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I. PARTIES

Norman L. Iverson was the owner of Iverson & Associates, a real estate investment and development company. CP 510. Norman L. Iverson and Marie K. Iverson had three (3) children, Norman C. Iverson Jeffrey B. Iverson and Penny Iverson Duke (jointly referred to as the “Iverson Children”).

Marie K. Iverson died on July 13, 2000, and Norman L. Iverson died on March 3, 2003. CP 128.

Kiri Joint Venture (“Kiri”) was a joint venture formed to develop, manage and lease real property located in Thurston County. CP 98.

Arthur J. Redford and Dallas J. Redford were members of Kiri. Robert Knudsen (“Knudsen”) was also a member of Kiri. CP 1.

A. Terms of Kiri Joint Venture.

On June 20, 1977, Kiri was formed. CP 97-120.¹ The members of Kiri were Norman L. Iverson and Marie K. Iverson (“Iverson Parents”) 25.5%; Arthur J. Redford and Dallas J. Redford (“Redford”) 24.5%; and Robert Knutsen (“Knutsen”) 24.5%. CP 98-126. The Kiri agreement recited that the Iverson Parents had contracted to purchase certain real

¹ Appendix A

property in Thurston County, and were the fee owners of portions of other property. CP 97.

The real property was not conveyed to the Kiri, but was held in the name of Norman L. Iverson. CP 99-100. Decisions in the management of the business and assets were to be made by a vote of the parties in accordance with their interest. CP 100. Transfers of interest in the Kiri were restricted and required the consent of all remaining parties, and the guaranty of the selling party. CP 102. Amendments to Kiri required 100% approval. CP 106.

The joint venturers distinguished the ownership of the real property to be held by the Iverson Parents from the membership interests. CP 99. This distinction was recognized at the time the joint venture was formed, and at the time interest in the real property and/or the membership was transferred.

B. Work of Nick Iverson.

Nick's work relating to the real property began in 1973, when he was an employee of his father's business. CP 510. Several years prior to 1973, Nick acted as the point man in looking for raw land along the I-5 corridor, and located the subject property in 1973, which was then acquired by his father and another partner. CP 510, 129.

Between 1973 and 1977, Nick acted as the manager for the property, ensuring the contract and property tax payments were made, and investigated a commercial development or the sale of the property. CP 510.

For several years prior to 1977, and thereafter, Nick was compensated for managing various properties as they were sold or developed based upon the benefit received by the owner, which always included his father. CP 510.

The work Nick performed under the Management Agreement was the same type of work he previously performed on other properties for his father. CP 510. Kiri paid for employment of attorneys, engineers, contractors and service personnel, who were hired by Nick, and never objected to the listing agreements that he signed. In performing this service, Nick relied on the agreement signed by his parents and Knutsen. Nick expected that he would be compensated for his management services at the time the real property was sold. CP 511-512, 130-131.

Nick contacted realtors; reviewed purchase and sale agreements; made counterproposals, kept members of the joint venture advised of the transactions; initiated meetings with Thurston County, and later the City of Lacey; employed Pac-Tech to design a plat for the property; had discussions and contacts relating to the water system, sewer system, water

easement, sewer easement, road configuration; and was the principal contact for the attorneys, accountants and engineers. CP 513. Nick also had many contacts with the police department, and contacts with adjoining property owners. CP 133.

Nick attached to his Declaration an 18-page chronology of his work based upon more than 30 years of documents that he retained. He also stated that there was other extensive work, meetings, conversations and other contacts, which are not evidenced in the document. CP 135-152.

The Appellants have not claimed that the work set forth in the chronology and in the Declaration of Norman C. Iverson, was not performed.

C. Management Fee Agreement.

Kiri agreed to pay Nick a management fee of 3.5% of the gross for his services rendered.² This agreement was signed by the Iverson Trust, Norbeck Trust, Marie Iverson and Knutsen (“Management Agreement”). The Management Agreement agreed to compensate Nick for services rendered in a sum equal to 3.5% of the gross sales prices of the property. Its explicit terms were as follows:

² Appendix B

The Joint Venture Agreement signed June 20, 1977 (known as KIRI) agrees to pay Norman C. Iverson a management fee of 3.5% of the gross for his services rendered.

If the property is sold for cash, the management fee is due immediately.

If the property is sold on a contract, the management fee will be pro-rated over three equal payments over a period of no longer than three years.

If the property is developed by the owners, another management fee basis must be agreed upon before development can begin.

CP 121.

For purposes of summary judgment and this appeal, Respondent will accept Appellants' position that the Management Fee Agreement was signed in 1995.

In 1995, the members of Kiri were the Iverson Parents six percent (6%); Iverson Trust 25.5% and Knudsen 24.5%.

The Management Fee Agreement was signed by the Iverson Trust, Marie K. Iverson and Knutsen. The signatories constituted 56% of the members of the Joint Venture, a clear majority.

D. The Management Fee was ratified in 1996.

In 1996, two (2) Agreements Among Partners were signed by all members of Kiri, except Redford.³ The agreements confirmed the Management Agreement required the payment of 3.5% of the gross sale price to Nick; that Kiri had the authority to enter into the agreement; that Nick had acted as the manager of the joint venture since 1977; and that the parties to the joint venture assigned their interest in one form or another subject to the approval of the joint venture partners pursuant to paragraph 12 of the joint venture agreement. The signatories of this agreement included the Iverson Parents, Iverson Children (Jeff, Penny and Nick), Knutsen, Iverson Trust, NorRae Trust and Iverson Real Estate, LLC. At the time the Agreement Among Partners was signed, Iverson Real Estate, LLC had no membership interest in Kiri Joint Venture. Norman L. Iverson signed for Iverson Real Estate, LLC.

Both Agreements Among Partners had the following recitals:

WHEREAS, on June 20, 1977, Norman L. Iverson, Trustee of the Iverson Trust, Norman L. Iverson as Trustee for the Norbeck Trust, and Marie K. Iverson and Robert J. Knutsen, executed a Management Agreement by and between Kiri Joint Venture and Norman C. Iverson to pay him a management fee of three and one-half percent (3.5%) of the gross sales price payable in cash on closing or, if the property was sold on contract,

³ Appendix C and D

prorated over three (3) equal payments over three (3) years; and

WHEREAS, the undersigned believes that the Kiri Joint Venture has the authority under Paragraph 8 of the Joint Venture Agreement to enter into a Management Agreement with Norman C. Iverson subject to a vote of their proportionate interest; and

WHEREAS, *Arthur J. Redford and Dallas J. Redford* have declined to execute the Management Agreement; and

WHEREAS, Norman C. Iverson has acted as the manager of the Joint Venture since 1977; and

...

WHEREAS, the undersigned are willing to have the escrow agent distribute three and one-half (3.5%) of their distributive share of the closing proceeds to Norman C. Iverson pursuant to the Management Contract; now, therefore; . . .

CP 122-125.

The body of the agreement expressly authorized the enforcement of the Management Agreement and the payment of sums necessary to complete management. CP 123 and 125.

The Agreement Among Partners endorsed the suit by Nick against Redford to recover their share of the management fee, and if necessary, sue Redford for declaratory judgment deeming the majority of the partners had authority to enter into the Management Agreement and pay the sums necessary to complete management. CP 123 and 125.

E. Conveyance of Real Property.

The real property subject to the Joint Venture Agreement was originally acquired in 1973 by Norman L. Iverson. CP 110-119. The purchase price was \$185,000.00. CP 133.

Between 1989 and 1994, quitclaim deeds were executed conveying the real property. These conveyances did not transfer any membership interest but, rather, conveyed the real property or a portion of the real property. The conveyance of the real property was evidenced by the following documents:

1. On June 21, 1989, a quitclaim deed from the Iverson Parents to the Norbeck Trust. CP 279.
2. On August 6, 1990, a Declaration of Interest in Real Property signed by the Iverson Parents and the Iverson Children. CP 287.
3. On October 11, 1990 a quitclaim deed from Norman L. Iverson as Trustee of the Norbeck Trust to Norman C. Iverson, Trustee of the NorRae Trust, Jeffery B. Iverson and Penny C. Duke. CP 294.
4. On December 28, 1994 quitclaim deed from the Iverson Trust to Iverson Real Estate of a 25.5% interest in the real property. CP 300.⁴

⁴ Appendix I

The conveyance of the real property separate from the membership interest in Kiri was consistent with the terms of the joint venture agreement wherein the Iverson Parents held the property in their name, subject to the Kiri Joint Venture. CP 99-100, ¶ 7.

On March 9, 2004, the Iverson Children recognized that the quitclaim deeds did not convey an interest in Kiri (CP 387), and specifically recognized that the Iverson Trust had not transferred a membership interest in Kiri to Iverson Real Estate, LLC. CP 388.⁵

On May 13, 2008, the real property was sold for \$14,171,966.00.

F. Transfer of Kiri Membership Interests.

In addition to the transfer of interest in the real property between 1990 and 1994, there were three (3) assignments and transfers of the Iverson Parents' interest in the membership interest of Kiri. None of the assignments contain a consent by all of the members of Kiri, nor have the Appellants submitted any evidence that these attempted assignments were consented to as required by the joint venture agreement. These assignments include:

1. On October 9, 1990 an assignment and transfer from the Iverson Parents of an undivided two percent (2%) each to Jeffrey B.,

⁵ Appendix J

Penny Duke, and Norman C. Iverson, as Trustee of the NorRae Trust, in that certain joint venture agreement.⁶

2. On December 24, 1992, an Assignment and Transfer from the Iverson Parents of an undivided two percent (2%) to each of the Iverson Children (Jeff, Nick and Penny).⁷

3. On June 30, 1994, an Assignment and Transfer from the Iverson Parents of a 2.5% interest each in the joint venture agreement to Jeffrey B. Iverson, Norman C. Iverson, as Trustee of the NorRae Trust, and Penny Duke.⁸

Without the consent of all members, the assignments were ineffective; however, even if the assignments were effective, the Iverson Parents reduced their membership interest in Kiri to six percent (6%), and the Iverson Children each held a 6.5% interest in Kiri.

II. PROCEDURAL HISTORY

On February 26, 2008, a Complaint for Declaratory Judgment was filed by Nick against Kiri, Knutsen and Redford, seeking a determination that the Management Agreement was valid. CP 1-4.

⁶ Appendix F

⁷ Appendix G

⁸ Appendix H

On August 29, 2008, a Second Amended Complaint was filed against Kiri, Redford, Knutsen, Duke, Jeff and Iverson Real Estate, LLC seeking judgment for 3.5% of the sale price of the real property. CP 223-229.

After cross motions for summary judgment the court awarded a summary judgment in favor of Nick Iverson, resulting in the entry of a judgment on February 20, 2009, in the total sum of \$541,772.40. CP 516.

On February 25, 2009, the judgment was partially satisfied in the sum of \$533,533.83. CP 519-520.

On March 4, 2009, after the partial satisfaction was entered, a Notice of Appeal was filed by the Appellants herein. CP 521-526.

III. ARGUMENT

A. Standard of Review.

Summary judgment orders are reviewed by this court de novo. *Reynolds v. Hicks*, 134 Wn.2d 491, 495, 951 P.2d 761 (1998). Summary judgment is properly granted “when the pleadings and affidavits show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” CR 56(c). The court must view the facts and all reasonable inferences in the light most favorable to the nonmoving

party. *Right-Price Recreation, L.L.C. v. Connells Prairie Com. Council*, 146 Wn.2d 370, 381, 46 P.3d 789 (2002). Only where this court finds that the trial court erred in determining that the moving party is entitled to a judgment as a matter of law should summary judgment be disturbed. *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 485, 78 P.3d 1274 (2003).

B. Kiri can contract for services by a majority vote of the members of the joint venture according to their interest.

- 1. The Joint Venture Agreement plainly states that decisions related to the management shall be made by a vote of the parties according to their interest.**

The trial court correctly ruled that a majority vote of the members of Kiri, in accordance with their interest, had the authority to bind Kiri, including the authority to enter into the Management Agreement with Nick. Authority to enter into this specific type of contract is governed by paragraph 8 of the Joint Venture Agreement titled “Management of Business and Assets,” which states in relevant part: “All decisions related to the conduct, management and operation of the business of the joint venture . . . shall be made by a vote of the parties according to their interest in the joint venture as specified in paragraph 4 hereof.” CP 100.

Contrary to the claims of the Appellants, the joint venture agreement simply does not contain any requirement that management decisions be unanimous. The plain reading of paragraph 8 only requires a

majority vote of the members. A joint venture agreement or partnership agreement is like any other contract in that the intent of the parties controls the meaning of the contract. *Dice v. City of Montesano*, 131 Wn. App. 675, 684, 128 P.3d 1253 (2006). It is the duty of this court to determine the meaning of this contract. Washington follows the *Berg* context rule, which focuses on the actual objective meeting of the minds of the parties, rather than merely the written expression of their agreement. *Diamond B. Constructors, Inc. v. Granite Falls School Dist.*, 117 Wn. App. 157, 162, 70 P.3d 966 (2003), quoting *Berg v. Hudesman*, 115 Wn.2d 657, 663, 801 P.2d 222 (1990).

The actions of the parties, both at the time the Management Agreement was signed, as well as at the time it was ratified in 1996, shows the parties never intended paragraph 8 to require a unanimous vote to manage Kiri. The language of the Management Agreement makes it absolutely clear that the parties intended to allow Kiri to be bound by a majority vote, and with no objection from Redford (the only party who did not sign), even those who chose not to sign the Management Agreement still believed Kiri could be bound by a majority vote.

Additionally, the fact that the parties believed a majority could bind Kiri, is made explicitly clear in writing in the Agreement Among

Partners, which ratified the Management Agreement. It states: “The undersigned believe that the Kiri Joint Venture has the authority under paragraph 8 of the joint venture agreement to enter into a management agreement with Norman C. Iverson subject to the vote of their proportionate interest.” In relationship to management matters, there is simply no mention in the record that any member believed a unanimous agreement was required.

2. Kiri never amended paragraph 8 of the Joint Venture Agreement, nor did it ever intend to do so.

Appellants argue that unanimous consent was required to enter into the Management Agreement by claiming that the Management Agreement amends the joint venture agreement. This conflates paragraph 8, which directly addresses the subject matter of the Management Agreement with paragraph 18, which addresses amending the joint venture agreement. Paragraph 18, titled “Miscellaneous” states in part: “This agreement may be amended only by written agreement signed by all parties or their authorized representatives.” CP 107.

To support the argument that paragraph 18 should change the meaning of paragraph 8, Appellants state that both paragraphs are “consistent” with the Revised Uniform Partnership Act, which states that every partner in a partnership “has equal rights in the management and

conduct of the partnership business.” RCW 25.05.150. Both paragraphs are certainly consistent, but that in no way means their meanings should be merged. The joint venture agreement requires “a vote of the parties *according to their interest*” for management issues. The right to manage certainly includes the right to hire others and to delegate management. So long as the vote was taken according to the interest of the members, the members could and, in fact, did elect one member to take care of the day-to-day operations of Kiri.

The fact that the joint venture agreement requires a unanimous agreement to amend it, but chose not to use that same language in the provision addressing management, is further evidence that decisions relating to the management of Kiri did not have to be unanimous. Requiring that management decisions be made by a vote according to the members’ interest is, therefore, the only reading of the joint venture agreement that is consistent with the Revised Uniform Partnership Act.

C. **Kiri entered into a binding, enforceable contract with Nick to manage the property in exchange for a fee.**

1. **The Management Agreement, requiring Kiri to pay Nick 3.5% of the gross sale price, was signed by a majority interest in Kiri.**

It is undisputed that if the Management Agreement was signed in 1977, as Nick Iverson believes, it would have been signed by a majority

interest. However, for purposes of summary judgment and this appeal, Nick Iverson will treat the Management Agreement as if it were signed in 1995 as claimed by the Appellants. In 1995, the parties who signed the Management Agreement held a majority interest in Kiri.

In an attempt to argue that by 1995 the interest of the members who signed the Management Agreement had decreased to less than 50%, Appellants conflate the transfers of interest in Kiri with transfers of real property. The chart provided by Appellants states claims that every transfer of real property through a quitclaim deed also transferred a membership interest in the entity of Kiri. That argument is inconsistent with the instruments used to transfer the real property and the 2004 declarations of Appellants Jeff Iverson and Penny Duke. CP 387. Further, it is impossible as a matter of law to transfer an interest in an entity by transferring the underlying real property, because an interest in a partnership is a personal property interest, not an interest in real property. RCW 25.05.200. The real property owned by a partnership is not directly owned by the partners themselves, but is owned only by the partnership.

Id.

A member of a joint venture or partnership can only transfer his or her interest in the partnership and not property then owned by the

partnership, real or personal. “The only transferable interest of a partner in the partnership is the partner’s share of the profits and losses of the partnership and the partner’s right to receive distributions. *The interest is personal property.*” RCW 25.05.205 (emphasis added). The Washington State Supreme Court has made it clear that, even when a partnership owns real property, each individual partner’s interest in the partnership is still a personal property interest.

Land of partnership is regarded in equity as personality, so that when either partner handles land either in purchasing or selling, he is not dealing in real estate for another but is representing partnership the partnership and disposing of a real estate asset of the partnership as if it were personal property.

Davis v. Alexander, 25 Wn.2d 458, 466, 171 P.2d. 167 (1946).

The ownership interest in Kiri from its formation to the date of the sale is as follows:

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

INTEREST OWNERSHIP IN KIRI				
	1977	1990	1992	1994 to sale
Interest transferred by:	06/20/77 Joint Venture Agreement CP 99	10/09/90 Assignment and Transfer ⁹ CP 292	12/24/92 Assignment and Transfer CP 296	06/30/92 Assignment and Transfer CP 299
Iverson Parents	25.5%	19.5%	13.5%	6.0%
Iverson Trust	25.5%	25.5%	25.5%	25.5%
Knutsen	24.5%	24.5%	24.5%	24.5%
Redford	24.5%	24.5%	24.5%	24.5%
Jeff Iverson	0.0%	2.0%	4.0%	6.5%
Nick Iverson	0.0%	0.0%	2.0%	2.0%
Penny Duke	0.0%	2.0%	4.0%	6.5%
Norbeck Trust	0.0%	0.0%	0.0%	0.0%
NorRae Trust	0.0%	2.0%	2.0%	4.5%
Iverson Real Estate	0.0%	0.0%	0.0%	0.0%

The above chart shows that between 1990 and 1994 the Iverson Parents transferred 19.5% of their membership interest in Kiri by assignment and transfer documents. In 1990, the Iverson Parents conveyed 2% each to their children. CP 292. In 1992, the Iverson Parents conveyed an additional two 2% to each of their children. CP 296. In 1994, the Iverson

⁹ The first transfer of a membership interest in Kiri occurred in 1990. A prior attempt to transfer was admittedly defective. CP 163. The 1989 quitclaim deed was a transfer of real property, not a membership interest. CP 279. A 1989 amendment to the Kiri Agreement was not signed by all members as required by paragraph 18 for an amendment, and does not contain transfer language. CP 282.

Parents conveyed 2.5% to each of their children. CP 299. After these transfers, and at the time the Management Agreement was signed, the Iverson Parents' interest was 6%, and each of the Iverson children owned 6.5% (Nick Iverson owned 4.5% individually, and 2% through the NorRae Trust). The Iverson Trust owned a 25.5% interest and Knutsen and Redford each still owned their original 24.5%.

The Management Agreement was signed by the Iverson Trust (25.5%), Marie Iverson on behalf of the Iverson Parents six percent (6%), and Robert Knutsen (24.5%). Therefore, the management agreement was entered into with a majority 56% interest in Kiri

For reference, and to help explain Appellants' misstatements, the following chart provides the ownership interest the parties had in the underlying real property, which is completely separate from ownership of an interest in Kiri.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

Interest Ownership in Real Property			
	1973	1989	1990 to sale
Transferred by:	12/13/1973 Statutory Warranty Deed CP 119	6/21/1989 Quitclaim Deed CP 279	10/25/1990 Quitclaim Deed ¹⁰ CP 294
Iverson Parents	100.0%	0.0%	0.0%
Iverson Trust	0.0%	0.0%	0.0%
Bob Knutsen	0.0%	0.0%	0.0%
Art Redford	0.0%	0.0%	0.0%
Jeff Iverson	0.0%	0.0%	2.0%
Nick Iverson	0.0%	0.0%	2.0%
Penny Duke	0.0%	0.0%	2.0%
Norbeck Trust	0.0%	100.0%	94.0%
NorRae Trust	0.0%	0.0%	0.0%
Iverson Real Estate	0.0%	0.0%	0.0%

The real property managed by Kiri was purchased by the Iverson parents in 1973. CP 110-119. In 1987, it was transferred into the Norbeck trust. CP. 279. In 1990, the Iverson Parents conveyed a two 2% interest in the real property from the Norbeck Trust to each of the Iverson Children. CP 294. Appellants incorrectly contend that, since the Iverson parents no longer held an interest in the real property in 1995, that didn't have an interest in Kiri either. That simply isn't the case. Appellants also incorrectly state that each of the Iverson children had an 8.5% interest in

¹⁰ The December 28, 1994 quitclaim deed from the Iverson Trust to Iverson Real Estate, LLC, attempted to convey an interest in real property; however, Iverson Real Estate had no interest in the real property, CP 300, which was recognized by the Appellants in 2004. CP 388.

Kiri when in truth, each of the Iverson children had a 6.5% interest in Kiri, plus a two percent (2%) interest in the real property. Appellants further mistakenly rely on the invalid quitclaim deed in which Iverson Trust attempted to transfer its interest in the real property to Iverson Real Estate. CP 300. However, as conceded by Appellants Jeff Iverson and Penny Duke in 2004, that quit claim deed was inoperative because Iverson Trust did not own an interest in the real property, but instead a membership interest in the entity of Kiri. CP 388. Applying the ownership of an interest in Kiri, a majority interest signed the Management Agreement in 1995.

2. Appellants' conclusory statement incorrectly states the ownership interests in Kiri must be disregarded by this Court.

The only document Appellants rely on, and cite to, in support of their argument that a quitclaim deed conveyed an interest in Kiri is the Declaration of Penny Duke. C P. 163, 275. That declaration is directly contrary to the documents attached to the declaration, as well as contrary to the declarations Penny Duke and Jeff Iverson signed in 2004. CP 387.

“The party opposing a motion for summary judgment may not rely on speculation, on argumentative assertions that unresolved factual issues remain, or on having its affidavits considered at face value.” *Doty-Fielding v. South Prairie*, 143 Wn. App. 559, 566, 178 P.3d 1054 (Div. II

2008), citing *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 3, 721 P.2d 1 (1986). Penny's statement that the quitclaim deed transferred an interest in Kiri is contradictory to both her Declaration in 2004, wherein she states: "In 1986 Mr. and Mrs. Iverson attempted to transfer a 2% interest in the Kiri Joint Venture to each of their three children, but by accident, *they instead deeded to their children each a 2% interest in the real property, not a 2% interest each in the Kiri joint venture.*" (Emphasis added.) CP 387. Penny's declaration contradicts her earlier sworn statement. A party cannot create a material issue of fact where none exists by filing a declaration that contradicts earlier sworn statements. *Beers v. Ross*, 137 Wn. App. 566, 571, 154 P.3d 277 (2007). For this reason alone, Penny's new, contradictory statement that her parents transferred an interest in Kiri to the children should be excluded.

Even if the two (2) declarations can be read together discussing the intent of the Iverson Parents, the statement must not be considered by this court because is a conclusory statement in direct contradiction to the documents. "Conclusory statements in a [party's] affidavit are insufficient; the [party] must demonstrate the basis for her ascertainment. *Id.* (citing CR 56(e); *Herron v. Tribune Publ'g Co.*, 108 Wn.2d. 162, 170, 736 P.2d 249 (1987)). The undisputed written record shows three (3) transfers of the membership interest to the Iverson Children totaling 19.5%. CP

292, 296, 299. In addition, the Agreement Among Partners signed in 1996 included signature blocks for the Iverson Parents and the Iverson Parents signed. If the Iverson Parents had assigned the last portion of their interest in Kiri, as Penny claims, they would not have been included in the agreement among partners. The only reasonable inference from the evidence is that the Iverson parents knew they still had a 6% in Kiri at the time they signed the Management Agreement.

3. Even if none of the transfers of interest in Kiri were valid, a majority interest in Kiri still signed the Management Agreement in 1995.

The table above depicting each member's interest in Kiri is the best representation of the ownership interests at the time the Management Agreement was signed. However, a strict reading of the Joint venture agreement invalidates every attempted transfer.

The joint venture agreement, at paragraph 12, titled "Sale or Transfer of Interests," provides a procedure which must be followed in order to sell or transfer an interest in the joint venture. It states in relevant part:

Such joint venturer shall provide *written notice* to the other joint venturers which shall set forth the terms on which the selling party proposes to sell, transfer or otherwise dispose of or encumber his interest. . . . In the event that all of the remaining parties do not approve the financial position of the person or persons to

whom the sale, transfer, encumbrance or other disposition is proposed to be made, no sale, transfer, encumbrance or other disposition shall be made.

(Emphasis added.) CP 102. There is no evidence in the record that any of the transfers of interest in Kiri were made after written notice was provided to all joint venturers setting forth the terms of the transfer. In addition, there is no evidence in the record that all parties approved of each transfer. In fact, Redford didn't sign a single instrument or declaration relating to any transfer, suggesting he never consented. Since none of the transfers on interests in Kiri were valid, the membership interests at the time the Management Agreement was signed in 1995 were the same as when the Joint Venture was formed: the Iverson trust held 25.5%, the Iverson parents held 25.5%, and Knutsen held 24.5%. The Management Agreement was signed by the Iverson Trust, the Norbeck Trust, the Iverson Parents and Knutsen. Therefore, the Management Agreement was entered into with an approval of 75.5% of the membership interest.

4. **The promise to pay Nick Iverson a management fee for his services is not illusory since it was made after Kiri had actual knowledge of the work performed and since Nick Iverson worked without objection from Kiri for 30 years.**

Appellants argue the Management Agreement cannot constitute an enforceable contract because the specific work to be performed by Nick was not spelled out in explicit terms. However, the day-to-day work performed by Nick had been observed and approved of, making it unnecessary to spell out every detail of what was to be done. No Appellant has claimed Nick did not perform the work set forth in his declaration. Further, by its terms, the Management Agreement was for services rendered (past tense). Since the Appellants assert the Management Agreement was entered into in 1995, Kiri had 19 years to observe the work Nick Iverson performed and determine that he had earned a management fee. Rather than spell out the wide range of work Nick had done, the one-page Management Agreement simply refers to the work Nick did as “services rendered.”

Any uncertainty in the Management Agreement was made clear through Nick’s continued work without objection after the Management Agreement was signed. While a contract cannot be formed without certainty of terms, a corollary to that rule exists under both the RESTATEMENT (SECOND) OF CONTRACTS and the Uniform Commercial Code. “Part performance under an agreement may remove uncertainty and establish that a contract enforceable as a bargain has been formed.” RESTATEMENT (SECOND) OF CONTRACTS § 34(2).

In addition, under the Uniform Commercial Code, an agreement “sufficiently definite to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties.” UCC §2-311(1). Here, certain aspects of Nick’s management of the property were left up to him because the nature of managing an undeveloped piece of land will necessarily involve several unforeseeable tasks. Nick performed those tasks as necessary, including issues relating to annexation, zoning, water systems, sewer systems, water easements, sewer easements, interchange and traffic configuration, road easements, platting the property into smaller lots, security issues relating to dumping, trespassing motorcycles and ATVs, fencing, police policies and weed control. He also negotiated listing agreements and proposed purchase and sale agreements through listing agents, and worked with adjoining property owners for mutual development of the property. An agreement that laid out the duties of the manager of a piece of property too narrowly would not allow the manager to complete his business. Therefore, the Management Agreement, accepted by performance, is not illusory.

D. Even if the Management Agreement itself is found invalid, Kiri ratified the Management Agreement in 1996.

- 1. Kiri expressly ratified the Management Agreement through the Agreement Among Partners.**

The Agreement Among Partners constitutes a ratification of the Management Agreement. “Ratification is the affirmation by a person ‘of a prior act which did not bind him but which was done or professed to be done on his account.’” *Consumer Insurance v. Cimoch*, 69 Wn. App. 313, 322, 848 P.2d 763 (1993), citing *Smith v. Dalton*, 58 Wn. App. 876, 881, 795 P.2d 706 (1990), quoting *Nichols Hills Bank v. McCool*, 104 Wn.2d 78, 85, 701 P.2d 1114 (1985). “For principal to be charged with unauthorized act of agent by ratification, it must act with full knowledge of the facts *or* accept benefits of act *or* intentionally assume the obligation imposed without inquiry. *Stroud v. Beck*, 49 Wn. App. 279, 286, 742 P.2d 735 (1987) (emphasis added); *also see Swiss Baco Skyline Logging, Inc. v. Haliewicz*, 18 Wn. App. 21, 32, 567 P.2d 1141 (1977). *Consumer Insurance*, at 323.

The elements of ratification are disjunctive, meaning only one element is necessary to ratify. The Agreement Among Partners expressly meets all three (3). In 1996, members holding a 75.5% interest in Kiri executed two (2) Agreements Among Partners. Each agreement was signed by the Iverson Parents (6%), Jeff (6.5%), Penny (6.5%), Nick (2%), NorRae Trust (4.5%), Iverson Trust (25.4%) and Knutsen (24.5%). Each of these agreements contained the following recitals:

WHEREAS, on June 20, 1977, Norman L. Iverson, Trustee of the Iverson Trust, Norman L. Iverson as Trustee for the Norbeck Trust, and Marie K. Iverson and Robert J. Knutsen, executed a Management Agreement by and between Kiri Joint Venture and Norman C. Iverson to pay him a management fee of three and one-half percent (3.5%) of the gross sales price payable in cash on closing or, if the property was sold on contract, prorated over three (3) equal payments over three (3) years; and

WHEREAS, the undersigned believes that the Kiri Joint Venture has the authority under Paragraph 8 of the Joint Venture Agreement to enter into a Management Agreement with Norman C. Iverson subject to a vote of their proportionate interest; and

WHEREAS, *Arthur J. Redford and Dallas J. Redford* have declined to execute the Management Agreement; and

WHEREAS, Norman C. Iverson has acted as the manager of the Joint Venture since 1977; and

...

WHEREAS, the undersigned are willing to have the escrow agent distribute three and one-half (3.5%) of their distributive share of the closing proceeds to Norman C. Iverson pursuant to the Management Contract; now, therefore; . . .

CP 122-125.

After setting forth the above recitals, one agreement endorsed the suit by Nick against Redford to recover their share of the management fee, and sued for declaratory judgment deeming that the majority of the partners have the authority to enter into the Management Agreement and

pay the sums necessary to complete management and expedite the closing of the purchase and sale agreement. The other agreement engaged the firm of Bonneville, Viert Morton & McGoldrick “to represent the partnership. . .sue. . .for declaratory judgment deeming that the majority of the partners have the authority to enter into the Management Agreement and pay the sums necessary to complete the management and expedite the closing of the purchase and sale.” The Agreement Among Partners makes clear in writing that a majority interest in Kiri had full knowledge of Nick’s work and agreed to pay him a management fee for it.

2. Kiri accepted the benefit of Nick Iverson’s work as manager of the property.

Kiri additionally ratified the Management Agreement under the second disjunctive element by accepting the work Nick performed. No one has disputed that Nick performed the 30 years of work set forth in his declaration. Appellants claim that there was no value added as a result of the work; however, this confuses the benefit received by management with the notion of increasing the value of the Kiri property. No one has claimed that there was not a benefit conferred by the management of Nick. An increase in value of the Kiri property and benefit conferred to the partnership are two (2) different concepts. Failing to dispute the work

done by Nick, the Appellants cannot now claim that the work did not benefit the joint venture.

3. Kiri ratified the Management Agreement by recognizing the Management Agreement as binding in the Agreement Among Partners.

The third disjunctive element of ratification is also met because the Agreement Among Partners contemplates the Management Agreement as a binding contract. Even if the underlying contract is unenforceable, it will be ratified if the principal exhibits conduct demonstrating an adoption and recognition of the contract as binding. *Barnes v. Treece*, 15 Wn. App. 437, 444, 549 P.2d 1152 (1976); also see *Smith v. Hanson, Hanson & Johnson*, 63 Wn. App. 355, 818 P.2d 1127 (1991).

The Agreement Among Partners recognizes that a majority of the parties have the authority to enter into the Management Agreement and retains counsel to represent the partnership to sue Redford for declaratory judgment, deeming the majority of the partners had the authority to enter into the Management Agreement. The language contained in the Agreement Among Partners clearly exhibits conduct demonstrating an adoption and recognition of the contract as binding. *Smith v. Hansen, supra*, at 370; *Barnes, supra*, at 443. Thus, the Appellants recognized Nick as the manager of Kiri and bound Kiri to pay for his services.

4. The Agreement Among Partners was properly entered into after an opportunity to meet.

While the Management Agreement was ratified by the acts of Kiri, even without the written Agreement Among partners, the written Agreement Among Partners was properly entered into. Appellants argue that the Agreement Among Partners is invalid because there is no evidence of meeting to discuss it. The joint venture agreement actually states:

All decisions relating to the conduct, management and operation of the business of the joint venture. . .shall be made by a vote of the parties according to their interest in the joint venture as specified in paragraph 4 hereof, which vote shall be taken after the parties *have been afforded the opportunity to meet and fully discuss such matters.*”

(Emphasis added.) CP 100.

It is clear from the language of the joint venture agreement that there be an *opportunity* to meet, not that a meeting is actually required. Appellants have offered no evidence that there was no opportunity to meet, just that no meeting was actually held. However, Appellants agree that everyone’s position on the Agreement Among Partners was well known, making a meeting to “fully discuss such matters” unnecessary. Because all parties had the opportunity to meet, the 1996 Agreement Among Partners is valid.

E. Iverson Real Estate, LLC ratified the Management Fee Agreement.

Appellants incorrectly argue that Iverson Real Estate, LLC was a member of Kiri, and that the signature of Norman L. Iverson on behalf of Iverson Real Estate, LLC was ineffective. This argument fails on two (2) grounds: (1) Iverson Real Estate was never a member; and (2) all the members of Iverson Real Estate ratified the authority of Norman L. Iverson to sign for Iverson Real Estate.

The only document in which Iverson Real Estate is the grantee, is the 1994 quitclaim deed between Iverson Trust and Iverson Real Estate, LLC. CP 300. The Appellants recognized that the quitclaim deed conveyed no interest as Iverson Trust had no interest in the real estate. CP 388. There is no assignment or transfer document from any other member of Kiri to Iverson Real Estate, LLC. Thus, Iverson Real Estate, LLC was not a necessary party to the Agreement Among Partners.

Even if Iverson Real Estate, LLC, was a necessary party, there is no evidence that Norman L. Iverson, who signed for the LLC, did not have the authority to bind it. In fact, all of the members of Iverson Real Estate, LLC signed the Agreement Among Partners. (Jeff, Nick and Penny.)

The Addendum to the Purchase and Sale Agreement also ratified the Management Fee Agreement. Jeff claims that his signature was not authorized; however, even excluding his interest, and accepting the

Appellants' argument that Iverson Real Estate, LLC, had an interest in Kiri, Iverson Real Estate, LLC's ratification of the Management Agreement was affirmed by the undisputed signature of Norman L. Iverson for Iverson Real Estate, LLC and Penny.

The signature of every member of Iverson Real Estate, LLC on the Agreement Among Partners, constituted a ratification of the Management Agreement by Iverson Real Estate, LLC. Even if Norman L. Iverson did not have authority to sign for the Iverson Real Estate, LLC, the signature of every member of Iverson Real Estate, LLC, ratified that authority and bound Iverson Real Estate, LLC, to the Agreement based upon the same authority set forth herein.

As a member managed LLC, the management of Iverson Real Estate, LLC was vested in its three (3) members (Jeff, Penny and Nick). Under Washington's Limited Liability Companies Act, any one member can bind Iverson Real Estate, LLC to a contract. The statute provides in part that "each member is an agent of the limited liability company for the purpose of its business and the act of any member for apparently carrying on in the usual way of the business of the limited liability company binds the limited company. . . ." RCW 25.15.150.

The 1996 Agreement Among Partners is a clear example of "carrying on in the usual way of the business," because the business

purpose was to manage real estate. The agreement ratified a management fee to be paid to Nick for his services as the manager of the property, and addressed an existing lawsuit concerning the property. When the members of Iverson Real Estate, LLC signed the agreements, they bound Iverson Real Estate, LLC.

F. The Agreement Among Partners was not limited to the pending sale.

Appellants, in argument, claim that the Agreement Among Partners was solely related to the pending sale; however, Appellants have not supported this argument with any facts, declarations or other documents. Their only basis for this claim is the body of the Agreement Among Partners states in part that Kiri endorses the suit or hires Bonneville, Viert, Morton & McGoldrick, to expedite the closing of the purchase and sale. In fact, in that agreement, Kiri endorsed the suit to bring a declaratory judgment deeming that the “majority of the partners have the authority to enter into the Management Agreement and pay the sums necessary to complete management.”

Appellants presented no declaration from any of the signatories that the Agreement Among Partners was limited to the pending sale.

G. If Kiri is not obligated to pay the management fee, then the individual partners are liable as agents of the partnership.

If, as contended by the Defendants, Kiri did not have the authority to enter into an agreement with Nick, then each individual partner who signed the 1977 Management Agreement and the Agreement Among Partners were liable as an unauthorized agent of the partnership.

Washington Courts have made it clear that an “agent who contracts with a third party. . . impliedly, if not expressly, represents that he is in fact authorized by his principal to make the contract.” *Equipto Div. Auora Equip. Co. v. Yarmouth*, 83 Wn. App. 817, 822, 924 P.2d 405 (1996). In 1977, Nick had every reason to believe Norman L. Iverson, Marie K. Iverson and Knutsen were authorized to enter into a contract with him, because he had done similar work for different properties for his father in the past. Moreover, the 1996 Agreement Among Partners explicitly stated that the agents had authority to contract with Nick Iverson.

Washington law is also clear that any agent who purports to have authority, and then “exceeds his authority, so that his principal is not bound, will himself be liable for the damage occasioned to the other contracting party” *Roth v. Wagner*, 53 Wn.2d 347, 350, 333 P.2d 674 (1959). These Washington cases follow the RESTATEMENT (THIRD) OF AGENCY, which would also subject Norman L. Iverson, Marie K. Iverson, Knutsen, Jeff and Penny to individual liability should it be found they exceeded their authority. The RESTATEMENT states:

[a] person who purports to make a contract, representation, or conveyance to or with a third party on behalf of another person, lacking power to bind that person, gives an implied warranty of authority to the third party and is subject to liability to the third party for damages for loss caused by breach of that warranty, including loss of the benefit expected from performance by the principal, unless (1) the principal or purported principal ratifies the act as stated in § 4.01; or (2) the person who purports to make the contract, representation, or conveyance gives notice to the third party that no warranty of authority is given; or (3) the third party knows that the person who purports to make the contract, representation, or conveyance acts without actual authority.

RESTATEMENT (THIRD) OF AGENCY § 6.10

In neither the 1977 Management Agreement, nor the 1996 Agreement Among Partners, did any partner who signed the contract give notice to Nick that no warranty was made, nor was he put on notice that the agents of Kiri may be acting without authority.

The 1977 Management Agreement was signed by Norman L. Iverson, Marie K. Iverson and Knutsen. If they lacked the authority to bind Kiri, they are each individually liable. In 1996, the Kiri Joint Venture ratified the acts of the agents when Norman L. Iverson, Marie K. Iverson, Knutsen, Jeff and Penny (a majority of the partners), signed the 1996 agreement. Under RESTATEMENT (THIRD) OF AGENCY §6.10(1) above, because Kiri ratified the 1977 Management Agreement, Kiri is subject to any liability stemming from the 1977 Management Agreement.

However, even if the ratification is found to be invalid because the 1996 Agreement Among Partners was not signed by every partner, then the partners who did sign the 1996 Agreement Among Partners are personally liable for expressly warranting authority to bind Kiri.

H. Nick Iverson's claim is not barred by the statute of limitations.

- 1. This breach of contract claim is governed by the six (6) year statute of limitations arising out of a written agreement, not the three (3) year statute of limitations arising out of an oral agreement.**

The trial court correctly ruled that Nick's claim was not barred by the statute of limitations. The statute of limitations for a claim arising out of a written agreement is six (6) years. The statute provides in relevant part: "The following actions shall be commenced within six years: (1) An action upon a contract in writing, *or liability express or implied arising out of a written agreement.*" *Id.* (emphasis added). RCW 4.16.040.

The statute allows a six (6) year statute of limitations for a written contract or liability arising out of a written agreement, whether or not an enforceable contract exists. In other words, it is not necessary to show that the underlying written agreement constituted an enforceable contract in order to apply the six (6) year statute of limitations rather than the three (3) year statute of limitations, RCW 4.16.080, which applies to oral contracts. It is only necessary to show that liability has arisen out of a

written agreement. The liability of Kiri to pay a 3.5% management fee arises both out of a contract and a written agreement.

In arguing that the six (6) year statute of limitations does not apply, the Appellants argue that parol evidence is necessary to determine whether a valid contract was formed. To support their position, the Appellants cite *DePhillips v. Zolt Constr. Co.*, 136 Wn. 2d 26, 31, 959 P.2d 1104 (1998). In that case, the court held no enforceable contract was present in an employee handbook because it lacked the essential elements of a contract. Specifically, the court held that a contract requires “the subject matter of the contract, the parties, the promise, the terms and conditions, and (in some but not all jurisdictions) the price or consideration.” *Id.* at 32. All of those elements were present in the 1977 Management Agreement entered into between Kiri and Nick. The subject matter of the Management Agreement is to pay a management fee. The parties to the contract are Kiri and Nick. The promise is to pay “3.5% of the gross” for management “services rendered.” the terms and conditions of payment are laid out in the contract and provide for immediate payment if sold for cash, and installment payment if sold on contract, and the price is 3.5% of the gross. Every essential element of a contract is present.

Although every element of an enforceable contract is met in the 1977 Management Agreement, the court need not find a contract was

formed in order to apply the six (6) year statute of limitations because it also applies to liability arising from written agreements, whether or not they are enforceable contracts. In *Kloss v. Honeywell*, the Court of Appeals wrote:

This language [of RCW 4.16.040] is very broad in its scope and differs from the statutes of limitation of most, if not all, other states in that an *implied liability* arising out of a written instrument is included in the same clause with an *express liability* arising out of a written contract.

As a result, what is normally regarded as a necessary element of a written contract need not be expressly addressed if it is implicit in the writing, and the fact that the obligation is implicit in the writing does not cause the contract to be 'partly oral' for statute of limitations purposes.

Kloss v. Honeywell, 77 Wn. App. 294, 299, 890 P.2d 480 (1995)

(emphasis in original). See also *Sanwick v. Puget Sound Title Ins. Co.*, 70 Wn.2d 438, 443, 423 P.2d 624 (1967). (The six (6) year statute of limitations, not the three (3) year statute limitations, applied to a cause of action arising from escrow instructions, even though the instructions alone were not an enforceable contract).

In *Kloss*, the Plaintiff sued his former employer based on an employment contract that failed to state an amount of compensation, an essential element of a contract. The court found that because liability arose out of a written agreement, the six (6) year statute of limitations applies. *Kloss, supra*, at 299.

It is undisputed that Kiri's liability, if any, to pay Nick Iverson a management fee of 3.5%, arises out of a written agreement. Given the broad language of RCW 4.16.040 and Washington's case law, which state Washington is among the most liberal states in applying the six (6) year statute of limitations where liability arises out of a writing, is not necessary for the court to first determine if the management agreement constituted a valid contract in order to determine which statute of limitations applies. Because liability is based on a writing, the six (6) year statute of limitations applies.

2. **Even if the three (3) year statute of limitations applies, Nick Iverson's claim is still not barred because the statute of limitations did not begin to run until Kiri breached its agreement to pay Nick Iverson's management fee.**

Whether the statute of limitations is three (3) years or six (6) years, it did not begin to run until May 13, 2008, the date the property sold and Kiri refused to pay Nick the management fee calculated on the sale price.

The sale of the property was a condition precedent that triggered the duty of Kiri to perform by paying Nick a 3.5% management fee. Kiri did not breach the contract it had with Nick until it refused to pay the agreed upon fee at the close of the sale. Since Nick's payment was a percentage of the sale price, Kiri could not have performed and, therefore, could not have failed to perform until the purchase price was known.

Washington law is clear that in contracts which contain a condition precedent, the statute of limitations does not begin to run until “all conditions precedent to a duty of immediate performance by the obligor have been satisfied.” *Bellingham Securities Syndicate v. Bellingham Coal Mines*, 13 Wn.2d 370, 389, 125 P.2d (1942). A condition precedent to the duty of Kiri to pay a 3.5 % management fee was the sale of the property. It was not until the property was sold that Kiri was able to calculate the management fee it owed to Nick.

Additionally, the statute of limitations did not begin to run until 2008, because Nick did not definitively know Kiri would breach until it refused to pay. It is well-established that a “statute of limitations in a contract action begins to run at the time of breach.” *Wm. Dickson Co. v. Pierce County*, 128 Wn. App. 488, 497, 116 P.3d 409 (2005). *See also N. Coast Enters., Inc. v. Factoria P’ship*, 94 Wn. App. 855, 860, 974 2d 1257 (1999). Under the discovery rule, the date the statute of limitations begins to run can be extended, not limited, until “a party knows or, in the exercise of due diligence should know, of the other party’s breach.” *Architectonics Constr. Mgmt., Inc. v. Khorram*, 111 Wn. App. 725, 737, 45 P.3d 1142 (2002). In other words, under no circumstance, will the statute of limitations begin to run before the breach, even if the Plaintiff

has reason to know that the other party may breach the contract in the future.

The Management Agreement does not serve as a promise of continued employment. Kiri was free to terminate Nick as the manager of the property at any time, so Nick could not have sued based on the October 2003 termination. The Management Agreement does, however, obligate Kiri to pay a management fee of 3.5 % to Nick on the sale of the property. That obligation is not one that can or has been revoked, and that obligation was not breached until the property sold. The breach of the management agreement by Kiri occurred in 2008, after the sale of the property, when it refused to pay the Nick the agreed-upon management fee. Nick Iverson timely brought this action under both the six (6) year statute of limitations (RCW 4.16.040), and the three (3) year statute of limitations (RCW 4.16.080).

I. The Appellants' Appeal should be dismissed as moot.

On February 20, 2009, a judgment in the sum of \$541,722.40 was entered. CP 524. On February 24, 2009, a Partial Satisfaction of Judgment in the sum of \$533,533.83 was entered.

On March 4, 2009, a Notice of Appeal from the full judgment was filed. The judgment having been satisfied in the sum of \$533,533.83, the only remaining issue in controversy is the payment of the sum of

\$8,188.57. The remainder of the judgment has been satisfied and the sums paid. “The withdrawal of judgment proceeds from a court registry satisfies the judgment and renders an appeal of the judgment moot. *Buckley v. Snapper Power Equip.*, 61 Wn. App. 932, 941, 813 P.2d 125 (1991) (citing *Murray v. Murray*, 38 Wn.2d 269, 273-74, 229 P.2d 309 (1951); *Potter v. Potter*, 46 Wn.2d 526, 527, 282 P.2d 1052 (1955)).

In this appeal, the Appellants satisfied the judgment on February 24, 2009, and did not give any intention of appealing or Notice of Appeal until March 4, 2009. Equally as important, the Appellants gave no indication as to why they made the payment in the amount of \$533,533.83, when the judgment was for \$8,188.57 more. In *Murray*, as here, the appellant had paid a portion of the judgment, the property settlement amount, and then appealed. The court found that constituted a satisfaction of judgment as to the property award, but allowed an appeal as to the remaining issues. Similarly, in *Potter, supra*, at 527, wherein the appellant paid a portion of the property award, it constituted a waiver of the appeal. Thus, in this appeal, the Appellants waived their right to appeal the \$533,533.83 of the judgment. The only remaining amount in controversy is the \$8,188.57.

IV. CONCLUSION

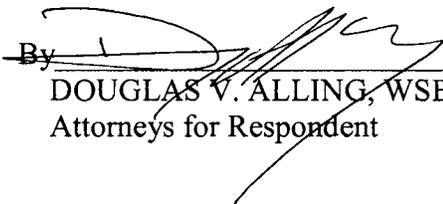
Based upon the declarations and the reasonable inferences in favor of the non-moving party, the evidence shows the Management Fee Agreement was signed by the members holding a majority interest in Kiri. By its terms, the Kiri agreement only required a majority to approve management decisions.

Even if a majority interest of Kiri did not sign the Management Fee Agreement, or it has some other defect, the two (2) Agreements Among Partners and the Amendment to the Purchase and Sale Agreement ratified the agreement to pay Nick Iverson the management fee.

Finally, the Appellants unconditionally satisfied the judgment in the amount of \$533,533.83, which was more than the principal judgment amount, excluding interest and costs. As to the amount satisfied, this appeal is moot. The only remaining amount in controversy is \$8,188.57. The decision of the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 26th day of October, 2009.

SMITH ALLING LANE, P.S.

By 
DOUGLAS V. ALLING, WSBA #1896
Attorneys for Respondent

APPENDIX

- A. Joint Venture Agreement.
- B. Kiri Joint Venture.
- C. Agreement Among Partners (CP 122-123).
- D. Agreement Among Partners (CP 124-125).
- E. Addendum/Amendment to Purchase and Sale Agreement (CP 126).
- F. October 9, 1990 Assignment and Transfer (CP 292).
- G. December 24, 1992 Assignment and Transfer (CP 296).
- H. June 30, 1994 Assignment and Transfer (CP 299).
- I. December 28, 1994 Quit Claim Deed.
- J. March 9, 2004 Affidavit of Norman C. Iverson, Jeffery B. Iverson and Penny Christine Iverson Duke (CP 387-389).
- K. RCW 25.05.150 – Partner’s rights and duties.
- L. RCW 25.05.200 – Partner not co-owner of partnership property.
- M. RCW 25.05.205 – Partner’s transferable interest in partnership.

- N. §34. Certainty and Choice of Terms; Effect of Performance or Reliance.
- O. U.C.C. Sect. 2-311 Options and Cooperation Respecting Performance.
- P. Restatement of the Law – Agency, §6.10 Agent’s implied Warranty of Authority.
- Q. RCW 4.16.040 – Actions limited to six years.
- R. RCW 4.16.080 – Actions limited to three years.

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- P. Restatement of the Law – Agency, §6.10 Agent’s implied Warranty of Authority.
- Q RCW 4.16.040 – Actions limited to six years.
- R. RCW 4.16.080 – Actions limited to three years.

JOINT VENTURE AGREEMENT

AGREEMENT entered into this 20th day of June, 1977, by and between NORMAN L. IVERSON and MARIE K. IVERSON, husband and wife ("Iverson"), NORMAN L. IVERSON, Trustee pursuant to Iverson Trust Agreement dated June 19, 1970 ("Iverson Trust"), ROBERT J. KNUTSEN, a single man ("Knutson") and ARTHUR J. REDFORD and DALLAS J. REDFORD, husband and wife ("Redford").

A. Iverson and Iverson Trust have contracted to purchase certain real property situated in Thurston County, Washington pursuant to a certain Real Estate Contract dated December 13, 1973, the "seller" of which is Thurston County Poggie Club; a copy of said Real Estate Contract is attached hereto as Exhibit "A" which accurately describes said real property;

B. Iverson and Iverson Trust are fee owners of a portion of said real property pursuant to a certain "Statutory Warranty Deed" dated December 13, 1973, a copy of which is attached hereto as Exhibit "B".

C. The parties, as joint venturers, desire to assume the rights and obligations of Iverson and Iverson Trust pursuant to said Real Estate Contract, to purchase and own said real property, and to construct improvements upon said real property and to manage and lease such real property and improvements.

AGREEMENT

In consideration of the premises and the mutual promises herein contained, the parties agree as follows:

-1-



1. JOINT VENTURE FORMED. The parties hereby form a joint venture pursuant to the laws of the State of Washington for the purposes of assuming the obligations of Iverson and Iverson Trust pursuant to said Real Estate Contract, developing, managing and leasing said real property and any improvements thereto which may hereafter be made. The name of the joint venture shall be "KIRI".

2. CONTRIBUTIONS TO CAPITAL. Concurrent with the execution of this agreement each party shall contribute to the capital of the joint venture as follows:

(a) Redford shall contribute the sum of \$12,965.70⁰⁰⁸

(b) Knutsen shall contribute the sum of \$12,965.70⁰⁰⁸

(c) Iverson and Iverson Trust shall convey and assign to the joint venture all of their respective rights, title and interests in and to said Real Estate Contract and to the real property described in Exhibit "B".

3. ASSUMPTION OF OBLIGATIONS. The joint venture shall assume all obligations of Iverson and Iverson Trust pursuant to said Real Estate Contract. Payments owing pursuant to said Real Estate Contract and any other obligations and liabilities of the joint venture shall be made from the assets of the joint venture, if available, otherwise such payments shall be made from contributions of the parties in accordance with their respective interests in the joint venture as provided in paragraph 4 hereof.

4. INTERESTS OF JOINT VENTURERS. The interest of each party in the joint venture, its properties, its obligations, including all obligations pursuant to said Real Estate Contract, and in the net profits and losses of the joint venture ("general profit and loss ratio") shall be as follows:

Iverson	25.5%
Iverson Trust	25.5%
Redford	24.5%
Knutsen	24.5%

5. CAPITAL ACCOUNTS AND RECORDS. Separate capital accounts shall be established for each party. No interest shall accrue to any capital account. Accounting records and data shall be maintained by Iverson Trust for the joint venture in accordance with accepted accounting principles. All such records shall be maintained at the main business office of the joint venture which shall be at 1912 - 64th Avenue West, Tacoma, Washington. All records and accounts shall be available for inspection by the parties at all reasonable times. The joint venture shall maintain its books and accounts on the basis of the calendar year. As soon as practicable after the expiration of each calendar year and at such other times as may be requested by any party, a general accounting shall be made by certified public accountants acceptable to all parties and a statement and financial report shall be furnished to each party.

6. DEPOSIT AND WITHDRAWAL OF FUNDS. All funds of the joint venture shall be maintained in a separate account or accounts in Pacific National Bank of Washington, University Place Branch, Tacoma, Washington. All withdrawals and payments from such account shall be made only pursuant to the signatures of two joint venturers, one of whom shall be either Norman L. Iverson or Norman C. Iverson (the latter in his capacity as a representative of Iverson Trust) and one of whom shall be either Robert J. Knutsen or Arthur J. Redford.

7. HOLDING OF PROPERTY. All monies and properties of the joint venture shall be held in the name of the joint

venture, subject to the terms of this agreement. Provided, that the interests of the joint venture in said Real Estate Contract and said real property shall be held in the name of Norman L. Iverson in his individual and/or Trustee capacities for the convenience of the parties.

8. MANAGEMENT OF BUSINESS AND ASSETS. The parties shall use their best efforts in the management and leasing of said real property and buildings and other improvements and in conducting any other business of the joint venture. All decisions relating to the conduct, management and operation of the business of the joint venture, including but not limited to, choosing contractors and entering contracts for the construction of any improvements and buildings on said real property and leasing said real property and improvements, shall be made by a vote of the parties according to their interests in the joint venture as specified in paragraph 4 hereof, which vote shall be taken after the parties have been afforded the opportunity to meet and fully discuss such matters.

9. DEPRECIATION AND EXPENSES. The joint venture's federal income tax depreciation deductions respecting any buildings or other structures or improvements constructed upon said real property shall be allocated to the parties in accordance with the general profit and loss ratio provided in paragraph 4 hereof. Federal income tax deductions and benefits allowable by virtue of any investments and expenses of the joint venture, including retail sales tax, interest, loan fees or discounts paid by the joint venture upon construction of any structures or improvements, shall be allocated to the parties in accordance with the general profit and loss ratio provided in paragraph 4 hereof. The capital

account of any party to whom said tax deductions or benefits are allocated shall be reduced by the amount of said deductions and benefits in accordance with standard accounting principles.

10. DISTRIBUTIONS AND SALARIES. Distributions of the joint venture's monies and payment of salaries for services rendered to the joint venture shall be made in such amounts and at such times as may from time to time be determined by the parties in accordance with a vote of their interests in the joint venture as specified in paragraph 4 hereof. Provided, that Redford and Knutsen shall not receive any distributions of monies or other property from the joint venture, including distributions of earnings, assets or proceeds from any sales or other dispositions of assets, including distributions made upon termination of the joint venture pursuant to paragraph 14 hereof, until Iverson and Iverson Trust each receive distribution of monies or assets of a value of \$17,650.

11. CONTINUATION OF THE JOINT VENTURE. In the event of the death, withdrawal or expulsion of any joint venturer, the remaining joint venturers may continue the joint venture's business under its present name.

In the event of the death or dissolution of any individual or trust, such decedent's or trust's interest as specified in paragraph 4 hereof and all of his or its obligations in the joint venture shall pass to his heirs or representatives or its beneficiaries. Said heirs or representatives shall assume all of the joint venture obligations of such decedent and such trust's beneficiaries shall assume the joint venture obligations of the trust in accordance with their respective interests in such trust.

In the event of a legal divorce or separation of Arthur R. Redford and Dallas J. Redford, Arthur R. Redford shall exercise all voting and management rights respecting the Redford interests in the joint venture.

12. SALE OR TRANSFER OF INTERESTS. No joint venturer shall sell, transfer, encumber or otherwise dispose of all or part of his interest in the joint venture except as provided in this paragraph 12. Such joint venturer ("selling party" herein) shall provide written notice to the other joint venturers ("remaining parties" herein) which shall set forth the terms on which the selling party proposes to sell, transfer or otherwise dispose of or encumber his interest. Current financial statements of the person or persons who are proposed to acquire ownership of such interest or any encumbrance with respect to such interest shall be provided to the satisfaction of the remaining parties.

In the event that all of the remaining parties do not approve the financial position of the person or persons to whom the sale, transfer, encumbrance or other disposition is proposed to be made, no sale, transfer, encumbrance or other disposition shall be made. Such approval shall not unreasonably be withheld and reasonable commercial financial standards shall be considered. In any event and without limiting or in any way affecting the discretion of the remaining parties to approve the proposal of the selling party, the selling party shall provide to each remaining party a written guarantee of the performance of all of the selling party's payments and obligations pursuant to this agreement and said Real Estate Contract by any such purchaser or transferee of the selling party's interests. Such guarantee shall be a condition precedent to any such sale, transfer, encumbrance or other disposition.

13. WITHDRAWAL AND EXPULSION. Subject to the provisions of paragraph 12 hereof, no joint venturer shall withdraw or be expelled from the joint venture except as herein provided. Any joint venturer or successor-in-interest who fails to perform his obligations in accordance with this agreement within thirty (30) days of his receipt of written notice from any joint venturer of such failure shall thereafter be expelled from the joint venture upon his receipt of written notice of expulsion from any other joint venturer.

The "effective date" of withdrawal or expulsion of any joint venturer shall be:

(a) The first day of the calendar month during which the expelled joint venturer receives written notice of his failure to perform obligations pursuant to this agreement, in the case of an expulsion; or

(b) The first day of the calendar month during which the withdrawing joint venturer provides written notice to all other joint venturers of his intention to withdraw from the joint venture, in the case of a withdrawal.

The interest in the joint venture of a withdrawing or expelled joint venturer as provided in paragraph 4 hereof shall be purchased by the joint venture if all joint venturers desire to purchase such interest. Otherwise, any one or more joint venturers may purchase such interest.

The withdrawing or expelled joint venturer shall be paid the "computed value" (hereinafter defined) of his interest in the joint venture on or before the following dates, at the option of the purchasing party:

(a) 1/3 - One (1) year from the effective date of withdrawal or expulsion;

(b) 1/2 of balance - Two (2) years from the effective date of withdrawal or expulsion; and

(c) Balance - Three (3) years from the effective date of withdrawal or expulsion.

No interest shall accrue on the unpaid balance of any expelled or withdrawing joint venturer's interest.

The term "computed value" of a withdrawing or expelled joint venturer's interest in the joint venture shall mean the value of such joint venturer's capital account upon the effective date of withdrawal or expulsion as computed by the regularly retained certified public accountants of the joint venture. Such computation shall be binding and conclusive upon all parties. The computation shall be made in accordance with accepted accounting practices and the following shall be observed:

- (1) No allowance of any kind shall be made for goodwill or any similar intangible asset;
- (2) All accounts payable shall be taken at face amount, less discounts deductible therefrom, and all accounts receivable shall be taken at face amount thereof, less discounts to the payors and a reasonable reserve for bad debts;
- (3) Inventory of merchandise and supplies shall be computed at cost or market value, whichever is lower;
- (4) All unpaid and accrued federal, state, city or other local taxes and assessments, including, but without intending to limit the foregoing, sales, payroll, unemployment insurance, excise, franchise, income, real estate, sewer, and water taxes, shall be deducted as liabilities;
- (5) All other assets of the joint venture, including real estate and any interest in real estate, businesses, buildings or other structures, and mortgages shall be valued at the book value thereof.

as evidenced by the joint venture's regular books of account; and

- (6) Such computed value shall not include any payments or contributions previously made to or for the joint venture by the withdrawing or expelled joint venturer for the purpose of paying interest expenses, taxes and any other expenses of the joint venture to the extent that federal income tax deductions and other benefits in respect of such expenses and taxes have been realized by the withdrawing or expelled joint venturer in accordance with paragraph 9 hereof.

14. TERMINATION. If the parties unanimously agree to dissolve the joint venture, the same shall be terminated by written agreement of all parties and the parties shall proceed with reasonable promptness to liquidate the business of the joint venture. The assets of the joint venture shall first be utilized to pay all debts of the joint venture. Thereafter, Iverson Trust and Iverson shall each receive monies or property of a value of \$17,650, unless such parties shall have previously received such value in money or property from the joint venture. All remaining monies and assets shall be divided among the parties according to the proportionate interests of the parties in the joint venture on the basis of their respective capital accounts upon the effective date of such termination, after crediting or debiting thereto the net profit, loss and expenses accrued or incurred, as the case may be, from the date of the last accounting to the effective date of termination.

15. DISCLAIMER. This agreement is in respect of the operations of the venture specified herein and no others. This agreement has no relation to any other operations,

agreements or ventures conducted by any of the joint venturers as individuals or as joint venturers.

16. LIMITATIONS ON PARTIES. No party shall without consent of all other parties:

(a) Borrow money in the joint venturer's name or utilize collateral owned by the joint venture as security for such loans;

(b) Assign, transfer, pledge, compromise or release any claims or debts due to the joint venture except upon payment in full, or arbitrate or consent to the arbitration of any of the disputes or controversies concerning the joint venture;

(c) Make, execute or deliver any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, deed, guarantee, indemnity bond, surety bond, or contract to sell or sell any property of the joint venture; or

(d) Mortgage any joint venture real estate or interest therein or enter into any contract for any such purpose.

17. NOTICES. Any and all notices and demands given pursuant hereto shall be given by registered or certified mail, return receipt requested, postage prepaid, addressed to the parties at the following addresses or such other addresses as they may hereafter designate in writing:

Iverson and
Iverson Trust

Norman L. Iverson
P. O. Box 99370
Tacoma, WA 98499

Redford

Arthur J. & Dallas J. Redford
6614 Hilltop Lane, S.W.
Tacoma, WA 98499

Knutsen

Robert J. Knutsen
P. O. Box 596
Milton, WA 98354

A notice shall be deemed to be received three days after being so mailed, if mailed within the State of Washington, and six days after being so mailed if mailed elsewhere in the United States.

18. MISCELLANEOUS. The parties agree that they will execute any instruments and perform any acts which are or may become reasonable and necessary to effectuate and carry on the joint venture and its business pursuant to the terms of this agreement. This agreement shall bind and inure to the benefit of the parties, their respective heirs, representatives, assigns, trust beneficiaries and successors in interest. This agreement incorporates the entire understanding of the parties with respect to the establishment and operation of the joint venture. This agreement may be amended only by written agreement signed by all parties or their authorized representatives. Unless another meaning and intent is apparent from the context, masculine, feminine and neuter words shall be used interchangeably, as shall the words "party" and "joint venturer" and the plurals thereof.

IN WITNESS WHEREOF, the parties have executed this Joint Venture Agreement on the day and year first above written.

"IVERSON"

Norman L. Iverson
Norman L. Iverson

Marie K. Iverson
Marie K. Iverson

"REDFORD"

Arthur J. Redford
Arthur J. Redford

Dallas J. Redford
Dallas J. Redford

"IVERSON TRUST"

Norman L. Iverson, Trustee
Norman L. Iverson, Trustee

"KNUTSEN"

Robert J. Knutsen
Robert J. Knutsen

STATE OF WASHINGTON)
) ss.
County of Pierce)

On this day personally appeared before me NORMAN L. IVERSON and MARIE K. IVERSON, husband and wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed the same as their free and voluntary acts and deeds, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 20 day of June, 1977.

Ann M. Swatland
NOTARY PUBLIC in and for the State
of Washington, residing at *Pierce*
County, Tacoma

STATE OF WASHINGTON)
) ss.
County of Pierce)

On this day personally appeared before me NORMAN L. IVERSON, to me known to be the Trustee of the Iverson Trust and the Iverson Trust and who executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 20 day of June, 1977.

Ann M. Swatland
NOTARY PUBLIC in and for the State
of Washington, residing at *Tacoma*

STATE OF WASHINGTON)
) ss.
County of Pierce)

On this day personally appeared before me ROBERT J. KNUTSEN, a single man, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 17 day of June, 1977.

Robert J. Knutsen
NOTARY PUBLIC in and for the State
of Washington, residing at *Federal Way*

STATE OF WASHINGTON)
) ss.
County of Pierce)

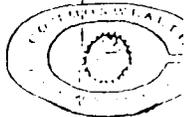
On this day personally appeared before me ARTHUR J. REDFORD and DALLAS J. REDFORD, husband and wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed for the purposes therein mentioned.

GIVEN under my hand and official seal this 17 day of June, 1977.


NOTARY PUBLIC in and for the State
of Washington, residing at Federal Way 1

First National Insurance Company

REAL ESTATE CONTRACT



---Exhibit "C"---

THIS CONTRACT, made and entered into this 13th day of December, 1973

between THURSTON COUNTY POGGIE CLUB, a Washington non-profit corporation, By Lee Brennan its President, and H. R. Craft, its Secretary, hereinafter called the "seller," and Norman L. Iverson

1120 PACIFIC AVE. TACOMA, WASHINGTON

hereinafter called the "purchaser."

WITNESSETH: That the seller agrees to sell to the purchaser and the purchaser agrees to purchase from the seller the following described real estate, with the appurtenances, in Thurston County, State of Washington.

Legal Description as per Attachment "A"

See Attachment "B"

The terms and conditions of this contract are as follows/ The purchase price is

(\$) Dollars, of which (\$) Dollars have been paid, the receipt whereof is hereby acknowledged, and the balance of said purchase price shall be paid as follows: or more at purchaser's option, on or before the day of (\$) Dollars, and or more at purchaser's option, on or before the day of each succeeding calendar month until the balance of said purchase price shall have been fully paid. The purchaser further agrees to pay interest on the diminishing balance of said purchase price at the rate of percent per annum from the day of which interest shall be deducted from each installment payment and the balance of each payment applied in reduction of principal. All payments to be made hereunder shall be made at

1122

57101

As referred to in this contract, "date of closing" shall be December 13, 1973

(1) The purchaser assumes and agrees to pay before delinquency all taxes and assessments that may or hereafter become a lien on said real estate, and to pay all taxes and assessments that may or hereafter become a lien on said real estate, and to pay all taxes and assessments that may or hereafter become a lien on said real estate, and to pay all taxes and assessments that may or hereafter become a lien on said real estate.

7.3

(2) The purchaser agrees, until the purchase price is fully paid, to keep the building insured by a company acceptable to the seller and for the seller's benefit, as his interest may appear, and to pay all premiums therefor and to deliver all policies and renewals thereof to the seller.

(3) The purchaser agrees that full inspection of said real estate has been made and that neither the seller nor his assigns shall be held to any covenant respecting the condition of any improvements thereon nor shall the purchaser or seller or the assigns of either be held to any covenant or agreement for alterations, improvements or repairs unless the covenant or agreement relied on is contained herein or is in writing and attached to and made a part of this contract.

(4) The purchaser assumes all hazards of damage to or destruction of any improvements now on said real estate or hereafter placed thereon and of the taking of said real estate or any part thereof for public use; and agrees that no such damage, destruction or taking shall constitute a failure of consideration. In case any part of said real estate is taken for public use, the portion of the condemnation award remaining after payment of reasonable expenses of procuring the same shall be paid to the seller and applied as payment on the purchase price herein unless the seller elects to allow the purchaser to apply all or a portion of such condemnation award to the rebuilding or reconstruction of any improvements damaged by such taking. In case of damage or destruction from a peril insured against, the proceeds of such insurance remaining after payment of the reasonable expense of procuring the same shall be devoted to the restoration or rebuilding of such improvements within a reasonable time, unless purchaser elects that said proceeds shall be paid to the seller for application on the purchase price herein.

(5) The seller has delivered, or agrees to deliver within 15 days of the date of closing, a purchaser's policy of title insurance in standard form, or a commitment therefor, issued by [Name of Title Insurance Company], insuring the purchase to the full amount of said purchase price against loss or damage by reason of defect in seller's title to said real estate as of the date of closing and containing no exceptions other than the following:

- a. Printed general exceptions appearing in said policy form;
- b. Liens or encumbrances which by the terms of this contract the purchaser is to assume, or as to which the conveyance hereunder is to be made, subject; and
- c. Any existing contract or contracts, under which seller is purchasing said real estate, and any mortgage or other obligation of seller, by this contract agreed to pay, none of which for the purpose of this paragraph (5) shall be deemed defects in seller's title.

635 use 165

EXHIBIT A

~~(6) If the seller fails to pay any such taxes or other obligations, which seller is to pay, seller agrees to make such payments in accordance with the terms thereof, and upon default the purchaser shall have the right to make any payments necessary to remove the default, and any payments so made shall constitute a lien in favor of the purchaser on this contract.~~

(7) The seller agrees, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to the purchaser a deed to said real estate, extending any part thereof hereafter given for public use, free of encumbrances except any that may attach after date of closing through any person other than the seller, and subject to the following:

Easement for telephone and telegraph lines in favor of Pacific Telephone and Telegraph Company, recorded May 16, 1941, under Auditor's Fee No. 351622.

B. Condemnation by the State of Washington with right of access to state highway and of light, air and view, decree entered May 31, 1967, Case No. 37854.

(8) Unless a different date is provided for herein, the purchaser shall be entitled to possession of said real estate on date of closing and to retain possession so long as purchaser is not in default hereunder. The purchaser covenants to keep the building, and other improvements on said real estate in good repair and not to permit waste and not to use, or permit the use of, the real estate for any illegal purpose. The purchaser covenants to pay all service, installing or construction charges for water, sewer, electricity, garbage or other utility services furnished to said real estate after the date purchaser is entitled to possession.

(9) In case the purchaser fails to make any payment herein provided or to maintain insurance, as herein required, the seller may make such payments or effect such insurance, and any amounts so paid by the seller, together with interest at the rate of 12% per annum thereon from date of payment until repaid, shall be repayable by purchaser on seller's demand, all without prejudice to any other right the seller might have by reason of such default.

(10) Time is of the essence of this contract, and it is agreed that in case the purchaser shall fail to comply with or perform any condition or agreement hereof or to make any payment required hereunder promptly at the time and in the manner herein required, the seller may elect to declare all the purchaser's rights hereunder terminated, and upon his doing so, all payments made by the purchaser hereunder, and all improvements placed upon the real estate shall be returned to the seller as liquidated damages, and the seller shall have right to re-enter and take possession of the real estate, and no waiver by the seller of any default on the part of the purchaser shall be construed as a waiver of any subsequent default.

Service upon purchaser of all demands, notices or other papers with respect to forfeiture and termination of purchaser's rights may be made by United States Mail, postage pre-paid, return receipt requested, directed to the purchaser at his address last known to the seller.

(11) Upon seller's election to bring suit to enforce any covenant of this contract, including suit to collect any payment required hereunder, the purchaser agrees to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, which sums shall be included in any judgment or decree entered in such suit.

If the seller shall bring suit to procure an adjudication of the termination of the purchaser's rights hereunder, and judgment is so entered, the purchaser agrees to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, and also the reasonable cost of searching records to determine the condition of title at the date such suit is commenced, which sums shall be included in any judgment or decree entered in such suit.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above: Thurston County Poggie Club, a Washington non-profit corporation.

BY: Lee Brennan, President (SEAL)
BY: H. R. Craft, Secretary (SEAL)
Norman L. Iverson (SEAL)

STATE OF WASHINGTON,

County of Thurston

On this day personally appeared before me Lee Brennan, H. R. Craft, Norman L. Iverson

to me known to be the individuals 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 13th day of December 1975

Paul T. [Signature]
Notary Public in and for the State of Washington,
Residing at [Address]

POOR QUALITY ORIGINAL

THIS SPACE RESERVED FOR RECORDING
THE STATE OF WASHINGTON
DEC 13 4 40 PM '75
RECORDS & COMMUNICATIONS DIVISION

TO: [Name]
[Address]
[City, State, Zip]

Pioneer National Title Insurance Company
WASHINGTON TITLE DIVISION
Filed for Record at Request of

EXHIBIT A VOL 635 PAGE 100

Attachment "A" to Real Estate Contract
Seller: Thurston County Poggie Club
Purchaser: Norman L. Iverson

POOR QUALITY ORIGINAL

Date: _____

IN THE COUNTY OF THURSTON, STATE OF WASHINGTON

THAT PART OF THE EAST ONE-HALF OF THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 18 NORTH, RANGE 1 WEST, W.M., LYING SOUTHERLY OF THE NORTH 1048.94 FEET THEREOF, ALSO, THOSE PORTIONS OF THE NORTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER AND OF THE NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER AND OF THE NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER, ALL OF SAID SECTION 11, LYING NORTHERLY OF PSH NO. 1 (SP 5), WESTERLY OF MARVIN ROAD, AND SOUTHERLY OF A LINE DESCRIBED AS BEGINNING AT A POINT ON THE WEST LINE OF SAID NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER 1265.80 FEET SOUTH 19° 54' 19" WEST OF THE NORTHWEST CORNER THEREOF; SAID POINT IS ON A CURVE THE RADIUS POINT OF WHICH BEARS SOUTH 87° 04' 14" EAST 130.52 FEET DISTANT; THENCE SOUTHERLY AND EASTERLY ALONG SAID CURVE A DISTANCE OF 100.00 FEET, THENCE SOUTHWEST 05° 14" EAST 40.00 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 411.97 FEET, A DISTANCE OF 350.11 FEET; THENCE NORTH 54° 05' 52" EAST 340.10 FEET TO THE NORTHEAST CORNER OF TRACT CONVEYED TO SHELL OIL COMPANY BY DEED DATED SEPTEMBER 17, 1971 AND RECORDED UNDER THURSTON COUNTY AUDITOR'S FILE NUMBER 551474; THENCE NORTH 54° 05' 52" EAST ALONG THE NORTHERLY LINE THEREOF 1265.80 FEET TO ITS NORTHEAST CORNER.

EXCEPTING THEREFROM SAID SHELL OIL COMPANY TRACT; AND ALSO EXCEPTING THEREFROM A TRACT OF LAND CONVEYED TO HAROLD WILBERT, RECORDED SEPTEMBER 21, 1971 UNDER AUDITOR'S FILE NUMBER 551474.

ATTACHMENT "A"

07.5.09

Attachment "B" to Real Estate Contract
 Seller: Thurston County Poggio Club
 Purchaser: Norman L. Iverson

Date: December 1, 2009

Additional covenants, terms and conditions of this contract are as follows:

Payment: The purchase price is ONE HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$185,000.00), of which TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) down payment of principal and an additional sum of TWELVE THOUSAND EIGHT HUNDRED DOLLARS (\$12,800.00) prepaid interest for one year has been paid; receipt of said amounts is hereby acknowledged; the unpaid principal balance of said purchase price in the amount of ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000.00) shall be paid as follows:

Purchaser agrees to pay the balance of the purchase price in four (4) equal annual installments of principal of FORTY THOUSAND DOLLARS (\$40,000.00) each, the first annual installment shall be paid on the third anniversary date of this contract and on each annual anniversary date thereafter for three additional years. Purchaser agrees to pay, in addition to the foregoing payments on principal, interest on the unpaid balance at the rate of eight percent (8%) per annum, said payments of interest shall be paid on each annual anniversary date of this agreement. Purchaser may prepay all or any portion of the principal or interest at any time without penalty. All payments shall be made at the following address or such other place as Seller may notify Purchaser in writing.

THURSTON COUNTY POGGIO CLUB

P.O. Box 121

Little Rock, WA 98554

Deed Releases: Seller covenants and agrees to execute and deliver statutory warranty deeds in partial fulfillment of this contract for such portions of the real property, designated as Parcels 1 through 5 and described in Attachment "C" hereto, as Purchaser may hereafter request upon the following terms: Deed to Parcel 1 shall be conveyed upon execution of this contract and receipt by Seller of the down payment of principal and prepaid interest for one year. Deeds to any or all of the remaining Parcels shall be executed and delivered upon payment to Seller of the following cash amounts, which payments shall be in addition to the payments due Seller under this contract; but shall be applied in reduction of the principal balance.

Parcel 2	\$23,500.00
Parcel 3	\$24,000.00
Parcel 4	\$40,000.00
Parcel 5	\$60,000.00

provided, however, Seller shall deliver a deed to the last remaining Parcel when the entire purchase price plus interest shall have been paid in full, but not prior thereto.

Norman L. Iverson
Buyer

the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

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

EXHIBIT A

Evergreen Club, Purchaser - Norman L. Iverson." Parcel 1

903244

BRACY & THOMAS
LAND SURVEYORS
1115 BLACK LAKE BLVD.
OLYMPIA, WASHINGTON 98507
PHONE 327-6593

BRUCE BRACY
DEALE WITH THOMAS

ASSOCIATES
WILLIAM M. JOHNSON

November 21, 1973

Description For Evergreen Gun Club
Tract 1

The East half of the Northeast quarter of the Northwest quarter of Section 11, Township 18 North, Range 1 West, W.M., EXCEPTING therefrom the North 1048.94 feet.

Also that part of the West half of the Northeast quarter of said Section 11, lying Westerly and Northerly of the following described line: Beginning at a point on the West line of said West half S 1° 54' 46" W 1203.80 feet from the Northwest corner thereof; said point being the P.C. of a curve to the left having a radius of 130.52 feet; thence along said curve 114.74 feet; thence N 88° 05' 14" W 47.27 feet to the Southwest corner of the North half of said West half.

n. 7 9
LS
2/2/74

Vol 635 page 169

EXHIBIT A

Loggie Club, Purchaser- Norman L. Iverson." Parcel 2

BRACY & THOMAS

LAND SURVEYORS
1116 BLACK LAKE BLVD.
OLYMPIA, WASHINGTON 98504

903244

PHONE 357-5503

BRUCE BRACY
DEALE W. THOMAS

ASSOCIATES
WILLIAM H. JOHNSON

November 21, 1973

Description For The Triune Corporation
Tract 2

That part of the Northeast quarter of the Southeast quarter of the Northwest quarter, and of the West half of the Northeast quarter of Section 11, Township 18 North, Range 1 West, W.M. described as follows: Beginning at the Northwest corner of said Northeast quarter of the Southeast quarter of the Northwest quarter; thence S 88° 11' 05" E along the North line thereof 662.05 feet to its Northeast corner; thence S 88° 05' 14" E 47.27 feet to a point on a curve the radius point of which bears N 41° 32' 43" E 130.52 feet distant; thence Southeasterly along said curve 50.00 feet; thence S 51° 39' 41" W 402.65 feet; thence S 75° 24' 18" W 465.00 feet to the West line of said Northeast quarter of the Southeast quarter of the Northwest quarter; thence N 1° 56' 37" E along said West line 415.00 feet to the point of beginning.

Handwritten notes:
N 2 3
2/13
H 2 3

EXHIBIT A

vol 635 page 170

Attachment of "CO. R. & S. 20000 S. 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

28813 11/4/2009 00134

"Loggio Club, Purchaser- Norman L. Iverson." Parcel 3

BRACY & THOMAS
LAND SURVEYORS
1115 BLACK LAKE BLVD.
OLYMPIA, WASHINGTON 98507
PHONE 357-5523

903244

JOHN C. BRACY
DEALER IN TRADE

ASSOCIATES
WILLIAM M. BRACY

November 21, 1973

Description For The Trilune Corporation
Tract 3

That part of the Northeast quarter of the Southeast quarter of the Northwest quarter, and of the North half of the Southwest quarter of the Northeast quarter of Section 11, Township 18 North, Range 1 West, W.M., described as follows: Beginning at the Southwest corner of said Northeast quarter of the Southeast quarter of the Northwest quarter; thence N 1° 56' 37" E along the West line thereof 238.74 feet; thence N 75° 24' 18" E 465.00 feet; thence N 51° 39' 41" E 402.65 feet to a point on a curve the radius point of which bears N 19° 35' 43" E 130.52 feet distant; thence Easterly along said curve 40.28 feet; thence S 88° 05' 14" E 35.66 feet; thence S 28° 15' 39" W 546.89 feet to the Northerly right of way line of PSII 1 (SR 5); thence along said Northerly right of way line S 75° 24' 18" W 466.72 feet, and S 77° 41' 36" W 6.67 feet to the South line of said Northeast quarter of the Southeast quarter of the Northwest quarter; thence N 88° 19' 20" W along said South line 131.91 feet to the point of beginning.

729
200
2/2/09

EXHIBIT A

VOL 635 PAGE 171

Wogio Club, Purchased- Norman L. Overton. Parcel 4.

BRACY & THOMAS

LAND SURVEYORS
1112 BLACK LAKE BLVD.
OLYMPIA, WASHINGTON 98502

903244

PHONE 327-5593

JOHN C. BRACY
LESLIE M. THOMAS

ASSOCIATES
MICHAEL JOHNSON

November 21, 1973

Description For The Triune Corporation
Tract 4

That part of the Southeast quarter of the Northwest quarter, and of the North half of the Southwest quarter of the Northeast quarter of Section 11, Township 18 North, Range 1 West, W.H. described as follows: Beginning at a point on the Northerly right of way of PSR 1 (SR 5), said point being opposite Engineer's Station LL 1432+00 as shown on sheet 9 of 36 sheets, dated December 14, 1965, and approved per State Highway Commission order January 25, 1966; thence S 75° 24' 18" N along said Northerly right of way line 547.33 feet; thence N 28° 15' 39" E 546.89 feet; thence S 88° 05' 14" E 25.00 feet; thence along a curve to the left having a radius of 411.97 feet a distance of 136.62 feet; thence S 17° 05' 13" E 377.57 feet to the point of beginning.

Handwritten notes:
n 2
2 3
3/12/73

EXHIBIT A

VOL 635 PAGE 172

RECORDED & INDEXED - 11/1/2000
Tennis Club, Purchaser - NORMAN L. IVERSON, Parcel 5

BRACY & THOMAS
LAND SURVEYORS
1113 BLACK LAKE BLVD.
OLYMPIA, WASHINGTON 98507
PHONE 357-5593

903244

JOHN L. BRACY
DEALER IN INSTRUMENTS

ASSOCIATES
WILLIAM M. JOHNSON

November 21, 1973

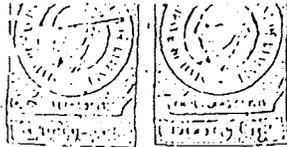
Description For The Triune Corporation
Tract 5

That part of the Northeast quarter of Section 11, Township 18 North, Range 1 West, W.M. described as follows: Beginning at a point on the Northerly right of way of PSN 1 (SR 5), said point being opposite Engineer's Station Ll. 1432+00 as shown on sheet 9 of 36 sheets, dated December 14, 1965, and approved per State Highway Commission order January 25, 1966; thence N 17° 05' 13" W 377.57 feet to a point on a curve, the radius point of which bears N 17° 05' 13" W 411.97 feet distant; thence Northeasterly along said curve 99.56 feet; thence N 59° 03' 57" E 342.79 feet to the Northwest corner of tract conveyed to Shell Oil Company by deed dated September 17, 1971 and recorded under Thurston County Auditor's File Number 871766; thence S 23° 25' 42" E along the West line of said tract 357.71 feet to said Northerly right of way line; thence S 59° 03' 57" W along said Northerly right of way line 485.01 feet to the point of beginning.

M L J
LB
11/21/73

EXHIBIT A

VOL 635 PAGE 173



WA 64482 WASHINGTON STATE 60910

THIS SPACE RESERVED

THURSTON COUNTY WASH.

Dec 13 4 42 PM '73

Filed for Record in Thurston County, Washington

Name: Norman L. Iverson
Address: J.C. Park 3370
City and State: Thurston Wash. 98499

903245

POOR QUALITY ORIGINAL

Statutory Warranty Deed

(CORPORATE FORM)

THE GRANTOR THURSTON COUNTY POGGIE CLUB, a Washington non-profit corporation, by Lee Brennan, President and H. R. Craft, Secretary, for and in consideration of TEN DOLLARS and other consideration

in hand paid, conveys and warrants to NORMAN L. IVERSON, his heirs and assigns,

the following described real estate, situated in the County of Thurston, State of Washington:

The East half of the Northeast quarter of the Northwest quarter of Section 11, Township 18 North, Range 1 West, W.M., EXCEPTING therefrom the North 1048.94 feet.

Also that part of the West half of the Northeast quarter of said Section 11, lying Westerly and Northerly of the following described line: Beginning at a point on the West line of said West half S 1°54'46" W 1203.80 feet from the Northwest corner thereof; said point being the P.C. of a curve to the left having a radius of 130.52 feet; thence along said curve 114.74 feet; thence N 88°05'14" W 47.27 feet to the Southwest corner of the North half of said West half.

partial

This deed is given in fulfillment of that certain real estate contract between the parties hereto, dated 13 day of December, 1973, and conditioned for the conveyance of the above described property, and the covenants of warranty hereinafter contained shall not apply to any title, interest or encumbrance arising by, through or under the purchase of said contract, and shall not apply to any taxes, assessments or other charges levied, assessed or becoming due subsequent to the date of said contract.

Real Estate Sales Tax was paid on this sale on December, 1973, Rec. No.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers this 13 day of December, 1973

THURSTON COUNTY POGGIE CLUB

By: Lee Brennan, President
By: H. R. Craft, Secretary

STATE OF WASHINGTON

County of Thurston

On this 13 day of December, 1973 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

Lee Brennan and H. R. Craft to me known to be the President and Secretary, respectively, of Thurston County Poggie Club, a Washington non-profit corporation,

the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on each stated that he authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation

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

Paul T. Lipman, Notary Public in and for the State of Washington, residing at Tacoma, WA

57101

EXHIBIT B VOL 635 PAGE 174

ACKNOWLEDGEMENT OF RECEIPT

NORMAN L. IVERSON and MARIE K. IVERSON, husband and wife ("Iverson"), and NORMAN L. IVERSON, Trustee pursuant to Iverson Trust Agreement dated June 19, 1970 ("Iverson Trust"), hereby acknowledge receipt from ARTHUR J. REDFORD and DALLAS J. REDFORD, husband and wife ("Redford"), and ROBERT J. KNUITSEN ("Knutsen"), a single man, of the sum of SEVEN THOUSAND TWO HUNDRED FORTY DOLLARS (\$7,240.00) in consideration of the sale by Iverson and Iverson Trust to Redford and Knutsen of interests as joint venturers in certain real property situated in Thurston County, Washington pursuant to Joint Venture Agreement dated June 20, 1977.

DATED this 20th day of June, 1977.

Norman L. Iverson

 NORMAN L. IVERSON

Marie K. Iverson

 MARIE K. IVERSON

Norman L. Iverson, Trustee

 NORMAN L. IVERSON, Trustee

TELEPHONE
(206) 565-1161

OFFICE
1914 64th AVE. WEST
TACOMA, WASH. 98466

NORMAN L. IVERSON & ASSOCIATES

P. O. BOX 99370
TACOMA, WASHINGTON 98499

KIRI JOINT VENTURE

The Joint Venture Agreement signed June 20, 1977 (known as KIRI) agrees to pay Norman C. Iverson a management fee of 3.5% of the gross for his services rendered.

If the property is sold for cash, the management fee is due immediately.

If the property is sold on a contract, the management fee will be pro-rated over three equal payments over a period no longer than three years.

If the property is developed by the owners, another management fee basis must be agreed upon before development can begin.

IVERSON TRUST, NORMAN L. IVERSON TRUSTEE *Norman L. Iverson, Trustee*

NORBECK TRUST, NORMAN L. IVERSON TRUSTEE *Norman L. Iverson, Trustee*

MARIE K. IVERSON *Marie K. Iverson*

ARTHUR J. REDFORD

DALLAS J. REDFORD

ROBERT J. KNUITSEN *Robert Knutsen*

EXHIBIT
2

AGREEMENT AMONG PARTNERS

THIS AGREEMENT is made and entered into this ____ day of March, 1996, by and between IVERSON REAL ESTATE LLC, NOR-RAE TRUST, JEFFREY B. IVERSON, PENNY C. DUKE, NORMAN L. IVERSON, MARIE K. IVERSON, IVERSON TRUST, dated June 19, 1970, Norman L. Iverson Trustee, NORMAN C. IVERSON and ROBERT J. KNUTSEN.

WHEREAS, Norman L. Iverson, Marie K. Iverson, Norman L. Iverson, as Trustee of the Iverson Trust Agreement dated June 19, 1970, Robert J. Knutsen, Arthur J. Redford and Dallas J. Redford, entered into a Joint Venture Agreement on June 20, 1977, known as the Kiri Joint Venture; and

WHEREAS, on June 20, 1977, all of the partners except Arthur J. Redford and Dallas J. Redford, executed a Management Agreement by and between Kiri Joint Venture and Norman C. Iverson to pay him a management fee of three and one-half percent (3.5%) of the gross sales price payable in cash on closing or, if the property was sold on contract, prorated over three (3) equal payments over three (3) years; and

WHEREAS, the undersigned believes that the Kiri Joint Venture has the authority under Paragraph 8 of the Joint Venture Agreement to enter into a Management Agreement with Norman C. Iverson subject to a vote of their proportionate interest; and

WHEREAS, Arthur J. Redford and Dallas J. Redford have declined to execute the Management Agreement; and

WHEREAS, Norman C. Iverson has acted as the manager of the Joint Venture since 1977; and

WHEREAS, all of the parties to the joint venture have assigned their interests in one form or another, subject to approval of the other joint venture partners pursuant to Paragraph 12 of the Joint Venture Agreement; and

WHEREAS, the undersigned are willing to approve all of the assignments of partnership interest, including the assignments by Arthur J. Redford and Dallas J. Redford.

WHEREAS, the undersigned are desirous of facilitating the execution of a Purchase and Sale Agreement for the property between the joint venture and Hawk's Prairie Development Company and/or assigns; and

WHEREAS, the undersigned are desirous that Norman C. Iverson and Arthur J. Redford and Dallas J. Redford resolve their dispute independent of the closing; and



WHEREAS, the undersigned are willing to have the escrow agent distribute their share of the management fee due to Norman C. Iverson pursuant to the Management Contract from the closing proceeds; now, therefore;

THE UNDERSIGNED parties, individually and as joint venture partners of Kiri Joint Venture, agree as follows:

The undersigned do hereby vote their proportionate partnership interests in the Kiri Joint Venture to expedite the closing of the sale of the joint venture property and endorses the suit by Norman C. Iverson against Arthur J. Redford and Dallas J. Redford to recover their share of the management fee, sue Arthur J. Redford and Dallas J. Redford, if necessary, for declaratory judgment, deeming that the majority of the partners have the authority to enter into the Management Agreement and pay the sums necessary to complete management and to expedite the closing of the Purchase and Sale Agreement by and between Kiri Joint Venture and Hawk's Prairie Development Company and/or Assigns pursuant to its terms, and to recover the costs for the undertaking from Arthur J. Redford and Dallas J. Redford and to ratify the assignments that have taken place between the joint venturers and the individuals or entities set forth above.

Further, Norman C. Iverson agrees that Bonneville, Viert, Morton and McGoldrick, P.S., shall be compensated for their services from a portion of the management fee or through Norman C. Iverson, and the undersigned agree that the representation by Bonneville, Viert, Morton and McGoldrick, P.S., of the Kiri Joint Venture and Norman C. Iverson does not constitute a conflict of interest.

DATED this _____ day of _____, 1996.

IVERSON REAL ESTATE LLC

NOR-RAE TRUST

By Norman C. Iverson, Trustee
Its _____

By Norman C. Iverson, Trustee

Jeffrey B. Iverson
JEFFREY B. IVERSON

Penny C. Duke
PENNY C. DUKE

Norman L. Iverson
NORMAN L. IVERSON

Marie K. Iverson
MARIE K. IVERSON

Norman C. Iverson
NORMAN C. IVERSON

Robert J. Knutsen
ROBERT J. KNUTSEN.

IVERSON TRUST

By Norman L. Iverson
NORMAN L. IVERSON, Trustee

AGREEMENT AMONG PARTNERS

THIS AGREEMENT is made and entered into this ____ day of March, 1996, by and between IVERSON REAL ESTATE LLC, NOR-RAE TRUST, JEFFREY B. IVERSON, PENNY C. DUKE, NORMAN L. IVERSON, MARIE K. IVERSON, IVERSON TRUST, dated June 19, 1970, Norman L. Iverson Trustee, NORMAN C. IVERSON and ROBERT J. KNUTSEN.

WHEREAS, Norman L. Iverson, Marie K. Iverson, Norman L. Iverson, as Trustee of the Iverson Trust Agreement dated June 19, 1970, Robert J. Knutsen, Arthur J. Redford and Dallas J. Redford, entered into a Joint Venture Agreement on June 20, 1977, known as the Kiri Joint Venture; and

WHEREAS, on June 20, 1977, Norman L. Iverson, Trustee of the Iverson Trust, Norman L. Iverson as Trustee for the Norbeck Trust, and Marie K. Iverson and Robert J. Knutsen, executed a Management Agreement by and between Kiri Joint Venture and Norman C. Iverson to pay him a management fee of three and one-half percent (3.5%) of the gross sales price payable in cash on closing or, if the property was sold on contract, prorated over three (3) equal payments over three (3) years; and

WHEREAS, the undersigned believes that the Kiri Joint Venture has the authority under Paragraph 8 of the Joint Venture Agreement to enter into a Management Agreement with Norman C. Iverson subject to a vote of their proportionate interest; and

WHEREAS, Arthur J. Redford and Dallas J. Redford have declined to execute the Management Agreement; and

WHEREAS, Norman C. Iverson has acted as the manager of the Joint Venture since 1977; and

WHEREAS, all of the parties to the joint venture have assigned their interests in one form or another, subject to approval of the other joint venture partners pursuant to Paragraph 12 of the Joint Venture Agreement; and

WHEREAS, the undersigned are willing to approve all of the assignments of partnership interest by Iverson Trust to Iverson Real Estate LLC, Norman L. Iverson and Marie K. Iverson, the assignment by Arthur J. Redford and Dallas J. Redford to their family limited partnership and the assignment by Robert J. Knutsen to Key Bank.

WHEREAS, the undersigned are desirous of facilitating the execution of a Purchase and Sale Agreement for the property between the joint venture and Hawk's Prairie Development Company and/or assigns; and

WHEREAS, the undersigned are desirous that Norman C. Iverson and Arthur J. Redford and Dallas J. Redford resolve their dispute independent of the closing; and



MAR 28 '96 16:20 BONNEVILLE VIERT

P.3

WHEREAS, the undersigned are willing to have the escrow agent distribute three and one-half percent (3.5%) of their distributive share of the closing proceeds to Norman C. Iverson pursuant to the Management Contract; now, therefore;

THE UNDERSIGNED parties, individually and as joint venture partners of Kiri Joint Venture, agree as follows:

The undersigned do hereby vote their proportionate partnership interests in the Kiri Joint Venture to engage the firm of Bonneville, Viert, Morton and McGoldrick, P.S., to represent the partnership, if necessary, to expedite the closing of the sale of the joint venture property, sue Arthur J. Redford and Dallas J. Redford, if necessary, for declaratory judgment, deeming that the majority of the partners have the authority to enter into the Management Agreement and pay the sums necessary to complete management and to expedite the closing of the Purchase and Sale Agreement by and between Kiri Joint Venture and Hawk's Prairie Development Company and/or Assigns pursuant to its terms, and to recover the costs for the undertaking from Arthur J. Redford and Dallas J. Redford and to ratify the assignments that have taken place between the joint venturers and the individuals or entities set forth above.

Further, Norman C. Iverson agrees that Bonneville, Viert, Morton and McGoldrick, P.S., shall be compensated for their services from a portion of the management fee or through Norman C. Iverson, and the undersigned agree that the representation by Bonneville, Viert, Morton and McGoldrick, P.S., of the Kiri Joint Venture and Norman C. Iverson does not constitute a conflict of interest.

DATED this _____ day of _____, 1996.

IVERSON REAL ESTATE LLC

NOR-RAE TRUST

By Norman L. Iverson

By Norman C. Iverson, Trustee

Jeffrey B. Iverson
JEFFREY B. IVERSON

Penny C. Duke
PENNY C. DUKE

Norman L. Iverson
NORMAN L. IVERSON

Marie K. Iverson
MARIE K. IVERSON

Norman C. Iverson
NORMAN C. IVERSON

Robert J. Knutsen
ROBERT J. KNUTSEN.

IVERSON TRUST

By Norman L. Iverson Trustee
NORMAN L. IVERSON, Trustee

(7

When recorded, return to:

Richard D. Turner
Eisenhower & Carlson
1200 First Interstate Plaza
1201 Pacific Avenue
Tacoma, Washington 98402

THURSTON COUNTY
OLYMPIA, WA
11.04.95 1:20 PM
REQUEST OF: RDC L.L.C.
899 2nd Ave SE P.O. BOX 100
13.00 UCU

QUIT CLAIM DEED

The Grantor, the IVERSON TRUST, Norman L. Iverson, Trustee, for no consideration, conveys and quit claims to IVERSON REAL ESTATE L.L.C., a Washington limited liability company, its 25.1% interest in the following described real estate situated in the County of Thurston, State of Washington:

See attached Exhibit "A".

DATED this 28 day of December, 1994.

IVERSON TRUST

Real Estate Sales tax paid none
Receipt No. 22411 Date 1-3-95
Issued by Thurston Co. Treas.
By [Signature] Deputy

By [Signature]
Norman L. Iverson, Trustee

STATE OF WASHINGTON

County of Pierce) ss.

I certify that I know or have satisfactory evidence that NORMAN L. IVERSON is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledge it as the Trustee of the IVERSON TRUST to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 28 day of December, 1994.

[Signature]
Signature of Notary Public
Richard D. Turner
Name of Notary Public
NOTARY PUBLIC
8-15-98
My Appointment Expires

2362 282
9531040114

Exhibit "A"

The following described real property located in Thurston County, Washington:

That part of the east one-half of the Northeast one-quarter of the Northwest one-quarter of Section 11, Township 18 North, Range 1 West, W.M., lying southerly of the North 1048.94 feet thereof. Also, those portions of the Northeast one-quarter of the Southeast one-quarter of the Northwest one-quarter and of the Southwest one-quarter of the Northeast one-quarter and of the Northwest one-quarter of the Northeast one-quarter, all of said Section 11, lying northerly of PSH No. 1 (SR 5), Westside, of Marvin Road, and southerly of a line described as beginning at a point on the west line of said Northwest one-quarter of the Northeast one-quarter 1203.80 feet South 1°54'46" west of the Northwest corner thereof, said point is on a curve the radius point of which bears South 88°05'14" East 130.52 feet distant, thence southerly and easterly along said curve a distance of 205.02 feet; thence south 88°05'14" east 68.66 feet; thence along a curve to the left, having a radius of 47.97 feet, a distance of 236.18 feet; thence North 59°03'57" east 342.39 feet to the Northwest corner of tract conveyed to Shell Oil Company by deed dated September 17, 1971 and recorded under Thurston County Auditor's File No. 871266; thence north 59°03'57" East along the northerly line thereof 189.98 feet to its Northeast corner. Excepting therefrom said Shell Oil Company tract, and also excepting therefrom a tract of land conveyed to Harold Knight recorded September 21, 1971 under Auditor's File No. 851474.

Being Tax Parcel Nos:

118-11-210400-5
118-11-120600-9
118-11-120700-7

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FILE NO. 200104011

End of Exhibit "A"

Subsequently, the Iversons deeded their interest in the property to the NOR-BECK Trust (Living Trust of NORMAN L. IVERSON and MARIE K. IVERSON dated December 23, 1974).

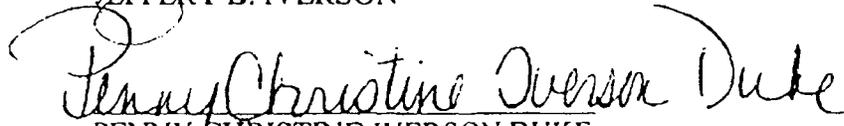
This trust was a standard estate planning trust.

53 In ¹¹⁻¹⁷⁻⁹⁴ 1995 at a time when limited liability companies had become popular and when the IVERSON Trust was in need of terminating, the IVERSON Trust mistakenly recorded a Quit Claim Deed (TCA 9501040114) to the IVERSON Real Estate LLC, which was a limited liability company owned equally by the three Affiants hereto. The problem was that the IVERSON Trust did not own any interest in the real property at the time of the conveyances; it owned a 25.5% interest in the KIRI Joint Venture.

The four deeds, one from each of the Affiants (and his or her respective spouse or the limited liability company of Affiant NORMAN C. IVERSON) and one from Affiants as members of the IVERSON Real Estate LLC are an attempt to restore title to the real property in the NOR-BECK Trust so that it can convey the real property to the proper parties in the proper percentages.


NORMAN C. IVERSON


JEFFERY B. IVERSON

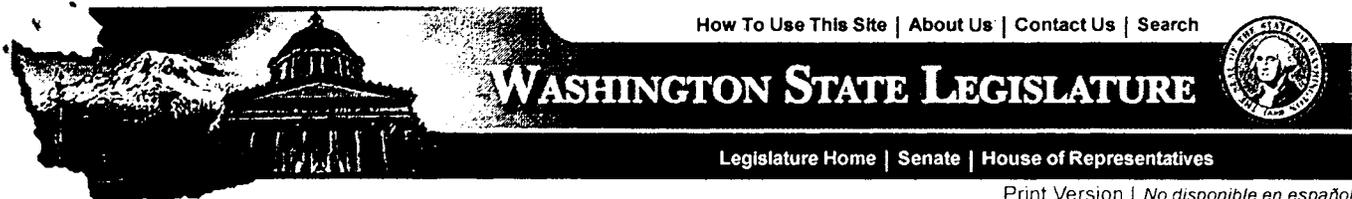

PENNY CHRISTINE IVERSON DUKE

SIGNED AND SWORN to before me on this 9 day of March, 2003 by
NORMAN C. IVERSON, JEFFERY B. IVERSON, and PENNY CHRISTINE IVERSON
DUKE.



Timothy L. Bunch
Signature of Notary Public
TIMOTHY L. BUNCH

Name of Notary Public
NOTARY PUBLIC
Residing at Tacoma, WA
My Appointment Expires: 12-4-07



RCWs > Title 25 > Chapter 25.05 > Section 25.05.150

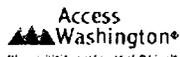
[25.05.135](#)

[25.05.155](#)

RCW 25.05.150

Partner's rights and duties.

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(1) Each partner is deemed to have an account that is:

(a) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(b) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

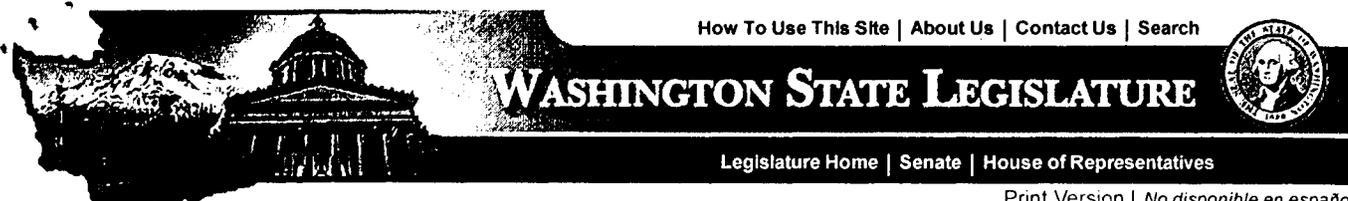
(9) A person may become a partner only with the consent of all of the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(11) This section does not affect the obligations of a partnership to other persons under RCW [25.05.100](#).

[1998 c 103 § 401.]

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[25.05.175](#) [25.05.205](#)

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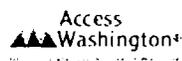
RCW 25.05.200

Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

[1998 c 103 § 501.]

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[25.05.210](#)

RCW 25.05.205

Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

[1998 c 103 § 502.]

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§34. CERTAINTY AND CHOICE OF TERMS; EFFECT OF PERFORMANCE OR RELIANCE

(1) The terms of a contract may be reasonably certain even though it empowers one or both parties to make a selection of terms in the course of performance.

(2) Part performance under an agreement may remove uncertainty and establish that a contract enforceable as a bargain has been formed.

(3) Action in reliance on an agreement may make a contractual remedy appropriate even though uncertainty is not removed.

Comment:

a. *Choice in the course of performance.* A bargain may be concluded which leaves a choice of terms to be made by one party or the other. If the agreement is otherwise sufficiently definite to be a contract, it is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Uniform Commercial Code §2-311(1). The more important the choice is, the more it is likely that the parties do not intend to be bound until the choice is made. But even on such matters as subject matter and price, one party is often given a wide choice. If the parties intend to make a contract and there is a reasonably certain basis for granting an appropriate remedy, such alternative terms do not invalidate the contract. See §33.

b. *Unlimited choice; good faith and fair dealing.* If one party to an agreement is given an unlimited choice, that party may not be a promisor..., and the contract may fail for want of consideration. See §79....And in any event discretionary power granted by a commercial contract must be exercised in good faith and in accordance with fair dealing. Uniform Commercial Code §§1-203, 2-103(1)(b). A price to be fixed by a seller or buyer of goods, for example, means a price for him to fix in good faith. Uniform Commercial Code §2-305(2).

c. *Subsequent conduct removing uncertainty.* Indefiniteness may prevent enforcement of a contract in two different ways: it may mean that a manifestation of intention is not intended to be understood as an offer; or, even though the parties intended to enter into a contract, there may be no sufficient basis for giving an appropriate remedy. Subsequent conduct of one or both parties may remove either obstacle or both....[P]art performance may give meaning to indefinite terms of an agreement, or may have the effect of eliminating indefinite alternatives by waiver or modification. Uniform Commercial Code §2-208. In such cases a bargain may be concluded, but it may be impossible to identify offer or acceptance or to determine the moment of formation. See §22(2).

U.C.C. Sect. 2-311 Options and Cooperation Respecting Performance

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed, specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of Section 2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

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Other Sections Via Section Table This Section's Official Comment

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**Restatement of the Law -- Agency
Restatement (Third) of Agency
Current through April 2006**

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**Chapter 6. Contracts And Other Transactions With Third Parties
Topic 2. Rights, Liabilities, And Defenses
Title C. Agent's Warranties And Representations**

§ 6.10 Agent's Implied Warranty Of Authority

A person who purports to make a contract, representation, or conveyance to or with a third party on behalf of another person, lacking power to bind that person, gives an implied warranty of authority to the third party and is subject to liability to the third party for damages for loss caused by breach of that warranty, including loss of the benefit expected from performance by the principal, unless

- (1) the principal or purported principal ratifies the act as stated in § 4.01; or**
- (2) the person who purports to make the contract, representation, or conveyance gives notice to the third party that no warranty of authority is given; or**
- (3) the third party knows that the person who purports to make the contract, representation, or conveyance acts without actual authority.**

REST 3d AGEN § 6.10
END OF DOCUMENT



WASHINGTON STATE LEGISLATURE



[RCWs](#) > [Title 4](#) > [Chapter 4.16](#) > [Section 4.16.040](#)

[4.16.030](#) | [4.16.040](#) | [4.16.050](#)

RCW 4.16.040

Actions limited to six years.

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate.

[2007 c 124 § 1; 1989 c 38 § 1; 1980 c 105 § 2; 1927 c 137 § 1; Code 1881 § 27; 1854 p 363 § 3; RRS § 157.]

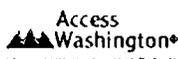
Notes:

Application -- 2007 c 124: "This act applies to all causes of action on accounts receivable, whether commenced before or after July 22, 2007." [2007 c 124 § 2.]

Application -- 1980 c 105: See note following RCW [4.16.020](#).

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[4.16.070](#)

[4.16.085](#)

RCW 4.16.080

Actions limited to three years.

The following actions shall be commenced within three years:

(1) An action for waste or trespass upon real property;

(2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

(3) Except as provided in RCW [4.16.040\(2\)](#), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

(4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;

(6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

[1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

Notes:

Reviser's note: Transitional proviso omitted from subsection (6). The proviso reads: "PROVIDED, FURTHER, That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective;".

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