:** In addition to, and supplementing the insurance provisions herein, LESSEE agrees to save and hold harmless and indemnify the PORT against all claims for loss caused by the death or injury to persons or damage to property (including, but not by way of limitation, oil, toxic or hazardous wastes, or air or water polluting or hazardous substances as defined by state or federal environmental authorities), occurring or arising out of the LESSEE's use and occupancy of the leased premises and the conduct of LESSEE's business, whether occurring on or off the leased premises, including cost of defense and regardless as to the validity of said claims.

8. **PAYMENTS OTHER THAN RENT:** LESSEE will pay or cause to be paid, as the same respectively become due, all utilities, taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the leasehold estate created herein, the improvements, or any

land on which any leased improvements are located (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the receipts, income or profits of the LESSEE from the leased premises which, if not paid, may become or be made a lien on such property or a charge on the revenues and receipts therefrom), and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the leased premises; provided however, that LESSEE shall not be required to pay or cause to be paid any such tax, assessment or charge of the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and if LESSEE shall, upon demand by the PORT, furnish indemnify satisfactory to the PORT against any loss or damage on account thereof.

LESSEE agrees to furnish the PORT all necessary data and cost information in order to calculate the amount of the leasehold taxes required to be collected by the PORT.

9. **NUISANCE**: LESSEE agrees to keep up and maintain the leased premises and not to allow unsightly accumulation of waste, debris or trash, and further covenants and agrees that no waste material or debris of any sort will be allowed to emanate from its leased property to such an extent or in such a degree as to create a nuisance or cause injury or damage to other Port property, the property of other tenants of the PORT, or any other persons or parties.

10. **ASSIGNMENT OR SUBLEASE:** This Lease shall not be assignable nor shall the LESSEE sublease the whole or any part of the leased premises without prior written consent of the PORT.

11. **LIENS AND ENCUMBRANCES:** LESSEE shall keep the premises free from any and all liens, including mechanics' and materialmen's liens, based upon any act or omission of LESSEE or those claiming under LESSEE, and will indemnify and save harmless the PORT from any expense or charge in connection with liens which may be placed upon said premises or asserted there against.

12. **INSPECTION:** It shall be lawful for the PORT and/or the PORT's servants, agents and employees to enter into or upon the leased premises at any reasonable time for the purpose of examining the condition thereof and the performance by LESSEE of the terms and provisions of this agreement.

13. **INSOLVENCY:** If a petition in bankruptcy be filed by or against LESSEE, or if LESSEE should make an assignment for the benefit of creditors, the PORT may re-enter the premises and declare this Lease null and void.

14. **COMPLIANCE WITH LAWS:** All of LESSEE's operations and its use, occupancy and enjoyment of the leased premises shall be in strict accordance and compliance with all pertinent and applicable federal, state and local rules, laws and regulations of any kind or nature, and failure to abide by such rules, laws and regulations shall result in the immediate forfeiture of this Lease.

15. EARLY TERMINATION BY THE PORT: It is understood and agreed that this Lease may be terminated by the PORT at any time the PORT needs said premises to carry on its industrial development or other PORT activities. The PORT shall give at least ninety (90) days written notice to the LESSEE of its intention to terminate said Lease and in addition, shall give the LESSEE an opportunity to remove all of its growing crops or in lieu thereof, the PORT shall pay the LESSEE the value of said crops which cannot be harvested by reason of the early termination of said Lease.

16. DEFAULT: Time and exact performance are of the essence of this Lease agreement and any extension or renewal thereof, and in case of the failure of the LESSEE to make the specified payments of rental, as required within ten (10) days of the due date, or to perform any of the other of its covenants and obligations hereinabove set forth, within thirty (30) days after receipt of written notice to correct any such default, then the PORT may, at its option, forfeit and terminate this Lease and re-enter and repossess the premises, but without prejudice to the PORT's right to recover from LESSEE, or

EXHIBIT "A" (P. 1)
COLUMBIA RIVER TO LOWER RIVER ROAD AREA

AREA 1

State of Washington, Clark County,

A portion of the William H. Dillon Donation Land Claim, described as follows:

Beginning at a point on the South line of said Claim which is South 67° West 3961.4 feet from the Southeast corner of said Claim, said point being the Southwest corner of that certain tract deeded to Louis Kadow by deed recorded in Volume 108, page 269; thence North 30 minutes West along the West line of said Kadow tract to a point of intersection of the North line of said William H. Dillon Claim; thence Northwesterly along the North line of said Dillon Claim to the Northwest corner thereof; thence Southerly and Easterly following the lines of said Dillon Claim to the point of beginning, being a portion of Section 1, 2, 11 and 12, Township 2 North, Range 1 West of the Willamette Meridian, lying within the William H. Dillon Donation Land Claim.

Except County Roads.

~~Section~~ That portion of the William Dillon Donation Land Claim in Section 2, Township 2 North, Range 1 West of the Willamette Meridian, described as follows:

Beginning at a point on the South line of the William Dillon Donation Land Claim which is South 69°32'00" West, 3961.4 feet from the Southeast corner of said claim, said point being the Southwest corner of that certain tract deeded to Louis Kadow by deed recorded in Volume 108, page 269, records of Clark County; thence North 5948.07 feet; thence West 2,161.37 feet, to the true point of beginning, said point being on the North line of said Dillon Claim; thence South 16°26'45" West 351.09 feet; thence South 1°52'16" West 1015.51 feet; thence South 24°33'15" East 152.78 feet; thence South 79°16'16" West 279.35 feet; thence North 10°43'44" West 619.24 feet; thence North 10°35'50" East 788.45 feet; thence North 28°56'33" East 266.58 feet; to the Westerly extensions of the north line of said Dillon Claim; thence South 68°10'00" East to the true point of beginning.

EXCEPT the portion conveyed to the County of Clark.

SUBJECT TO easements and restrictions of record.

Exhibit A
Page 11 of 15

AREA 2

State of Washington, Clark County,

Beginning on the South line of the Wm. Dillon Donation Land Claim, in Section Twelve (12), Township Two (2) North, Range One (1) West of the Willamette Meridian, at a point 1808.4 feet South 67° West from the Southeast corner thereof; thence North 1°20' East 3375 feet to the center of a slough; thence Northerly along the center of said slough to a point 5430 feet North 1°20' East from the point of beginning; thence along said slough, North 66° West to the East line of the David Sturgess Donation Land Claim; thence South 20° West 197.6 feet to the Northeast corner of tract conveyed to E. M. Dietdrich, by deed recorded in Volume 70, page 61, records of said County; thence North 70° West along the North line of said tract 1485 feet to the Northwest corner thereof and the center of a slough; thence South 12°30' East along said slough 2065.8 feet, more or less, to the North line of the said Dillon Donation Land Claim; thence North 70° West, along said North line, 1071 feet; thence South 0°30' East 5014 feet to the South line of the said Dillon Donation Land Claim; thence North 67° East 2153 feet, more or less, to the point of beginning.

EXCEPT public roads.

SUBJECT TO an easement, including the terms and provisions thereof, for electric transmission and distribution line over and across and/or under said premises, granted to Pacific Power and Light Company by instrument recorded under Auditor's File No. F 90096.

ALSO SUBJECT TO an easement, including the terms and provisions thereof, for pipeline or pipelines for the transportation of oil, gas and products thereof, on, over and through said premises granted to Pacific Northwest Pipeline Corporation, a Delaware corporation, by instrument recorded under Auditor's File No. G 192887.

ALSO SUBJECT TO an easement, including the terms and provisions thereof, for pipeline or pipelines for the transportation of oil, gas and products thereof, on, over and through said premises granted to Olympic Pipeline Company, a Delaware Corporation, by instrument recorded January 4, 1965, under Auditor's File No. G 403907.

EXHIBIT "B"
SITE PLAN

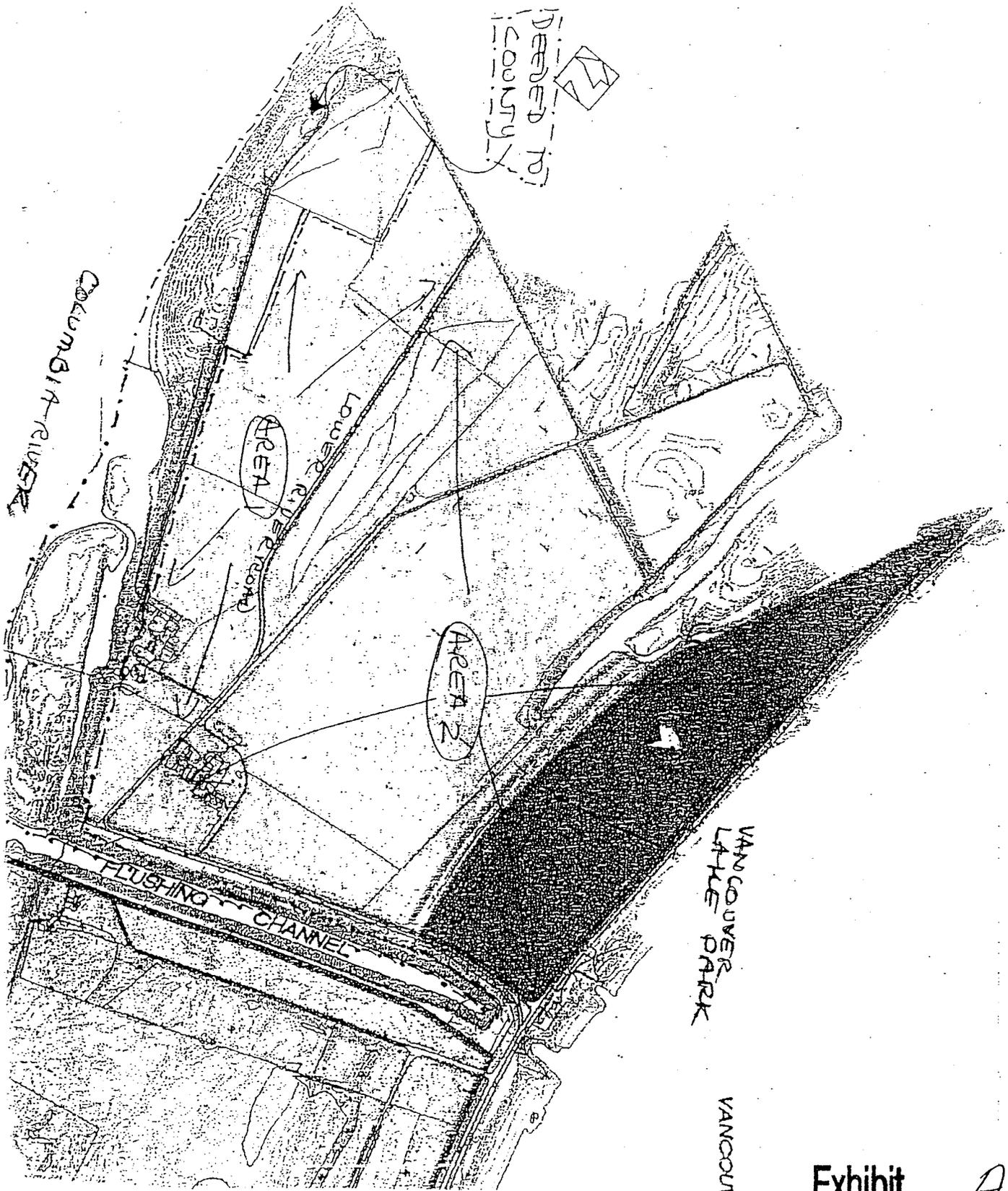


EXHIBIT 'C'

BUILDING NOT TO
BE DEMOLISHED

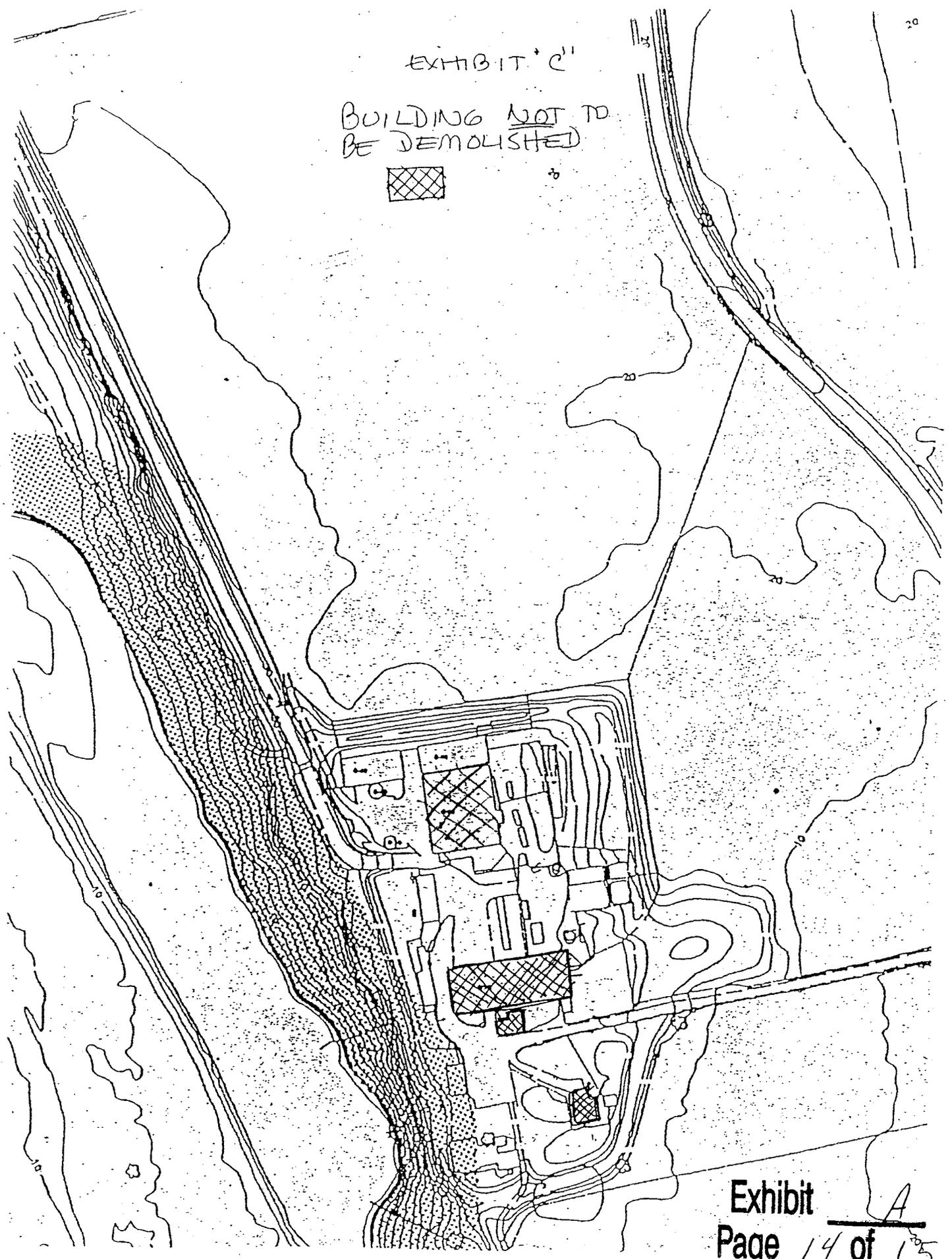


Exhibit A
Page 14 of 15



September 13, 2002

Mr. William Holdner
Holdner Farms
925 SE Sandy Blvd.
Portland, OR 97214

Dear Mr. Holdner:

As per my letter of August 6, 2002, Holdner Farms is scheduled to receive a rent adjustment effective November 1, 2002. Upon receiving your phone call regarding the rent structure, I contacted our real estate agent. They then researched current market values for agricultural and farming property in the area.

The Lease Agreement states in Section 2 "Lessee agrees to pay an amount agreed by the parties as representing the comparable market value of similar property, excluding the value of all improvements made by Lessee for the period November 1, 2002 to October 31, 2007 less Two Hundred Forty-Three Dollars (\$243) per month for that time period, but not less than previously paid. Leasehold taxes shall be paid on the lease payments plus any reductions allowed for Lessee improvements".

Upon receiving the market value of agricultural and farming land, it has been determined that the lease value is \$40.00 per acre per year. Based on this value, the base rent for the aforementioned time frame shall be:

Approximately 543 acres valued at \$40.00 per acre = \$21,720.00
\$21,720.00 divided by 12 months = \$1,810 per month
\$1,810.00 - \$243.00 = **\$1,567.00** per month plus leasehold tax
(Leasehold tax will be established at 12.84% of \$1,810.00 per month)

If you are in agreement with the above amount, please sign below and return one original to me for my files.

If you have any questions, please contact me. Thank you.

Best regards,

PORT OF VANCOUVER USA

Linda Carlson
Assistant Property Manager

I agree to the rent structure stated above

William Holdner - Owner

Exhibit A
Page 15 of 15

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2006, I caused to be served the foregoing ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS on the following party at the following address:

Ben Shafton
CARON, COLVEN, ROBISON & SHAFTON, P.S.
900 Washington Street, Suite 1000
Vancouver, WA 98660

by:

- U.S. Postal Service, ordinary first class mail
- U.S. Postal Service, certified or registered mail, return receipt requested
- hand delivery
- facsimile
- electronic service
- other (specify) _____

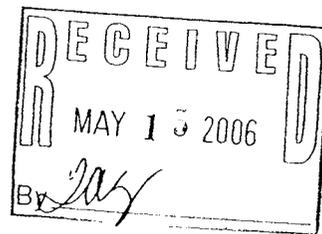


Bradley W. Andersen

B



May 12, 2006



Mr. William Holdner
Holdner Farms
975 SE Sandy Blvd
Portland, OR 97214

Sent via Certified Mail
70011140000180058145
Return Receipt Requested

Mr. Randal William Holdner
Holdner Farms
975 SE Sandy Blvd
Portland, OR 97214

Sent via Certified Mail
70011140000480058138
Return Receipt Requested

RE: NOTICE TO TERMINATE LEASE AND NOTICE TO VACATE PREMISES

Lease Agreement Dated November 26, 1997 between Port of Vancouver and William Holdner and Randall William Holdner, d/b/a Holdner Farms

Leased Premises located at what is commonly known as: Parcel 4 and Parcel 5 of Columbia Gateway consisting of approximately 543 acres

Dear Messrs. Holdner:

As you are aware, the Port of Vancouver ("the Port") is in the process of developing approximately 1,100 acres of property commonly referred to as Columbia Gateway. A portion of this area is currently leased by Holdner Farms.

To proceed with the development of Columbia Gateway, as per the Port's preferred alternative, the Port has completed several environmental studies. One of these studies requires the Port to drill 14 monitoring wells to determine the existing water table for development of future wetlands. On Friday, May 5, 2006, staff from the Port of Vancouver and its consultant traveled to the Portland office of Holdner, Backstrom, Baum & Company to discuss the Port's needs to drill the monitoring wells with you. You were given a map of the proposed location of the wells and asked to cooperate in providing the consultant with access to the Holdner Farms leasehold for the purposes of installing the monitoring wells. At that time, you refused the Port's request for access.

Paragraph 15 of the Port/Holdner Farms Lease Agreement, provides:

Early Termination by the Port: "It is understood and agreed that this Lease may be terminated by the Port at any time the Port needs said premises to carry on its industrial development or other Port activities. The Port shall give at least ninety (90) days written notice to the Lessee of its intention to terminate said Lease and in addition, shall give the Lessee an opportunity to remove all of its growing crops, or in lieu thereof, the Port shall pay the Lessee the value of said crops which cannot be harvested by reason of the early termination of said Lease."

As a result of your refusal to allow the Port to install the monitoring wells on the Holdner Farms Leasehold and the Port's need to continue with the installation of the monitoring wells as part of its development of Columbia Gateway, **THE PORT HEREBY GIVES YOU NOTICE OF ITS INTENT TO TERMINATE THE LEASE AGREEMENT DATED NOVEMBER 26, 1997 BETWEEN THE PORT OF VANCOUVER AND WILLIAM HOLDNER AND RANDALL WILLIAM HOLDNER, DBA HOLDNER FARMS ("LEASE"). PURSUANT**

Exhibit
page

B

William Holdner
Randall Holdner
Page 2
May 12, 2006

TO THE LEASE, THE EFFECTIVE DATE OF TERMINATION IS AUGUST 15, 2006, NINETY DAYS FROM THE DATE OF THIS NOTICE (THE "TERMINATION DATE").

Upon the Termination Date, your tenancy of the premises located at 8612 Lower River Road, 8618 Lower River Road and 8603 Lower River Road, Vancouver, Washington 98660, is terminated and on that day you will be required to surrender possession of the premises to the Port or its agent named below. If you do not surrender possession of these premises on or before the date set forth above, you will be in unlawful detainer of the premises and judicial proceedings will be instituted for your eviction.

Paragraph 15 of the Lease also allows for the removal and/or payment of crops. Holdner Farms shall provide to the Port a written list of all current active crops on the leased premises that: (i) names the type of crops; (ii) states the date each crop was planted; and (iii) gives the anticipated harvest date. The Port shall review and photograph the crops as well for our records.

Paragraph 5 of the Lease Agreement provides"

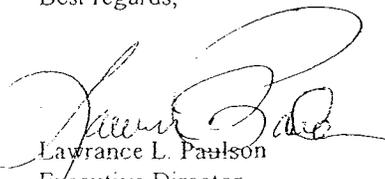
Alterations and Improvements: "The Lessee shall be entitled to remove all or any of the improvements placed on said property by the Lessee upon the termination of this Lease or any extension thereof."

Holdner Farms shall provide the Port a written list of the improvements that are expected to be removed from the premises, if any, prior to removal.

Holdner Farms has provided the Port of Vancouver with a cash deposit in the amount of \$21,218.43 for the rental security required within the Lease. The Port of Vancouver will refund to Holdner Farms, within thirty (30) days from the Termination Date, any outstanding balance from the deposit after any and all outstanding payments due to the Port under the Lease are secured.

The Port of Vancouver appreciates the tenancy of Holdner Farms and regrets the need for early termination. Nevertheless, the Port is looking forward to the future expansion of Columbia Gateway, which will provide economic development to our community.

Best regards,


Lawrence L. Paulson
Executive Director
LLP:lc

cc: Todd Coleman
Curtis Shuck
Linda Carlson
Alicia L. Lowe

Exhibit B
Page 2 of 2

CERTIFICATE OF SERVICE

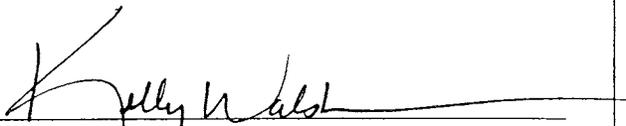
I hereby certify that on the 7th day of June 2006, I caused to be served the foregoing
DECLARATION OF LINDA CARLSON IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION on the following party at the following address:

Ben Shafton, Esq.
Caron, Colven, Robison & Shafton, P.S.
900 Washington Street, Suite 1000
Vancouver, WA 98660

STATE OF WASHINGTON
BY _____
JUN 17 2006

by:

- U.S. Postal Service, ordinary first class mail
- U.S. Postal Service, certified or registered mail,
return receipt requested
- hand delivery
- facsimile
- electronic service
- other (specify) _____



Kelly M. Walsh

DECLARATION OF SERVICE ✓

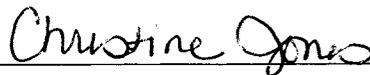
On said day set forth below, I deposited with the U. S. Postal Service a true and accurate copy of: Brief of Appellants in Cause No. 35556-6-II to the following parties:

Bradley W. Andersen
Kelly W. Walsh
Schwabe, Williamson & Wyatt, P.C.
700 Washington Street, Suite 701
Vancouver, WA 98660

Original sent by Messenger:
Court of Appeals
Division II
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: April 17, 2007, at Tukwila, Washington.



Christine Jones
Legal Assistant
Talmadge Law Group PLLC