

Court of Appeals No. 37760-8-II

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY Key
DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

VICTOR ERICKSON and LARRY ERICKSON,

Plaintiff/Appellant,

v.

CHARLES W. CHASE and NANCY CHASE, husband and wife,

Defendants and Third-Party Plaintiffs/Respondents

LLOYD COMBS and DORIS COMBS,

Third-Party Defendants and Fourth-Party Plaintiffs

JAMES ROBSON,

Fourth-Party Defendant.

**RESPONSE BRIEF OF JAMES ROBSON,
FOURTH-PARTY DEFENDANT**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR.....	1
A. TRIAL COURT DISMISSED JAMES ROBSON ON SUMMARY JUDGMENT BECAUSE THE SIX YEAR STATUTE OF LIMITATIONS FOR A WRITTEN CONTRACT COMMENCED WHEN HE SOLD THE PROPERTY AT ISSUE, ON CONTRACT ON OCTOBER 24, 1997. DID THE TRIAL COURT CORRECTLY DECIDE THE RUNNING OF THE STATUTE OF LIMITATIONS BEGAN ON THIS DATE?	1
B. THIRD-PARTY DEFENDANT AND FOURTH- PARTY PLAINTIFF COMBS HAS ASKED THAT THIS COURT REVERSE THE TRIAL COURT ON THE RULING ON SUMMARY JUDGMENT NOTED IN PARAGRAPH A ABOVE AND TO SUBSTITUTE ROBSON FOR COMBS REGARDING A \$39,405.00 MONEY JUDGMENT IN FAVOR OF CHASE FOR HAVING TO DEFEND THE UNDERLYING ACTION. UNDER THE DOCTRINES OF <i>RES JUDICATA</i> AND COLLATERAL ESTOPPEL, IS ROBSON BOUND BY THE UNDERLYING JUDGMENT?	1
III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	1
A. WHEN PROPERTY IS SOLD ON A REAL ESTATE CONTRACT, DO ANY ALLEGED BREACHES OF WARRANTY BEGIN TO RUN AT THE DATE OF SALE OR AT SOME LATER DATE WHEN THE CONVEYANCE IS FORMALIZED?.....	1
B. ROBSON DID NOT PARTICIPATE IN THE TRIAL OF THIS MATTER AND THEREFORE IS NOT BOUND BY THE OUTCOME.	2

IV.	STATEMENT OF THE CASE.....	3
A.	STANDARD OF REVIEW	5
B.	COMBS TOOK THE ASSIGNMENT OF REAL ESTATE CONTRACT BY QUIT CLAIM	5
C.	STATUTE OF LIMITATIONS.....	6
D.	THE TRIAL COURT’S DETERMINATIONS ARE NOT BINDING ON ROBSON	9
E.	ATTORNEYS’ FEES	10
V.	CONCLUSION.....	11

TABLE OF AUTHORITIES

Page(s)

Cases

Alishio v. Dept. of Social & Health Services, 122 Wash.App. 1, 91 P.3d 893 (2004)..... 9

Boey v. State of Washington, Dept. of Revenue, Docket No. 36977-0, Court of Appeals, Div. II (2009)..... 5

Bordeaux v. Ingersoll Rental Company, 71 Wn.2d 392, 429 P.2d 207 (1967)..... 10

Foley v. Smith, 14 Wash. App. 285, 539 P.2d 874 (1975)..... 7, 8

Haven v. Bays, 55 Wash.App. 324, 777 P.2d 562 (1989)..... 7

Monegan v. Pacific National Bank, 16 Wash. App. 280, 556 P.2d 226 (1976)..... 7

Overton v. Consol. Ins. Co., 145 Wn.2d 417, 38 P.3d 322 (2002)..... 5

Turpen v. Johnson, 26 Wn.2d 716, 175 P.2d 495 (1946)..... 7

Other Authorities

Washington Real Property Deskbook, Vol. 2, “Conveyances”, § 32.3(7) (copyright 1996)..... 7

I. INTRODUCTION

James Robson's role in this appeal is only on the issue of whether the statute of limitations ran on any claims made by Lloyd Combs and Doris Combs against him. James Robson did not participate in the trial of this matter and takes no position on any of the other issues raised by the parties.

II. ASSIGNMENTS OF ERROR

- A. TRIAL COURT DISMISSED JAMES ROBSON ON SUMMARY JUDGMENT BECAUSE THE SIX YEAR STATUTE OF LIMITATIONS FOR A WRITTEN CONTRACT COMMENCED WHEN HE SOLD THE PROPERTY AT ISSUE, ON CONTRACT ON OCTOBER 24, 1997. DID THE TRIAL COURT CORRECTLY DECIDE THE RUNNING OF THE STATUTE OF LIMITATIONS BEGAN ON THIS DATE?
- B. THIRD-PARTY DEFENDANT AND FOURTH-PARTY PLAINTIFF COMBS HAS ASKED THAT THIS COURT REVERSE THE TRIAL COURT ON THE RULING ON SUMMARY JUDGMENT NOTED IN PARAGRAPH A ABOVE AND TO SUBSTITUTE ROBSON FOR COMBS REGARDING A \$39,405.00 MONEY JUDGMENT IN FAVOR OF CHASE FOR HAVING TO DEFEND THE UNDERLYING ACTION. UNDER THE DOCTRINES OF *RES JUDICATA* AND COLLATERAL ESTOPPEL, IS ROBSON BOUND BY THE UNDERLYING JUDGMENT?

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- A. WHEN PROPERTY IS SOLD ON A REAL ESTATE CONTRACT, DO ANY ALLEGED BREACHES OF WARRANTY BEGIN TO RUN AT THE DATE OF SALE OR AT SOME LATER DATE WHEN THE CONVEYANCE IS FORMALIZED?

Robson purchased the property in question in November, 1994. He then sold it to David and Connie Rocha by Real Estate Contract on October 24, 1997. Rochas intended to subdivide the property and sell four five-acre lots. Part of the Real Estate Contract between Robson and Rocha required Robson to accept any Real Estate Contracts back as partial payment which carried 10% or greater interest. Rochas sold a five-acre lot to another person who assigned it to Combs. Robson took the Contract to secure the underlying debt and when it was paid in full, Robson released his secured interest by a Fulfillment Deed.

B. ROBSON DID NOT PARTICIPATE IN THE TRIAL OF THIS MATTER AND THEREFORE IS NOT BOUND BY THE OUTCOME.

The trial court held for Plaintiffs Erickson in part, for Defendant and Third-Party Plaintiffs Chase in part, and ordered Combs to pay \$39,405.00 in attorneys' fees for Chases' defense costs. The doctrines of *res judicata* and collateral estoppel both require an identity of persons and parties or at least the person against whom a plea is asserted must have been a party or in privity with the party to the prior adjudication. Under either doctrine, can Robson be bound by the determinations in the underlying case?

IV. STATEMENT OF THE CASE

James Robson bought the twenty acres in question from the Roman Catholic Archbishop of Portland on November 15, 1994. (Ex 23; Ex 24A) On October 24, 1997, Mr. Robson sold all twenty acres to David and Connie Rochas under a Real Estate Contract. (Appendix 1; CP 35-41) Rochas paid \$150,000.00 for the property with a \$3,000.00 down payment. Under "additional payment terms" the financing of the purchase included: no fixed monthly payments; Robson was to receive a \$5,000.00 bonus at the closing of each lot sale to be paid over and above the purchase price and was not to be deducted from the remaining balance; Rochas had to start the short plat process immediately and sell at least three lots as soon as possible; Robson had to agree to accept any real estate contracts bearing 10% interest as face value payment toward the loan balance; and the contract was to carry 10% interest on the balance beginning 18 months after closing. These sale terms allowed the purchaser some time to short plat the property and to sell them before having to make any additional payments on the purchase. The contract required Robson to deliver to Rochas a fulfillment deed when the Real Estate Contract was paid in full.

Rochas completed the subdivision process and on May 22, 1998, sold a five-acre parcel, the subject of this lawsuit, to Grant and Carolyn

Hosea (Appendix 2; CP 42-48). The Hoseas paid \$5,000.00 down on the Real Estate Contract for a \$59,900.00 total purchase price. Rochas assigned that contract back to Robson on May 19, 1998 (Appendix 3; CP 49-51).

On March 22, 2001, the Hoseas assigned the contract to the property to Lloyd Combs with terminology that stated “for value received does hereby convey and quit claim . . .” (Appendix 4; CP 52)

Robson delivered the fulfillment deed to Combs on December 5, 2003. (CP 53-54) Combs then sold the property to Chase and gave them a statutory warranty deed in December, 2003.

This lawsuit was filed in June, 2006. Among the claims made by Ericksons was a prescriptive easement to the property which had begun in the 1980’s. Chase tendered the defense of the warranty claims to Combs, who in turn tendered them to Robson. (CP 71) The Fourth-Party Complaint was filed in November, 2006. (CP29-40). Robson moved for summary judgment to dismiss the case against him based upon the statute of limitations. Combs filed a cross motion for summary judgment on whether the statute of limitations had run. The trial court found that the statute of limitations began to run when the Real Estate Contract between Robson and Rochas was entered into and recorded on October 24, 1997

and thus, the statute of limitations ran on any warranty claims on October 24, 2003, six years later. (CP 72-73)

A lengthy trial followed in which Robson did not participate. After that trial, these appeals followed. Robson's only involvement in the appeal are on the issues of whether the trial court correctly determined the commencement of the statute of limitations and whether Robson is bound by any determinations of the trial court in the underlying disputes among the parties.

A. STANDARD OF REVIEW

This is a review of a summary judgment. The Court of Appeals reviews the grant of summary judgment *de novo*, engaging in the same inquiry as the trial court and viewing the facts and reasonable inferences from those facts in a light most favorable to the non-moving party. *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 429, 38 P.3d 322 (2002); *Boey v. State of Washington, Dept. of Revenue*, Docket No. 36977-0, Court of Appeals, Div. II (2009).

B. COMBS TOOK THE ASSIGNMENT OF REAL ESTATE CONTRACT BY QUIT CLAIM

When the Hoseas quit claimed the assignment of the Contract and Deed to Combs, they took it without warranty. A quit claim deed conveys, without warranty, all of the Grantor's rights, title and interest in the described property. If the property is encumbered by adverse interests,

the Purchaser gets what he has paid for. Because Combs took the property without any guarantees of title under the contract, all the fulfillment deed could have done was to convey that title to him. Combs accepted the property without any warranties and that is what the fulfillment deed gave him.

C. STATUTE OF LIMITATIONS

Robson originally sold the property on Contract on October 24, 1997. The property was then twenty acres. The purchaser, Rochas, short platted the property into four 5-acre lots and sold the lot involved in this case on May 22, 1998. Using either of the above dates, the statute of limitations has run on any claim for a breach of warranty of title. Robson passed legal title to the property by Statutory Warranty Fulfillment Deed, a form provided by Stewart Title Company, on December 9, 2003.

A fulfillment deed is used in those instances where a conveyance is made in compliance with the requirements of the real estate contract. The warranties contained in the deed are usually limited in time to those warranties given by the grantor in the real estate contract, except for liens, encumbrances or other matters arising by or through grantor from and after the date of the contract. The Real Estate Contract between Robson and Rochas required Robson to convey title by a fulfillment deed. *See* ¶ 8 of Exhibit 1. Thus, the warranties, if any provided by Robson, were those

existing when the Real Estate Contract was entered into. *Washington Real Property Deskbook*, Vol. 2, “Conveyances”, § 32.3(7) (copyright 1996).

A purchaser under a real estate contract obtains all of the “bundle of rights” of an owner and in exchange, the vendor has the right to receive the contract payments. The right to receive contract payments is treated as personal property totally separate and distinct from the retained naked legal title which is held in trust for the contract vendee. *Monegan v. Pacific National Bank*, 16 Wash. App. 280, 284-285, 556 P.2d 226 (1976). “Under Washington case law, a purchaser under an executory real estate contract has substantial rights and is clearly the beneficial owner of the real property.” *Haven v. Bays*, 55 Wash.App. 324, 328, 777 P.2d 562 (1989). “If the vendee under such a contract may contest execution and attachment and physical damage, certainly he may contest a suit to quiet title by interposing any defense thereto which the law permits.” *Turpen v. Johnson*, 26 Wn.2d 716, 727, 175 P.2d 495 (1946). In other words, the vendee under an executory real estate contract has a right to contest a suit to quiet title. If the vendee under a real estate contract has the right to contest an eviction, then the question arises when does that right arise? Under *Foley v. Smith*, 14 Wash. App. 285, 539 P.2d 874 (1975), the question is answered as follows: “A covenant of warranty is broken only

by an actual or constructive eviction under a paramount title existing at the time of the conveyance.” *Foley, supra*, 291.

According to the Complaint, the adverse possession in this case started sometime in the early 1980’s. If true, then when the real estate contract was entered into in 1998, the actual or constructive eviction had already taken place. Combs’ time to complain about any breach of warranty occurred at that time. Because this is a contract claim, the statute of limitations ran six years after the contract was entered into.

Robson’s interest in the real estate contracts was as a security interest only, no different than a mortgage or deed of trust. There are no time limitations on the contracts Robson had to accept from Rochas. Rochas could enter into 15-, 20-, 30-years or even longer contracts on the sales of the five-acre lots and Robson would have to accept them. Should he be liable for the condition of the property until the end of the contract period? As a policy matter, the answer should be no as to answer otherwise would extend the statute of limitations for his actions to six years plus the length of the contract. The Courts favor an end to litigation and this would extend possible litigation out to an unacceptable length of time.

D. THE TRIAL COURT'S DETERMINATIONS ARE NOT BINDING ON ROBSON

Robson did not participate in the trial of this matter. Therefore, even if the Court overturns the summary judgment determination and holds that the statute of limitations did not run as to any claims against Robson, he is not bound by any of the trial court's determinations and this Court would have to remand for a new trial. The doctrine of *res judicata* requires "concurrence of identity" in (1) subject matter; (2) cause of action; (3) persons and parties; and (4) quality of the person for or against whom the claim is made. *Alishio v. Dept. of Social & Health Services*, 122 Wash.App. 1, 91 P.3d 893 (2004). Because Robson did not participate in the underlying trial, he cannot be bound to it under the doctrine of *res judicata*.

Collateral estoppel precludes parties from relitigating issues after parties have had a full and fair opportunity to present their case, even if the subsequent litigation is made in the form of a different claim or cause of action. Four elements must be satisfied for collateral estoppel to bar subsequent litigation. Both doctrines require a large measure of identity as to the parties, issues and facts, and in neither can the party urging the two doctrines as a defense be a stranger to the prior proceeding. He must have been a party, participant or in privity with either and the action out of

which the bar is claimed must be qualitatively the same as the case in which the doctrine is set up as a bar.” *Bordeaux v. Ingersoll Rental Company*, 71 Wn.2d 392, 396, 429 P.2d 207 (1967). A judgment is not *res judicata* nor is one collaterally estopped by judgment in a later case if there is no identity of privity of the parties in the same antagonistic relationship as in the decided action. *Bordeaux, supra* at 396.

Here, there is no privity or identity of parties in the Combs-Robson relationship. Robson had no direct dealings with Combs other than to provide the fulfillment deed. He did not independently contract with Combs but was simply the beneficiary of an assignment of a real estate contract from Hosea to Combs. Robson was merely a third person, having no privity with Combs in any proceeding involving the underlying lawsuit. Combs was not Robson’s agent; Robson was not a party to the underlying lawsuit after being dismissed; Robson did not participate, except as a witness, in the underlying action.

E. ATTORNEYS’ FEES

Paragraph 24 of the Real Estate Contract (Appendix 2) between Rochas and Hoseas allows for attorneys’ fees and costs to the prevailing party. This contract was assigned from Hoseas to Combs and was therefore the operative agreement in this case. Robson asks this Court to

award him attorneys' fees on appeal and those incurred in the trial court for defending this matter.

V. CONCLUSION

The Trial Court correctly granted Robson's motion for summary judgment determining that the commencement of the statute of limitations was on October 24, 1997 and therefore, the statute of limitations on the written contract expired on October 24, 2003, well before this lawsuit was commenced. The Court should affirm that decision and award Robson his attorneys' fees for having to defend this matter.

Respectfully submitted this 30 day of JUNE, 2009.

LANDERHOLM, MEMOVICH,
LANSVERK & WHITESIDES, P.S.



MICHAEL SIMON, WSBA No. 10931
Attorney for Fourth-Party Defendant

APPENDIX 1

129583

2-5-50-1800

BOOK 170 PAGE 250

FILED FOR RECORD
SKAMANIA CO. WASH
B. SKAMANIA CO. TITLE

OCT 24 12 59 PM '97

G. Olson
AUDITOR
GARY M. OLSON

When Recorded Return to:

CTC-82210 *LB*

REAL ESTATE CONTRACT
(RESIDENTIAL SHORT FORM)

Grantor(s) (Seller): (1)
(2)
(3)
(4)

Additional names on page of document

Grantee(s) (Buyer): (1)
(2)
(3)
(4)

Additional names on page of document

Legal Description (Abbreviated):
SECTION 30, TOWNSHIP 2 NORTH, RANGE 5 EAST

Additional legal on page 7 of document

Assessor's Tax Parcel ID# 02053000180200

SEE 2/234

ANY OPTIONAL PROVISION NOT INITIALED BY ALL PERSONS SIGNING THIS CONTRACT
WHETHER INDIVIDUALLY OR AS AN OFFICER OR AGENT -- IS NOT A PART OF THIS
CONTRACT.

1. PARTIES AND DATE. This Contract is entered into on 10/24/97
between JAMES E. ROBSON, A SINGLE PERSON

540 SE BLAIR ROAD, WASHOUGAL WA 98671 as "Seller" and
DAVID A. ROCHA AND CONNIE S. ROCHA, husband and wife

4242 L CIRCLE, WASHOUGAL WA 98671 as "Buyer."

2. SALE AND LEGAL DESCRIPTION. Seller agrees to sell to Buyer and
agrees to purchase from Seller the following described real estate
in SKAMANIA County, State of Washington: *19112*
REAL ESTATE EXCISE TAX

Legal Description Attached hereto as PAGE 7

OCT 24 1997
PAID 1920.00
G. H. Martin
SKAMANIA COUNTY TREASURER

3. PERSONAL PROPERTY. Personal property, if any,
as follows:

Gary H. Martin, Skamania County Assessor
Date 10-24-97 Parcel # 2-5-50-1812

No part of the purchase price is attributed to personal property.

Buyer's Name
Seller's Name
Title
Date
Parcel #

4. (a) PRICE. Buyer agrees to pay:

\$ 150,000.00 Total Price
Less (\$ 3,000.00) Down Payment
Less (\$) Assumed Obligation(s)
Results in (\$ 147,000.00) Amount Financed by Seller.

rec 3/97

CTC-82210

EXHIBIT 1
PAGE 1 OF 7

(b) ASSUMED OBLIGATIONS. Buyer agrees to pay the above Assumed Obligation(s) by assuming and agreeing to pay that certain dated _____ recorded as AP# _____, Seller warrants the unpaid balance of said obligation is \$ _____ which is payable \$ _____ on or before the _____ day of _____ 19 _____ interest at the rate of _____ % per annum on the declining balance thereof; and a like amount on or before the _____ day of each and every _____ thereafter until paid in full.

Note: Fill in the date in the following two lines only if there is an early cash out date.

NOTWITHSTANDING THE ABOVE, THE ENTIRE BALANCE OF PRINCIPAL AND INTEREST IS DUE IN FULL NOT LATER THAN _____ ANY ADDITIONAL ASSUMED OBLIGATIONS ARE INCLUDED IN ADDENDUM.

(c) PAYMENT OF AMOUNT FINANCED BY SELLER.

Buyer agrees to pay the sum of \$147,000.00 as follows: \$ _____ or more at buyer's option on or before the _____ day of _____, 19 _____, interest from _____ at the rate of _____ % per annum on the declining balance thereof; and a like amount or more on or before the _____ day of each and every _____ thereafter until paid in full.

Note: Fill in the date in the following two lines only if there is an early cash out date.

NOTWITHSTANDING THE ABOVE, THE ENTIRE BALANCE OF PRINCIPAL AND INTEREST IS DUE IN FULL NOT LATER THAN _____ 20 _____.

Payments are applied first to interest and then to principal. Payments shall be made at _____ or such other place as the Seller may hereafter indicate in writing.

5. FAILURE TO MAKE PAYMENTS ON ASSUMED OBLIGATIONS. If Buyer fails to make any payments on assumed obligation(s), Seller may give written notice to Buyer that unless Buyer makes the delinquent payment(s) within fifteen (15) days, Seller will make the payment(s), together with any late charge, additional interest, penalties, and costs assessed by the holder of the assumed obligation(s). The 15-day period may be shortened to avoid the exercise of any remedy by the holder of the assumed obligation. Buyer shall immediately after such payment by Seller reimburse Seller for the amount of such payment plus a late charge equal to five percent (5%) of the amount so paid plus all costs and attorneys' fees incurred by Seller in connection with making such payment.

6. (a) OBLIGATIONS TO BE PAID BY SELLER. The Seller agrees to continue to pay from payments received hereunder the following obligation, which obligation must be paid in full when Buyer pays the purchase price in full.

That certain _____ dated _____ recorded as AP# _____

ANY ADDITIONAL OBLIGATIONS TO BE PAID BY SELLER ARE INCLUDED IN ADDENDUM.

(b) EQUITY OF SELLER PAID IN FULL. If the balance owed the Seller on the purchase price herein becomes equal to the balances owed on prior encumbrances being paid by Seller, Buyer will be deemed to have assumed said encumbrances as of that date. Buyer shall thereafter make payments direct to the holders of said encumbrances and make no further payments to Seller. Seller shall at that time deliver to Buyer a fulfillment deed in accordance with the provisions of Paragraph 8.

(c) FAILURE OF SELLER TO MAKE PAYMENTS ON PRIOR ENCUMBRANCES. If Seller fails to make any payments on any prior encumbrance, Buyer may give written notice to Seller that unless Seller makes the delinquent payments within 15 days, Buyer will make the payments together with any late charge, additional interest, penalties, and costs assessed by the holder of the prior encumbrance. The 15-day period may be shortened to avoid the exercise of any remedy by the holder of the prior encumbrance. Buyer may deduct the amounts so paid plus a late charge of 5% of the amount so paid and any attorney's fees and costs incurred by Buyer in connection with the delinquency from payments next becoming due Seller on the purchase price. In the event buyer makes such delinquent payments on three occasions, Buyer shall have the right to make all payments due thereafter direct to the holder of such prior encumbrance and deduct the then balance owing on such prior encumbrance from the then balance owing on the purchase price and reduce periodic payments on the balance due Seller by the payments called for in such prior encumbrances such as payments become due.

7. OTHER ENCUMBRANCES AGAINST THE PROPERTY. The property is subject to encumbrances including the following listed tenancies, easements, restrictions and reservations in addition to the obligations assumed by Buyer and the obligations being paid by Seller:

SUBJECT TO: RIGHTS OF THE PUBLIC IN AND TO THAT PORTION LYING WITHIN THE ROAD; EASEMENT FOR PIPELINE; INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED DECEMBER 13, 1948, IN BOOK 32, PAGE 254, AUDITOR'S FILE NO. 38717, SKAMANIA COUNTY DEED RECORDS; ALSO RECORDED DECEMBER 14, 1948, IN BOOK 32, PAGE 257, AUDITOR'S FILE NO. 38724, SKAMANIA COUNTY DEED RECORDS; EASEMENT FOR INGRESS, EGRESS AND UTILITIES, INCLUDING THE TERMS AND PROVISIONS

ANY ADDITIONAL NON-MONETARY ENCUMBRANCES ARE INCLUDED IN ADDENDUM.

8. FULFILLMENT DEED. Upon payment of all amounts due Seller, Seller agrees to deliver to Buyer a Statutory Warranty Deed in fulfillment of this Contract. The covenants of Warranty in said deed shall not apply to any encumbrances assumed by Buyer or to defects in title arising subsequent to the date of this Contract by, through or under persons other than the Seller herein. Any personal property included in the sale shall be included in the fulfillment deed.

rec 5/77

CTC-82210

EXHIBIT 1
PAGE 2 OF 7

(continued)

THEREOF, RECORDED JULY 17, 1989, IN BOOK 114, PAGE 884, AUDITOR'S FILE NO. 107391, SKAMANIA COUNTY DEED RECORDS; EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF RECORDED MAY 11, 1995 IN BOOK 149, PAGE 821; DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS INCLUDING THE TERMS AND PROVISIONS THEREOF RECORDED IN BOOK 156, PAGE 362.

ADDITIONAL PAYMENT TERMS.

SELLER AGREES TO ALLOW BUYER TO SELL LOTS PROVIDING THAT BUYER PAYS SELLER A \$5,000 BONUS AT THE CLOSING OF LOT SALES, ON EACH OF FOUR LOTS. THE \$5,000.00 BONUS IS TO BE PAID TO SELLER OVER AND ABOVE THE PURCHASE PRICE AND WILL NOT BE DEDUCTED FROM LOAN BALANCE.

BUYER FURTHER AGREES TO PAY SELLER 50% OF NET PROCEEDS AT CLOSING OF SAID LOT SALES THAT ARE SOLD ON CONTRACT AND A MINIMUM 80% OF NET PROCEEDS FROM THE CLOSING OF ANY CASH SALES.

BUYER AND SELLER UNDERSTAND AND AGREE THAT:

1. THERE WILL BE NO FIXED MONTHLY PAYMENTS.
2. SELLER AGREES TO ACCEPT ANY REAL ESTATE CONTRACTS BEARING 10% INTEREST AS FACE VALUE PAYMENT TOWARDS LOAN BALANCE.
3. BUYER SHALL START THE SHORT PLAT PROCESS PRIOR TO CLOSING OF THIS SALE AND ALL COSTS TO SHORT PLAT PROPERTY SHALL BE PAID BY BUYER.
4. BUYER SHALL BEGIN MARKETING LOTS PRIOR TO CLOSING OF SALE OR COMPLETING SHORT PLAT WITH FULL DISCLOSURE TO POTENTIAL BUYERS.
5. BUYER SHALL MAKE EVERY EFFORT TO SELL AT LEAST THREE LOTS AS SOON AS POSSIBLE IN ORDER TO PAY BALANCE DUE TO SELLER IN FULL.
6. BUYER IS A LICENSED REALTOR PURCHASING THIS PROPERTY WITH THE INTENTION OF MAKING A PROFIT.
7. 10% INTEREST SHALL BE PAID ON BALANCE BEGINNING 18 MONTHS AFTER CLOSING.

9. **LATE CHARGE.** If any payment on the purchase price is not made within ten (10) days after the date it is due, Buyer agrees to pay a late charge equal to 5% of the amount of such payment. Such late payment charge shall be in addition to all other remedies available to Seller and the first amounts received from Buyer after such late charges are due shall be applied to the late charges.
10. **NO ADVERSE EFFECT ON PRIOR ENCUMBRANCES.** Seller warrants that entry into this Contract will not cause in any prior encumbrance (a) breach, (b) accelerated payments, or (c) an increased interest rate, unless (a), (b) or (c) has been consented to by Buyer in writing.
11. **POSSESSION.** Buyer is entitled to possession of the property from and after the date of this Contract, or _____, whichever is later, subject to any tenancies described in Paragraph 7.
12. **TAXES, ASSESSMENTS AND UTILITY LIENS.** Buyer agrees to pay by the date due all taxes and assessments becoming a lien against the property after the date of this Contract. Buyer may in good faith contest any such taxes or assessments so long as no forfeiture or sale of the property is threatened as the result of such contest. Buyer agrees to pay when due any utility charges which may become liens superior to Seller's interest under this Contract. If real estate taxes and penalties are assessed against the property subsequent to date of this Contract because of a change in use prior to the date of this Contract for Open Space, Farm, Agriculture or Timber classifications approved by the County or because of a Senior Citizen's Declaration to Defer Property Taxes filed prior to the date of this Contract, Buyer may demand in writing payment of such taxes and penalties within 30 days. If payment is not made, Buyer may pay and deduct the amount thereof plus 5% penalty from the payments next becoming due Seller under the Contract.
13. **INSURANCE.** Buyer agrees to keep all buildings now or hereafter erected on the property described herein continuously insured under fire and extended coverage policies in an amount not less than the balances owed on obligations assumed by Buyer plus the balance due Seller, or full insurable value, whichever is lower. All policies shall be held by the Seller and be in such companies as the Seller may approve and have loss payable first to any holders of underlying encumbrances, then to Seller as their interests may appear, and then to Buyer. Buyer may within 30 days after loss negotiate a contract to substantially restore the premises to their condition before the loss. If the insurance proceeds are sufficient to pay the contract price for restoration or if the Buyer deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the property shall be restored unless the underlying encumbrances provide otherwise. Otherwise the amount collected under any insurance policy shall be applied upon any amounts due hereunder in such order as the Seller shall determine. In the event of forfeiture, all rights of Buyer in insurance policies then in force shall pass to Seller.
14. **NONPAYMENT OF TAXES, INSURANCE AND UTILITIES CONSTITUTING LIENS.** If Buyer fails to pay taxes or assessments, insurance premiums or utility charges constituting liens prior to Seller's interest under this Contract, Seller may pay such items and Buyer shall forthwith pay Seller the amount thereof plus a late charge of 5% of the amount thereof plus any costs and attorney's fees incurred in connection with making such payment.
15. **CONDITION OF PROPERTY.** Buyer accepts the property in its present condition and acknowledges that Seller, his agents and subagents have made no representation or warranty concerning the physical condition of the property or the uses to which it may be put other than as set forth herein. Buyer agrees to maintain the property in such condition as complies with all applicable laws.
16. **RISK OF LOSS.** Buyer shall bear the risk of loss for destruction or condemnation of the property. Any such loss shall not relieve Buyer from any of Buyer's obligations pursuant to this Contract.
17. **WASTE.** Buyer shall keep the property in good repair and shall not commit or suffer waste or willful damage to or destruction of the property. Buyer shall not remove commercial timber without the written consent of Seller.
18. **AGRICULTURE USE.** If this property is to be used principally for agriculture purposes, Buyer agrees to conduct farm and livestock operations in accordance with good husbandry practices. In the event a forfeiture action is instituted, Buyer consents to Seller's entry on the premises to take any reasonable action to conserve soil, crops, trees and livestock.
19. **CONDEMNATION.** Seller and Buyer may each appear as owners of an interest in the property in any action concerning condemnation of all or part of the property. Buyer may within 30 days after condemnation and removal of improvements, negotiate a contract to substantially restore the premises to their condition before the removal. If the condemnation proceeds are sufficient to pay the contract price for restoration or if the Buyer deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the property shall be restored unless underlying encumbrances provide otherwise. Otherwise proceeds of the award shall be applied in payment of the balance due on the purchase price, as Seller may direct.
20. **DEFAULT.** If the Buyer fails to observe or perform any term, covenant or condition of this Contract, Seller may:
 (a) **Suit for Installments.** Sue for any delinquent periodic payment; or
 (b) **Specific Performance.** Sue for specific performance of any of Buyer's obligations pursuant to this Contract or;
 (c) **Forfeit Buyer's Interest.** Forfeit this Contract pursuant to Ch. 61.10, RCW, as it is presently enacted and may hereafter be amended. The effect of such forfeiture includes: (i) all right, title and interest in the property of the Buyer and all persons claiming through the Buyer shall be terminated; (ii) the Buyer's rights under the Contract shall be cancelled; (iii) all sums previously paid under the Contract shall belong to and be retained by the Seller or other person to whom paid, and entitled thereto; (iv) all improvements made to and unharvested crops on the property shall belong to the Seller; and (v) Buyer shall be required to surrender possession of the property, improvements, and unharvested crops to the Seller 10 days after the forfeiture.
 (d) **Acceleration of Balance Due.** Give Buyer written notice demanding payment of said delinquencies and payment of a late charge of 5% of the amount of such delinquent payments and payment of Seller's reasonable attorney's fees and costs incurred for services in preparing and sending such Notice and stating that if payment pursuant to said Notice is not received within 100 days after the date said Notice is either deposited in the mail addressed to the Buyer or personally delivered to the Buyer, the entire balance owing, including interest, will become immediately due and payable. Seller may thereupon institute suit for payment of such balance, interest, late charge and reasonable attorney's fees and costs.
 rec 5/37

CTC-82210

(e) Judicial Foreclosure. Due to foreclose this contract as a mortgage, in which event Buyer may be liable for a deficiency.

21. RECEIVER. If Seller has instituted any proceedings specified in Paragraph 20 and Buyer is receiving rental or other income from the property, Buyer agrees that the appointment of a receiver for the property is necessary to protect Seller's interest.

22. BUYER'S REMEDY FOR SELLER'S DEFAULT. If Seller fails to observe or perform any term, covenant or condition of this Contract, Buyer may, after 30 days' written notice to Seller, institute suit for damages or specific performance unless the breaches designated in said notice are cured.

23. NON-WAIVER. Failure of either party to insist upon strict performance of the other party's obligations hereunder shall not be construed as a waiver of strict performance thereafter of all of the other party's obligations hereunder and shall not prejudice any remedies as provided herein.

24. ATTORNEY'S FEES AND COSTS. In the event of any breach of this Contract, the party responsible for the breach agrees to pay reasonable attorney's fees and costs, including costs of service of notices and title searches, incurred by the other party. The prevailing party in any suit instituted arising out of this Contract and in any forfeiture proceedings arising out of this Contract shall be entitled to receive reasonable attorney's fees and costs incurred in such suit or proceedings.

25. NOTICES. Notices shall be either personally served or shall be sent certified mail, return receipt requested and by regular first class mail to Buyer at 4221 Civic Washington WA 98071

and to Seller at 540 SE Blaw Road Washington WA 98071 or such other address as either party may specify in writing to the other party. Notices shall be deemed given when served or mailed. Notice to Seller shall also be sent to any institution receiving payments on the Contract.

26. TIME FOR PERFORMANCE. Time is of the essence in performance of any obligations pursuant to this Contract.

27. SUCCESSORS AND ASSIGNS. Subject to any restrictions against assignment, the provisions of this Contract shall be binding on the heirs, successors and assigns of the Seller and the Buyer.

28. OPTIONAL PROVISION --SUBSTITUTION AND SECURITY ON PERSONAL PROPERTY. Buyer may substitute for any personal property specified in Paragraph 3 herein other personal property of like nature which buyer owns free and clear of any encumbrances. Buyer hereby grants Seller a security interest in all personal property specified in Paragraph 3 and future substitutions for such property and agrees to execute a financing statement under the Uniform Commercial Code reflecting such security interest.

SELLER INITIALS: BUYER

29. OPTIONAL PROVISION --ALTERATIONS. Buyer shall not make any substantial alteration to the improvements on the property without the prior written consent of Seller, which consent will not be unreasonably withheld.

SELLER INITIALS: BUYER

30. OPTIONAL PROVISION --DUE ON SALE. If Buyer, without written consent of Seller, (a) conveys, (b) sells, (c) leases, (d) assigns, (e) contracts to convey, sell, lease or assign, (f) grants an option to buy the property, (g) permits a forfeiture or foreclosure or trustee or sheriff's sale of any of the Buyer's interest in the property or this Contract, Seller may at any time thereafter either raise the interest rate on the balance of the purchase price or declare the entire balance of the purchase price due and payable. If one or more of the entities comprising the buyer is a corporation, any transfer or successive transfers in nature of items (a) through (g) above of 49% or more of the outstanding capital stock shall enable Seller to take the above action. A lease of less than 1 year (including options for renewals), a transfer to a spouse or child of Buyer, a transfer incident to a marriage dissolution or condemnation, and a transfer by inheritance will not enable Seller to take any action pursuant to this Paragraph; provided the transferee other than a condempnor agrees in writing that the provisions of this paragraph apply to any subsequent transaction involving the property entered into by the transferee.

SELLER INITIALS: BUYER

31. OPTIONAL PROVISION --PRE-PAYMENT PENALTIES ON PRIOR ENCUMBRANCES. If buyer elects to make payments in excess of the minimum required payments on the purchase price herein, and Seller, because of such prepayments, incurs prepayment penalties on prior encumbrances, Buyer agrees to forthwith pay Seller the amount of such penalties in addition to payments on the purchase price.

SELLER INITIALS: BUYER

32. OPTIONAL PROVISION -- PERIODIC PAYMENTS ON TAXES AND INSURANCE. In addition to the periodic payments on the purchase price, Buyer agrees to pay Seller such portion of the real estate taxes and assessments (including fire insurance premiums as will approximately total the amount due during the current year based on Seller's reasonable estimate.

The payments during the current year shall be \$ _____ per _____
Such "reserve" payments from Buyer shall not accrue interest. Seller shall pay when due all real estate taxes and insurance premiums, if any, and debit the amounts so paid to the reserve account. Buyer and Seller shall adjust the reserve account in April of each year to reflect excess or deficit balances and changed costs. Buyer agrees to bring the reserve account balance to a minimum of \$10 at the time of adjustment.

SELLER INITIALS: BUYER

33. ADDENDA. Any addenda attached hereto are a part of this Contract.

34. ENTIRE AGREEMENT. This Contract constitutes the entire agreement of the parties and supersedes all prior agreements and understandings, written or oral. This Contract may amend only in writing executed by Seller and Buyer.

IN WITNESS WHEREOF the parties have signed and sealed this Contract the day and year first above written.

SELLER

BUYER

James E. Robson
JAMES E. ROBSON

David A. Rocha
DAVID A. ROCHA

Connie S. Rocha
CONNIE S. ROCHA

STATE OF WASHINGTON, _____
County of CLARK

I certify that I know or have satisfactory evidence that JAMES E. ROBSON signed this instrument, and acknowledged it to be, HIS free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: 10/20/97
Kellie A. Braaten

Notary Public in and for the state of Washington, residing at LACENTER

My Appointment expires 09/05/98

KELLIE A. BRAATEN
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
SEPTEMBER 5, 1998

EXHIBIT "A"

The East 20 acres of the North 3/4 of the Southeast Quarter of the Southeast Quarter of Section 30, Township 2 North, Range 5 East of the Willamette Meridian in the County of Skamania, State of Washington.

EXCEPT that portion conveyed to the Catlin Gabel School by instrument recorded in Book 79, Page 68.

Also EXCEPT that portion conveyed to Portland Adventist Medical Center by instrument recorded in Book 116, Page 202.

Gary H. Marra, Skamania County Assessor

Date 10-24-97 Parcel # 5-5-30-1P02

GHM

APPENDIX 2

SP 3-319 (1)

BOOK 177 PAGE 457

131660

FILED IN THE PUBLIC RECORDS
SHERIFF'S OFFICE
CLATSOP COUNTY, OREGON

MAY 22 10 58 AM '98

A. Mosler
ASSISTANT

REAL ESTATE EXCISE TAX GARY H. OLSON
19537

When Recorded Return to:

MAY 22 1998

PAID 7166.72

CTC-88638 CAQ

REAL ESTATE CONTRACT
(RESIDENTIAL SHORT FORM)

Buyer Name
Sister, Ltd
Indirect
Agent

Grantor(s) (Seller): (1)
(2)
(3)
(4)

Additional names on page of document

Grantee(s) (Buyer): (1)
(2)
(3)
(4)

Additional names on page of document

Legal Description (Abbreviated):
SE 1/4, SEC 30, T 2 N, 4 5 E.

Additional legal on page 6 of document

Assessor's Tax Parcel ID# 02-05-30-0-0-1802-00

SE TC 21734

ANY OPTIONAL PROVISION NOT INITIALED BY ALL PERSONS SIGNING THIS CONTRACT
WHETHER INDIVIDUALLY OR AS AN OFFICER OR AGENT -- IS NOT A PART OF THIS
CONTRACT.

1. PARTIES AND DATE. This Contract is entered into on 05/19/98
between DAVE ROCHA and CONNIE ROCHA, HUSBAND AND WIFE

4242 "L" CIRCLE, WASHOUGAL, WA 98671 as "Seller" and
GRANT HOSEA AND CAROLYN HOSEA, HUSBAND AND WIFE

16904 N.E. COUCH ST., PORTLAND, OR 97230 as "Buyer."

2. SALE AND LEGAL DESCRIPTION. Seller agrees to sell to Buyer and Buyer
agrees to purchase from Seller the following described real estate
in CLATSOP County, State of Washington:

Shammon

Legal Description Attached hereto as Exhibit "A"

Gary H. Martin, Shastoma County Assessor

Date 5/22/98 Parcel # 2-5-30-1802

3. PERSONAL PROPERTY. Personal property, if any, included in the sale
as follows:

No part of the purchase price is attributed to personal property.

4. (a) PRICE. Buyer agrees to pay:

\$ 59,900.00 Total Price
Less (\$ 5,000.00) Down Payment

EXHIBIT 2
PAGE 1 OF 7

(b) ASSUMED OBLIGATIONS. Buyer agrees to pay the above Assumed Obligation(s) by assuming and agreeing to pay that certain dated _____ recorded as AP# _____, Seller warrants the unpaid balance of said obligation is \$ _____ which is payable \$ _____ on or before the day of _____, 19__ interest at the rate of _____ % per annum on the declining balance thereof; and a like amount on or before the day of each and every _____ thereafter until paid in full.

Note: Fill in the date in the following two lines only if there is an early cash out date.

NOTWITHSTANDING THE ABOVE, THE ENTIRE BALANCE OF PRINCIPAL AND INTEREST IS DUE IN FULL NOT LATER THAN _____ ANY ADDITIONAL ASSUMED OBLIGATIONS ARE INCLUDED IN ADDENDUM.

(c) PAYMENT OF AMOUNT FINANCED BY SELLER.

Buyer agrees to pay the sum of \$54,900.00 as follows: \$481.78 or more at buyer's option on or before the 21 day of JUNE, 1998, interest from _____ at the rate of 10.0000 % per annum on the declining balance thereof; and a like amount or more on or before the 21 day of each and every month thereafter until paid in full.

Note: Fill in the date in the following two lines only if there is an early cash out date.

NOTWITHSTANDING THE ABOVE, THE ENTIRE BALANCE OF PRINCIPAL AND INTEREST IS DUE IN FULL NOT LATER THAN JUNE 21, 2003,

Payments are applied first to interest and then to principal. Payments shall be made at CLARK EMPLOYEES CREDIT UNION ATTN: BRUCE ** or such other place as the Seller may hereafter indicate in writing.

**2620 SE 165TH AVENUE, VANCOUVER, WA 98683

1. FAILURE TO MAKE PAYMENTS ON ASSUMED OBLIGATIONS. If Buyer fails to make any payments on assumed obligation(s), Seller may give written notice to Buyer that unless Buyer makes the delinquent payment(s) within fifteen (15) days, Seller will make the payment(s), together with any late charge, additional interest, penalties, and costs assessed by the holder of the assumed obligation(s). The 15-day period may be shortened to avoid the exercise of any remedy by the holder of the assumed obligation. Buyer shall immediately after such payment by Seller reimburse Seller for the amount of such payment plus a late charge equal to five percent (5%) of the amount so paid plus all costs and attorneys' fees incurred by Seller in connection with making such payment.

1. (a) OBLIGATIONS TO BE PAID BY SELLER. The Seller agrees to continue to pay from payments received hereunder the following obligation, which obligation must be paid in full when Buyer pays the purchase price in full:

That certain _____ dated _____, recorded as AP# _____

ANY ADDITIONAL OBLIGATIONS TO BE PAID BY SELLER ARE INCLUDED IN ADDENDUM.

(b) EQUITY OF SELLER PAID IN FULL. If the balance owed the Seller on the purchase price herein becomes equal to the balance owed on prior encumbrances being paid by Seller, Buyer will be deemed to have assumed said encumbrances as of that date. Buyer shall thereafter make payments direct to the holders of said encumbrances and make no further payments to Seller. Seller shall at that time deliver to Buyer a fulfillment deed in accordance with the provisions of Paragraph 5.

(c) FAILURE OF SELLER TO MAKE PAYMENTS ON PRIOR ENCUMBRANCES. If Seller fails to make any payments on any prior encumbrance, Buyer may give written notice to Seller that unless Seller makes the delinquent payments within 15 days, Buyer will make the payments together with any late charge, additional interest, penalties, and costs assessed by the holder of the prior encumbrance. The 15-day period may be shortened to avoid the exercise of any remedy by the holder of the prior encumbrance. Buyer may deduct the amount so paid plus a late charge of 5% of the amount so paid and any attorney's fees and costs incurred by Buyer in connection with the delinquency from payments next becoming due Seller on the purchase price. In the event Buyer makes such delinquent payments on three occasions, Buyer shall have the right to make all payments due thereafter direct to the holder of such prior encumbrance and deduct the then balance owing on such prior encumbrance from the then balance owing on the purchase price and reduce periodic payments on the balance due Seller by the payments called for in such prior encumbrances such as payments become due.

7. OTHER ENCUMBRANCES AGAINST THE PROPERTY. The property is subject to encumbrances including the following listed hereinafter, easements, restrictions and reservations in addition to the obligations assumed by Buyer and the obligations being paid by Seller:

9. **LATE CHARGES.** If any payment on the purchase price is not made within ten (10) days after the date it is due, Buyer agrees to pay a late charge equal to 5% of the amount of such payment. Such late payment charge shall be in addition to all other remedies available to Seller and the first amounts received from Buyer after such late charges are due shall be applied to the late charges.

10. **NO AFFECT ON PRICE ENCUMBRANCES.** Seller warrants that entry into this Contract will not cause in any prior encumbrance (a) a breach, (b) accelerated payments, or (c) an increased interest rate, unless (a), (b) or (c) has been consented to by Buyer in writing.

11. **POSSESSION.** Buyer is entitled to possession of the property from and after the date of this Contract, or _____, whichever is later, subject to any tenancies described in Paragraph 7.

12. **TAXES, AGREEMENTS AND UTILITY LIENS.** Buyer agrees to pay by the date due all taxes and assessments becoming a lien against the property after the date of this Contract. Buyer may in good faith contest any such taxes or assessments so long as no forfeiture or sale of the property is threatened as the result of such contest. Buyer agrees to pay when due any utility charges which may become liens superior to Seller's interest under this Contract. If real estate taxes and penalties are assessed against the property subsequent to date of this Contract because of a change in use prior to the date of this Contract for Open Space, Park, Agriculture or Timber classifications approved by the County or because of a Seller's Citizen's Declaration to Defer Property Taxes filed prior to the date of this Contract, Buyer may demand in writing payment of such taxes and penalties within 30 days. If payment is not made, Buyer may pay and deduct the amount thereof plus 5% penalty from the payments next becoming due Seller under the Contract.

13. **INSURANCE.** Buyer agrees to keep all buildings now or hereafter erected on the property described herein continuously insured under fire and extended coverage policies in an amount not less than the balance owed on obligations assumed by Buyer plus the balance due Seller, or full insurable value, whichever is lower. All policies shall be held by the Seller and be in such companies as the Seller may approve and have loss payable first to any holders of underlying encumbrances, then to Seller as their interests may appear and then to Buyer. Buyer may within 10 days after loss negotiate a contract to substantially restore the premises to their condition before the loss. If the insurance proceeds are sufficient to pay the contract price for restoration or if the Buyer deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the property shall be restored unless the underlying encumbrances provide otherwise. Otherwise the amount collected under any insurance policy shall be applied upon any amounts due hereunder in such order as the Seller shall determine. In the event of forfeiture, all rights of Buyer in insurance policies then in force shall pass to Seller.

14. **NONPAYMENT OF TAXES, INSURANCE AND UTILITIES CONSTITUTING LIENS.** If Buyer fails to pay taxes or assessments, insurance premiums or utility charges constituting liens prior to Seller's interest under this Contract, Seller may pay such items and Buyer shall forthwith pay Seller the amount thereof plus a late charge of 5% of the amount thereof plus any costs and attorney's fees incurred in connection with making such payment.

15. **CONDITION OF PROPERTY.** Buyer accepts the property in its present condition and acknowledges that Seller, his agents and subagents have made no representation or warranty concerning the physical condition of the property or the uses to which it may be put other than as set forth herein. Buyer agrees to maintain the property in such condition as complies with all applicable laws.

16. **RISK OF LOSS.** Buyer shall bear the risk of loss for destruction or condemnation of the property. Any such loss shall not relieve Buyer from any of Buyer's obligations pursuant to this Contract.

17. **WASTE.** Buyer shall keep the property in good repair and shall not commit or suffer waste or willful damage to or destruction of the property. Buyer shall not remove commercial timber without the written consent of Seller.

18. **AGRICULTURE USE.** If this property is to be used principally for agriculture purposes, Buyer agrees to conduct farm and livestock operations in accordance with good husbandry practices. In the event a forfeiture action is instituted, Buyer consents to Seller's entry on the premises to take any reasonable action to conserve soil, crops, trees and livestock.

19. **CONDEMNATION.** Seller and Buyer may each appear as owners of an interest in the property in any action concerning condemnation of any part of the property. Buyer may within 10 days after condemnation and removal of improvements, negotiate a contract to substantially restore the premises to their condition before the removal. If the condemnation proceeds are sufficient to pay the contract price for restoration or if the Buyer deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the property shall be restored unless underlying encumbrances provide otherwise. Otherwise proceeds of the award shall be applied in payment of the balance due on the purchase price, as Seller may direct.

20. **DEFAULT.** If the Buyer fails to observe or perform any term, covenant or condition of this Contract, Seller may:

(a) Suit for installments. Sue for any delinquent periodic payment; or

(b) Specific Performance. Sue for specific performance of any of Buyer's obligations pursuant to this Contract or;

(c) Forfeit Buyer's Interest. Forfeit this Contract pursuant to Ch. 61.18, RCW, as it is presently enacted and may hereafter be amended. The effect of such forfeiture includes: (i) all right, title and interest in the property of the Buyer and all persons claiming through the Buyer shall be terminated, (ii) the Buyer's rights under the Contract shall be cancelled, (iii) all sums previously paid under the Contract shall belong to and be retained by the Seller or other person to whom paid and entitled thereto, (iv) all improvements made to and unharvested crops on the property shall belong to the Seller, and (v) Buyer shall be required to surrender possession of the property, improvements, and unharvested crops to the Seller 10 days after the forfeiture.

(d) Acceleration of Balance Due. Give Buyer written notice demanding payment of said delinquencies and payment of a late charge of 5% of the amount of such delinquent payments and payment of Seller's reasonable attorney's fees and costs incurred for services in preparing and sending said Notice and stating that if payment pursuant to said Notice is not received within _____ days after _____

EXHIBIT 2

PAGE 3 OF 7

(e) Additional Encumbrance. It is intended this contract as a mortgage, in which event Buyer may be liable for a deficiency.

21. RECEIVER. If Seller has instituted any proceedings specified in Paragraph 20 and Buyer is receiving rental or other income from the property, Buyer agrees that the appointment of a receiver for the property is necessary to protect Seller's interest.

22. BUYER'S REMEDY FOR SELLER'S DEFAULT. If Seller fails to observe or perform any term, covenant or condition of this Contract, Buyer may, after 30 days' written notice to Seller, institute suit for damages or specific performance unless the breaches designated in said notice are cured.

23. NON-WAIVER. Failure of either party to insist upon strict performance of the other party's obligations hereunder shall not be construed as a waiver of strict performance thereafter of all of the other party's obligations hereunder and shall not prejudice any remedies as provided herein.

24. ATTORNEY'S FEE AND COSTS. In the event of any breach of this Contract, the party responsible for the breach agrees to pay reasonable attorney's fees and costs, including costs of service of notices and title searches, incurred by the other party. The prevailing party in any suit instituted arising out of this Contract and in any forfeiture proceedings arising out of this Contract shall be entitled to receive reasonable attorney's fees and costs incurred in such suit or proceedings.

25. NOTICE. Notices shall be either personally served or shall be sent certified mail, return receipt requested and by regular first class mail to XXXXXX SELLER AT

4242 "I" CIRCLE WASHOUGAL WA 98671 and to BUYER

16904 NE CONCH STREET, PORTLAND OR 97230

or such other address as either party may specify in writing to the other party. Notices shall be deemed given when served or mailed. Notice to Seller shall also be sent to any institution receiving payments on the Contract.

26. TIME FOR PERFORMANCE. Time is of the essence in performance of any obligations pursuant to this Contract.

27. SUCCESSORS AND ASSIGNS. Subject to any restrictions against assignment, the provisions of this Contract shall be binding on the heirs, successors and assigns of the Seller and the Buyer.

28. OPTIONAL PROVISION -- SUBSTITUTION AND SECURITY ON PERSONAL PROPERTY. Buyer may substitute for any personal property specified in Paragraph 1 herein other personal property of like nature which Buyer owns free and clear of any encumbrances. Buyer hereby grants Seller a security interest in all personal property specified in Paragraph 1 and future substitutions for such property and agrees to execute a financing statement under the Uniform Commercial Code reflecting such security interest.

SELLER

INITIALS:

BUYER

29. OPTIONAL PROVISION -- ALTERATIONS. Buyer shall not make any substantial alteration to the improvements on the property without the prior written consent of Seller, which consent will not be unreasonably withheld.

SELLER

INITIALS:

BUYER

30. OPTIONAL PROVISION -- OUT ON SALE. If Buyer, without written consent of Seller, (a) conveys, (b) sells, (c) leases, (d) assigns, (e) contracts to convey, sell, lease or assign, (f) grants an option to buy the property, (g) permits a foreclosure or foreclosure sale of any of the Buyer's interest in the property or this Contract, Seller may at any time thereafter either raise the interest rate on the balance of the purchase price or declare the entire balance of the purchase price due and payable. If one or more of the entities comprising the Buyer is a corporation, any transfer of successive transfers in nature (a) through (g) above of 1% or more of the outstanding capital stock shall enable Seller to take the above action. A lease of less than 3 years (including options for renewals), a transfer to a spouse or child of Buyer, a transfer incident to a marriage dissolution or condemnation, and a transfer by inheritance will not enable Seller to take any action pursuant to this Paragraph; provided the transferee other than a condempnor agrees in writing that the provisions of this paragraph apply to any subsequent transaction involving the property entered into by the transferee.

SELLER

INITIALS:

BUYER

DR
GR

HH
BB

31. OPTIONAL PROVISION -- PRE-PAYMENT PENALTIES ON PRIOR ENCUMBRANCES. If Buyer elects to make payments in excess of the minimum required payments on the purchase price herein, and Seller, because of such payments, incurs prepayment penalties on prior encumbrances, Buyer agrees to forthwith pay Seller the amount of such penalties in addition to payments on the purchase price.

SELLER

INITIALS:

BUYER

BOOK 177 PAGE 461

22. OPTIONAL PROVISION --PERIODIC PAYMENTS ON TAXES AND INSURANCE. In addition to the periodic payments on the purchase price, Buyer agrees to pay Seller such portion of the real estate taxes and assessments and fire insurance premium as will approximately total the amount due during the current year based on Seller's reasonable estimate.

The payments during the current year shall be \$ _____ per _____
Such "reserve" payments from Buyer shall not accrue interest. Seller shall pay when due all real estate taxes and insurance premiums, if any, and debit the amounts so paid to the reserve account. Buyer and Seller shall adjust the reserve account in April of each year to reflect excess or deficit balances and changed costs. Buyer agrees to bring the reserve account balance to a minimum of \$100 at the time of adjustment.

SELLER	INITIALS:	BUYER
_____	_____	_____
_____	_____	_____

23. ADDENDA. Any addenda attached hereto are a part of this Contract.

24. ENTIRE AGREEMENT. This Contract constitutes the entire agreement of the parties and supercedes all prior agreements and understandings, written or oral. This Contract may amend only in writing executed by Seller and Buyer.

IN WITNESS WHEREOF the parties have signed and sealed this Contract the day and year first above written.

SELLER

Dave Rocha
DAVE ROCHA

Connie Rocha
CONNIE ROCHA

By *Debra*
Their, His, Her Attorney in Fact

BUYER

Grant Hosea
GRANT HOSEA

Carolyn Hosea
CAROLYN HOSEA

STATE OF WASHINGTON
County of Clark

I certify that I know or have satisfactory evidence that Grant Hosea and Carolyn Hosea
signed this instrument, and acknowledged it to be, their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: 5/19/98
Suzanne Parton

Notary Public in and for the state of Washington, residing at Yacow WA
My Appointment expires 5/27/99



BOOK 177 PAGE 462

EXHIBIT A

CTC-88639

A tract of land in the Southeast Quarter of the Southeast Quarter of Section 30, Township 2 North, Range 5 East of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Lot 1 of the Southridge Short Plat, recorded in Book 3 of Short Plats, Page 319, Skamania County Records.

BOOK 177 PAGE 463

ADDITIONAL NOTARY FOR: CTC - 88639

STATE OF WASHINGTON ss.
County of CLARK

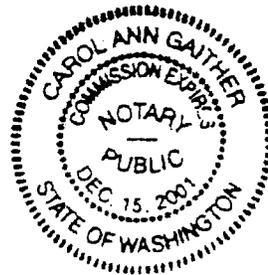
I certify that I know or have satisfactory evidence that before me personally appeared DAVE ROCHA to me known to be individual described in and who executed the foregoing instrument for him/her self and also as Attorney in fact for CONNIE ROCHA and acknowledged that he/she signed and sealed the same as his/her free and voluntary act and deed for him/her self and also as his/her free and voluntary act and deed as Attorney in fact for said principal for the uses and purposes therein mentioned, and on oath stated that the Power of Attorney authorizing the execution of this instrument has not been revoked and that the said principal is now living and is not insane.

Dated: MAY 19, 1998

Carol Ann Gaither

Notary Public in and for the State of Washington,
residing at VANCOUVER

My appointment expires 12/15/01



APPENDIX 3

SP3-319 ①

ROCK 177 PAGE 464

131661

FILED FOR RECORD
SKAGWAY WASH
BY SKAMAMIA CO. TITLE

MAY 22 11 39 AM '98

Amodeo
AUDITOR
GARY M. OLSON

When Recorded Return to:

Filed	
Recorded	
Indexed	
Produced	
Filed	

SELLER'S ASSIGNMENT OF CONTRACT AND DEED

CTC-88638 *CPG*

Grantor(s) (Seller): (1)
(2)
(3)
(4)

Additional names on page of document

Grantee(s) (Buyer): (1)
(2)
(3)
(4)

Additional names on page of document

Legal Description (Abbreviated):
SE 1/4, SEC 30, T 2 N, 4 E E.

Additional legal on page 2 of document

Assessor's Tax Parcel ID# 02-06-30-0-0-1802-00

THE GRANTOR DAVE ROCHA AND CONNIE ROCHA, HUSBAND AND WIFE

for value received (I, it, we) convey(s) and quit claim to
JAMES E. ROBSON, A SINGLE PERSON

the following described real estate, situated in *Skamania* the grantee,
State of Washington, together with all after acquired title of the
grantor(s) therein: *CLARK* County,
as in legal description on page 2 of this document.

and do(es) hereby assign, transfer and set over to the grantee that
certain real estate contract dated the day of 05/19/98 between
DAVE ROCHA AND CONNIE ROCHA, HUSBAND AND WIFE

as seller and GRANT HOSEA AND CAROLYN HOSEA, HUSBAND AND
WIFE

as purchaser for the sale and purchase of the above described real estate.
The grantee(s) hereby assume and agree to fulfill the conditions of said
real estate contract and the grantor(s) hereby covenant(s) that there is
now unpaid on the principal of said contract the sum of

RECORDED 5-22-98 in B177, p457 Audit# 131660
Dated: 05/19/98 1998

Dave

DAVE ROCHA

CONNIE ROCHA

CONNIE ROCHA

By *Dave*

Their ~~Use~~ *As* Attorney in Fact

STATE OF WASHINGTON, County of *CLARK*

I certify that I know or have satisfactory evidence that
signed this instrument, and acknowledged it to be
purposes mentioned in this instrument

free and voluntary
ANN GAYTHOR
COMMISSIONER
NOTARY

EXHIBIT 3
PAGE 1 OF 3

BOOK 177 PAGE 465

EXHIBIT A

CTC-88639

A tract of land in the Southeast Quarter of the Southeast Quarter of Section 30, Township 2 North, Range 5 East of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Lot 1 of the Southridge Short Plat, recorded in Book 3 of Short Plats, Page 319, Skamania County Records.

REAL ESTATE EXCISE TAX
PAID: See Ex 14112
JUL 22 1998
SKAMANIA COUNTY TREASURER

BOOK 177 PAGE 466

ADDITIONAL NOTARY FOR: CTC - 88639

STATE OF WASHINGTON ss.
County of CLARK

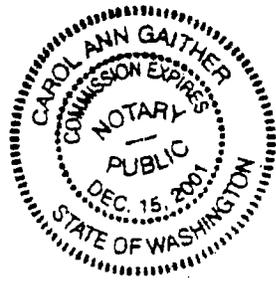
I certify that I know or have satisfactory evidence that before me personally appeared DAVE ROCHA to me known to be individual described in and who executed the foregoing instrument for him/her self and also as Attorney in fact for CONNIE ROCHA and acknowledged that he/she signed and sealed the same as his/her free and voluntary act and deed for him/her self and also as principal for the uses and purposes therein mentioned, and on oath stated that the Power of Attorney authorizing the execution of this instrument has not been revoked and that the said principal is now living and is not insane.

Dated: MAY 19 1998

Carol Ann Gaither

Notary Public in and for the State of Washington,
residing at VANCOUVER

My appointment expires 12/15/01



APPENDIX 4

140629

BOOK 20 PAGE 842

~~2-5-01~~

FILED FOR RECORD
SKAMANIA CO. WASH
BY ~~FRANKLIN CO. TITLE~~

SP 3-39 C

WHEN RECORDED RETURN TO:

Name: JAMES ROBSON
Address: 540 SE BLAIR ROAD
City, State, Zip WASHOUGAL, WA. 98671

MAR 22 1 38 PM '01

G. Olsson
AUDITOR
GARY M. OLSON

WASHINGTON TITLE COMPANY

SP 22856

PURCHASER'S ASSIGNMENT OF CONTRACT AND DEED

THE GRANTOR(s) GRANT HOSEA AND CAROLYN HOSEA, HUSBAND AND WIFE

for value received does hereby convey and quit claim to LLOYD COMBS, A MARRIED MAN, the grantee(s), the following described real estate, situated in the County of SKAMANIA, State of Washington, together with all after acquired title of the grantor(s) therein:

A TRACT OF LAND IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 2 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN IN THE COUNTY OF SKAMANIA, STATE OF WASHINGTON, DESCRIBED AS FOLLOWS:

LOT 1 OF THE SOUTHRIDGE SHORT PLAT, RECORDED IN BOOK 3 OF SHORT PLATS, PAGE 319, SKAMANIA COUNTY RECORDS.

Gary H. Martin, Skamania County Assessor

TAX ACCOUNT #02-0530-0-0-1802-00 Date *3-22-01* Parcel # *0205300680200*

Reference Number of assignment: BOOK 177, PAGE 457 AF#131660 AND BOOK 177, PAGE 464 AF#131661

and do hereby assign, transfer and set over to the grantee that certain real estate contract dated the 19TH day of MAY, 1998 and recorded on MAY 22, 1998 under recording number 131660, BOOK 177 AND PAGE 457 between DAVE ROCHA AND CONNIE ROCHA, HUSBAND AND WIFE, CONTRACT SELLERS AND GRANT HOSEA AND CAROLYN HOSEA, HUSBAND AND WIFE, CONTRACT PURCHASERS.

BY INSTRUMENT RECORDED MAY 22, 1998, IN BOOK 177, PAGE 464, UNDER AF#131661, THE SELLERS INTEREST IN SAID CONTRACT WAS ASSIGNED TO JAMES E. ROBSON, A SINGLE PERSON

as purchaser for the sale and purchase of the above described real estate. The grantees hereby assumes and agrees to fulfill the conditions of said real estate contract.

DATED 3-20-01, 19__

J. D. Robson
(Individual)
Carolyn A. Hosea
(Individual)

STATE OF WASHINGTON)
COUNTY OF Wash)

On this day personally appeared before me Grant Hosea & Carolyn Hosea to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 20th day of March 2001
[Signature]
Notary Public in and for the State of Washington,
residing at _____



REAL ESTATE EXCISE TAX
21429

MAR 22 2001
PAID \$ 806.40
[Signature]
SKAMANIA COUNTY TREASURER

Fee \$40.00
Adm. Fee \$
Title Fee \$
Total \$

FILED
COURT OF APPEALS
DIVISION II

Court of Appeals No. 37760-800
JUL -11 AM 9:40

STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

VICTOR ERICKSON and LARRY ERICKSON,

Plaintiff/Appellant,

v.

CHARLES W. CHASE and NANCY CHASE, husband and wife,

Defendants and Third-Party Plaintiffs/Respondents

LLOYD COMBS and DORIS COMBS,

Third-Party Defendants and Fourth-Party Plaintiffs

JAMES ROBSON,

Fourth-Party Defendant.

AFFIDAVIT OF MAILING

MICHAEL SIMON, WSBA No. 10931
LANDERHOLM, MEMOVICH,
LANSVERK & WHITESIDES, P.S.
805 Broadway Street, Suite 1000
P.O. Box 1086
Vancouver, WA 98666-1086
(360) 696-3312
Of Attorneys for Fourth-Party Defendant

STATE OF WASHINGTON)
) ss.
County of Clark)

The undersigned hereby deposes and states as follows:

1. My name is Linda Gill. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party of this action.

2. On the 3rd day of June, 2009, copies of the **Responsive Brief of James Robson, Fourth-Party Defendant** were delivered via first class United States Mail, postage prepaid, to the following persons:

Robert D. Mitchelson
Attorney at Law
P.O. Box 87096
Vancouver, WA 98687-0096

Gideon Caron
Caron, Colven, Robison & Shafton
900 Washington Street, Suite 1000
Vancouver, WA 98660

Charles Wiggins
Wiggins & Masters, PLLC
241 Madison Avenue North
Bainbridge Island, WA 98110

DATED: June 3, 2009
At: Vancouver, Washington

Linda Gill
LINDA GILL

SUBSCRIBED AND SWORN TO before me this 3rd day of June, 2009, by Linda Gill.
Ramona Z. Taylor
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 01-15-10

