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## **I. IDENTITY OF THE RESPONDENT**

Respondent, Olson Engineering, Inc. (hereinafter “Olson”), asks this court to affirm the Superior Court decision.

## **II. INTRODUCTION**

To accept the propositions set forth in the brief of the Appellant, KeyBank National Association (hereinafter “KeyBank”), is to accept KeyBank’s sense of entitlement and belief that it deserves special treatment and a favorable interpretation of the Washington Mechanics’ and Materialmen’s Lien Statute. The fact is, RCW 60.04.161 was established to transfer a construction lien from real property to bond proceeds in those circumstances when priority will not be an issue. The legislature did not intend to prejudice the rights of the lien claimants by allowing the transfer of the lien from one security to another. Contrary to KeyBank’s assertions, the legislature did not contemplate that RCW 60.04.161 would provide a vehicle for lenders to prejudice the rights of lien claimants in order for it to foreclose on properties more quickly.

Furthermore, in light of the Washington Supreme Court’s recent decision in *Williams v. Athletic Field, Inc.*, \_\_\_ Wash.3d \_\_\_, 261 P.3d 109 (2011), Chapter RCW 60.04 is to be construed liberally to protect lien claimants. Interpreting RCW 60.04.161 in the manner proposed by KeyBank gives lenders an unfair advantage and undercuts the protections

afforded to lien claimants under RCW 60.04. This was not what the legislature intended.

Adopting Olson's measured interpretation of RCW 60.04.161 allows for those wishing to bond off a construction lien to make the choice as to whether lien priority is an issue that needs to be litigated or not. If priority is an issue, then a lender, such as KeyBank, has a choice. The lender can either choose to: (1) bond off the lien and give up its priority dispute; or (2) not file a "release of lien" bond and either contest priority of the lien claimant or if the lien claimant's interest is inferior, foreclose it out. If the lender chooses to bond off the lien, the lender makes a conscious choice that it will not contest priority and affords itself the protections of the statute which allows it to proceed with foreclosing on its security interest without having title encumbered by the construction lien. This benefits the lender significantly in expediting the foreclosure, sale and disposition of the property.

In this case KeyBank made the choice to record the "release of lien" bond, thus removing Olson's lien from the real property. As a result, KeyBank lost its ability to assert that its lien had priority over Olson's construction lien. As the trial court succinctly stated "[t]he term 'correctness' does not include prioritization. The bonding off statute only works as – if prioritization is not part of the analysis at that point and so

that's what I'm going to find.” (RP 59, ll. 9-12, November 12, 2010 Hearing) Adopting KeyBank's interpretation of RCW 60.04.161 would prejudice the rights of a lien claimant.

Finally, the trial court correctly granted Olson's motion for summary judgment when it ruled that there was no issue of material fact as to the correctness and validity of Olson's lien and found that as a matter of law, Olson was entitled to a decree of foreclosure against the bond proceeds and an award of attorney fees and costs against KeyBank.

### **III. RESPONDENT'S STATEMENT OF THE ISSUE**

- A. Does the recording of a “release of lien” bond per RCW 60.04.161 eliminate the issue of priority as to a lien claimant's lien and require payment of the bond proceeds to a lien claimant upon the claimant establishing that lien is correct and valid?
- B. Was the construction lien filed by Olson correct and valid?
- C. Was the professional services provided by Olson at the instance of the owner per RCW 60.04.121?

### **IV. RESPONDENT'S STATEMENT OF THE CASE**

#### **A. Procedural History**

On November 12, 2010, the trial court issued its oral ruling granting Olson's motion in limine and prohibiting KeyBank from

referencing, inferring or presenting any evidence contesting priority of Olson's construction lien over KeyBank's Deeds of Trust, because KeyBank filed a "release of lien" bond under RCW 60.04.161 and removed Olson's lien from the real property described in Olson's lien. (RP 59, November 12, 2010 Hearing). The trial court ruled that KeyBank could not assert priority as a defense and could only contest the correctness and validity of Olson's lien because the real property was no longer subject to the lien. The court ruled that to allow such a priority defense under these circumstances would prejudice Olson because, if Olson's lien was found to be junior to KeyBank, Olson was precluded from exercising remedies including redemption, reinstatement, or cure rights, which are afforded any lien claimant in a foreclosure action. (RP 56-59, November 12, 2010 Hearing).

Following the trial court's ruling, Olson moved for summary judgment under CR56 on the basis that there was no genuine issue of material fact as to the correctness and validity of Olson's construction lien and that as a matter of law Olson was entitled to summary judgment in its favor. The trial court agreed and granted summary judgment in favor of Olson and against KeyBank in the amount of \$219,209.94, which included principal, interest, costs and attorney fees. (CP 1037-CP 1053) The trial

court also granted and issued a decree foreclosing on the bond proceeds of the “Release of Lien” bond filed by KeyBank.

Prior to the trial court’s November 12, 2010 order regarding the “Release of Lien” bond issue, the trial court ruled that the work commenced by Olson in January of 2006 was performed at the instance of the owner. (CP 98) This issue became irrelevant after the trial court determined that Keybank could not argue priority upon filing the “Release of Lien” bond since this issue related to when Olson’s lien attached to the real property and whether Olson’s or KeyBank’s interest had priority.<sup>1</sup> With the trial court’s rulings, lien priority was no longer an issue. If this Court reaffirms the trial court’s decision in regards to priority under 60.04.161 and affirms the trial court’s finding that Olson’s lien was correct and valid, the “instance of the owner” issue becomes moot.

#### **B. Background Facts**

Olson was hired to provide engineering, surveying, and planning services for an assemblage of property referred to and known as the Meriwether Master Plan Property (“Meriwether Property”) in Cowlitz County, WA. (CP 267)

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<sup>1</sup> The Appellant states at page 26 of its brief that it is undisputed that work performed by Olson was not done at the instance of Antonsen/Skaar. Olson does in no way concede this issue. This issue was never litigated or addressed as a result of the rulings of the trial court, thus making such a determination irrelevant.

During the period from January 23, 2006 through July 29, 2008 and thereafter, Olson provided professional services for and in conjunction with the improvement of the Meriwether Property. (CP 267) At all times Olson performed work on the entire Meriwether Property, and all work, whether designated for a particular subpart, was done for the project as a whole. (CP 267, CP 849); (App. A) Olson provided services at the request of and for the benefit of Juneau Investments, LLC (“Juneau”) and Pacific Lifestyle Homes (“PLH”), as agent for Juneau. (CP 267) Juneau owned the property for the relevant period. Olson performed engineering, planning, and surveying services, together with materials and labor associated therewith. (CP 267) Olson continued providing said services, materials, and labor through and past July 29, 2008. (CP 267) However, Olson was not getting paid and was owed \$74,508.51, plus interest. (CP 267) As a result of nonpayment, on or about October 1, 2008, Olson filed a construction lien (“Construction Lien”) with the Auditor of Cowlitz County, Washington, against the Meriwether Property to recover the amounts it was owed for the work done on this project.

Prior to the eight month period for filing an action to foreclose had run, Olson filed an action to foreclose its lien. The complaint to foreclose described all of the Meriwether Property contained in Olson’s construction

lien except for a portion that was included in the bankruptcy estate of PLH and related entities who had previously filed bankruptcy.<sup>2</sup> (CP 1-CP 22)

Following Olson's commencement of its lien foreclosure action, KeyBank, pursuant to RCW 60.04.161 filed and recorded with the Cowlitz County Auditor's Office a Release of Lien Bond. (CP 282-CP 293) The filing of the "release of lien" bond removed Olson's lien from the Meriwether Property over to the bond proceeds.

## V. ARGUMENT

### A. The trial court interpreted RCW 60.04.161 correctly.

Per RCW 60.04.161, upon establishing the validity and correctness of its lien, a lien claimant is entitled to a decree foreclosing on and collecting the "release of lien" bond proceeds. *DBM Consulting Eng'rs, Inc. v. U.S. Fid. & Guar. Co.*, 142 Wash.App. 35, 40, 170 P.3d 592 (2007). The statute is clear that a construction lien can only be challenged in regards to *correctness* and *validity* once a "release of lien" bond has been filed and the construction lien is transferred from the subject real property to the bond proceeds. Noticeably absent is the term "*priority*." The term "*correctness*" obviously refers to the amount of the lien and the

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<sup>2</sup> Prior to Pacific Lifestyle Homes filing for Bankruptcy, all of the Meriwether property that was described in Olson's Complaint was conveyed to PL Land II, LLC, who's lone member was a trust in which the beneficiary of the trust was KeyBank. (CP 156)

term “*validity*” refers to whether the lien is valid and whether the statutory requirements have been met.

The trial court was spot-on in its analysis and decision when it stated: “the bonding off statute only works if prioritization is not part of the analysis.” (RP 59, L7-11, November 12, 2010 Hearing). If a lender was allowed to assert priority without having the real property at the court’s disposal, a lien claimant would obviously be prejudiced as the claimant would be denied the ability to seek any and all applicable remedies provided under the foreclosure process, including but not limited to, the right to redeem or reinstate a mortgage or deed of trust to protect its interest. “[T]he purpose of the release bond procedures is to provide a means by which, before final determination of the lien claimant’s rights, **and without prejudice to those rights**, the property may be freed of the liens, so it may be sold, developed, or used for security for a loan.” *Hutnick v. U.S. Fid. & Guar. Co.*, 47 Cal.3d 456, 462, 763 P.2d 1326 (1988)(emphasis added); See also *DBM Consulting* 142 Wash.App. at 41.

In addition, interpreting RCW 60.04.161 to exclude priority disputes is consistent with the rules of statutory construction. The Washington Supreme Court succinctly set forth the rule of statutory interpretation as follows.

When interpreting a statute, “the court’s objective is to determine the legislature’s intent.” State v. Jacobs, 154 Wash.2d 596, 600, 115 P.3d 281 (2005). The surest indication of legislative intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face we “give effect to that plain meaning.” *Id.* (quoting Dep’t of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1, 9, 43 P.3d 4 (2002)). In determining the plain meaning of a provision, we look to the text of the statutory provision in question, as well as “the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.* An undefined term is “given its plain and ordinary meaning unless a contrary legislative intent is indicated.” Ravenscroft v. Wash. Water Power Co., 136 Wash.2d 911, 920-21, 969 P.2d 75 (1998). If, after this inquiry, the statute is susceptible to more than one reasonable interpretation, it is ambiguous and we “may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.” Christensen v. Ellsworth, 162 Wash.2d 365, 373, 173 P.3d 228 (2007).

*State v. Ervin*, 169 Wash.2d 815, 820, 239 P.3d 354 (2010)

Additionally, in the lien context, the legislature has mandated that Washington’s lien statute is “to be liberally construed to provide security for all parties intended to be protected by their provisions.” RCW 60.04.900. This mandate was reaffirmed in *Williams v. Athletic Field, Inc.*, 261 P.3d at 117, which held that if the lien claimant is a party intended to be protected by the statute, Washington’s courts must liberally construe the statute to protect them. *Id.* Here, there is no argument that Olson is a party intended to be protected by the statute, and therefore, the statute must be liberally construed to protect Olson.

While the court in *DBM Consulting Eng'rs, Inc. v. U.S. Fid. & Guar. Co.* recognized that RCW 60.04.161 “is certainly not a model of clarity,” it is not difficult to ascertain the mechanics of the provision. *DBM Consulting Eng'rs* 142 Wn. App. at 39. The provision allows a person who disputes the correctness or validity of a lien to record a separate release of lien bond in an amount one and one-half times the amount of *each* lien claim, the condition of which must be to guarantee payment of any judgment in favor of the lien claimant. RCW 60.04.161. Each lien that is bonded off is then secured by its own bond and priority between the bonding party, and the lien claimant becomes moot. This theoretically provides the lien claimant sufficient protection to the given rights that it loses against the property. This interpretation is consistent with the language of the statute, and the principal of liberal construction for the protection of the lien claimant.

Based on the language and mechanics of the lien statute, it is clear that a priority dispute does not fall within the purview of RCW 60.04.161. When KeyBank filed the “release of lien” bond, it gave up its right to argue priority because upon filing the bond it removed Olson’s lien from the real property over to the bond proceeds. This eliminated Olson’s ability to foreclose and protect its rights if it was adjudged that its lien claim was junior to KeyBank. Prior to filing the bond, the statutory

mechanics for handling a priority dispute was in place. KeyBank unilaterally extinguished these mechanics by filing the “release of lien” bond. Thus KeyBank bears the repercussions of having its defenses to Olson’s lien limited to correctness and validity. To rule otherwise would prejudice the lien claimant for the unilateral decision of a lender.

In addition, KeyBank’s actions since Olson commenced its lien foreclosure action are illustrative of why priority disputes are excluded from RCW 60.04.161. After filing its “release of lien” bond, KeyBank assigned and/or transferred its beneficial interest in the subject Deeds of Trust to KeyBank’s subsidiary OREO Corp. (CP 189-CP 200) Following said assignment, OREO foreclosed one of its Deeds of Trust and acquired the remaining property covered in the other Deed of Trust through Deeds in Lieu of Foreclosure. (CP 201-CP 205)

This was all done without determining what the value of these properties were and without allowing Olson the following opportunities: (1) pursue recovery against the property; (2) determine the current property market values; (3) establish lien rank and priority; and (4) exercise any rights of redemption or reinstatement as allowed by the Washington Foreclosure Statutes. Furthermore, this all occurred as a result of KeyBank filing the “release of lien” bond. It is without question, Olson would have been prejudiced if the trial court would have allowed

KeyBank to boot strap priority disputes into the correctness and validity disputes contemplated by the plain language of RCW 60.04.161.

Contrary to KeyBank's assertions, there is no way for a trial court to undo the prejudice to a lien claimant if the construction lien is bonded off and a lender is still allowed to assert priority. Because the property is not available, the junior lien claimant could never cure or reinstate, and then wait for market values to increase or find a buyer for the property that would pay off both the lender and the lien claimant. These remedies were all taken away by the filing of the "release of lien" bond. That is exactly why the statute only allows for an owner or lender to argue the correctness and validity of the lien claim but not priority. It is obvious that the purpose of this statute was for those typical situations where there is a dispute as to the amount of the lien claim.

A typical situation would include a subcontractor who has a dispute with a general contractor as to what the subcontractor is owed. The subcontractor claims \$5,000 and the general contractor claims the subcontractor is only owed \$2,000. After the subcontractor files a lien for \$5,000, the general contractor, owner or lender can utilize RCW 60.04.161 to remove the lien from the real property, where then the subcontractor and general contractor can settle their dispute over the correct amount owing to the subcontractor without subjecting the real property to the lien.

RCW 60.04.161 also allows the recording of a “release of lien” bond to contest validity issues. An example of this would include a lien claimant failing to timely record the lien notice or failing to file an action to foreclose within the time frame designated within the statutes.

In both of these contexts the mechanics of RCW 60.04.161 work. It was enacted so that disputes over what was exactly owed to a lien claimant or questions regarding the validity of the lien could be litigated without prejudice to any party while the real property was released from the lien. Priority disputes are an entirely different conflict and require the availability of the real property to remedy the dispute.

KeyBank had the opportunity to address its priority defense when this action was first commenced, but chose not to when it filed the “release of lien” bond and commenced with its internal conveyance plan. Olson should not be penalized based on the internal decisions and actions of KeyBank.

Much of KeyBank’s reasoning is based on the non-binding Virginia Supreme Court case, *York Fed. Sav. & Loan Assn. v. Hazel*, 256 Va. 598, 506 S.E.2d 315 (1998). The *York* case is not only non-binding, it relies on Virginia statutory law that is distinguishable from Washington statutory law, and therefore non-persuasive. KeyBank’s reliance on *York* is misplaced. The Virginia statute allows for an owner or other party in

interest to seek permission to file a bond to remove a construction lien. However, approval of the bond is not absolute and the court has broad discretion to set the amount and terms so that no parties are prejudiced. Further, the Virginia statute is very broad and the bonding off of a lien is not limited to only those cases where the correctness or validity of the lien is at issue.

That is not the case in Washington as RCW 60.04.161 does not allow discretion by the court to set the bond amount or the terms of authorizing the issuance of said bond. In Washington, bonding off a construction lien is a unilateral decision made by a lender without a court's participation. Once this bond is filed, the lien is transferred from the property and any issues regarding priority are extinguished as the statutory mechanics are no longer in place to handle a priority issue. Both practically and mechanically, priority disputes require the real property so that a remedy can be properly fashioned to not prejudice a lien claimant.

The decision in *York* is also perplexing as the Court indicated that few lien holders who allege priority would be willing to bond off the real estate if doing so relieved the lien claimant the necessity of proving his priority. It is perplexing because the lien holder's motivation should not be a factor. The driving factor should be that all property rights of the parties in the action are properly protected. In a priority dispute, the only

way to ensure this is for the real property to be at the disposal of the court so that priorities can be properly adjudicated and junior lien holders can exercise all of their rights to protect their interests, including redemption and reinstatement. This can't happen in Washington once the "release of lien" bond is filed and the lien is transferred to the bond proceeds. As a result, when an owner or lender elects to bond off the lien per RCW 60.04.161, its right to argue priority should be deemed extinguished and the lender be limited to dispute only the correctness of the amount and the validity of the lien.

Furthermore, KeyBank's reliance on RCW 60.04.181(1) and (2) in support of its position is misguided. Its argument supports Olson's argument that priority disputes cannot be bonded off per RCW 60.04.161. KeyBank asserts that an integral part of a lien priority dispute is a ranking of the liens, including attention to deeds of trust and other construction liens. This proposition only works in a priority dispute if the real property is before the court and subject to the liens of all lien holders. In a "release of lien" bond scenario, bond proceeds are only available to the lien claimant whose construction lien is being bonded off.

None of the bond proceeds are available to any other lien holders, nor should they be. The statute is clear that once the validity is established and judgment is obtained by the lien claimant, the lien claimant is entitled

to the bond proceeds. Priority is not a factor at this juncture because the lender gave that right up when it removed the lien from the real property to the bond proceeds. In addition, despite assertions by KeyBank, there is no windfall for Olson in this case by receiving the bond proceeds upon proving the validity of the lien, as Olson will be receiving the amounts it is rightfully owed.

The plain meaning of RCW 60.04.161 and the mechanics of a dispute contesting priority conclusively show that priority disputes do not fall within the purview of this statute. Once a lender elects to utilize RCW 60.04.161, it limits itself to contesting only the correctness of the amount and the validity of the lien. If priority is an issue for a lender, the lender's remedy is to litigate the matter, allow the court to decide priority, rank the liens, and allow for the foreclosure and sale of the property in a manner that will not compromise the rights of any lien claimants. KeyBank chose not to go this route, but instead chose to facilitate its own internal transactions by bonding off the lien on validity grounds. KeyBank should not be allowed to prejudice Olson's lien claim. The decision of the trial court should be affirmed.

**B. Olson's lien was correct and valid.**

As set forth in the "Statement of the Case" supra, following the trial court's ruling granting Olson's motion in limine regarding RCW

60.04.161, Olson immediately filed for summary judgment and to foreclose against the bond proceeds. The trial court correctly ruled that Olson's lien was correct and valid, and granted summary judgment in Olson's favor. (CP 1020-CP 1022)

**1. KeyBank failed to assert and/or prove any defects in Olson's lien and is precluded from raising issue for the first time on appeal.**

KeyBank asserts that somehow the attestation clause on the statutory form, which is verbatim from the RCW 60.04.031, is invalid. KeyBank never raised this issue with the trial court and is barred from raising it now for the first time on appeal. *Herberg v. Swartz* 89 Wash.2d 916, 925, 578 P.2d 17 (1978) (citing *Boeing v. State*, 89 Wash.2d 443, 450-451, 572 P.2d 8(1978)) ("An issue, theory or argument not presented at trial will not be considered on appeal). See also *State v. McFarland*, 127 Wash.2d 322-33, 899 P.2d 1251 (1995);

Furthermore, KeyBank's basis for this proposition was *Williams v. Athletic Field, Inc.*, 155 Wn.App 434, 228 P.3d 1297, overruled, \_\_\_\_ Wash.3d \_\_\_\_, 261 P.3d 109 (2011). Since filing its brief, the Washington Supreme Court overturned this ruling, holding that the form acknowledgment set forth in RCW 60.04.031 was sufficient. *Williams v. Athletic Field, Inc.*, \_\_\_ Wash.3d \_\_\_\_, 261 P.3d 109 (2011). On both

procedural grounds and substantive ground, KeyBank's argument regarding a deficient attestation clause should be rejected in total.

**2. For the purposes of the RCW 60.04 et al., all work performed by Olson was performed for the benefit of the entire Meriwether Property.**

Keybank argues that Olson's lien was invalid because the work performed was only on a portion of the Meriwether Property. Said arguments were unconvincing at the trial court level as the trial court ruled correctly that Olson's lien was valid and enforceable, and entered judgment in favor of Olson.

The fact that Olson had no written contract with Juneau or PLH is irrelevant. See *Caine-Grimshaw Co. v. White*, 136 Wash. 98, 101-102, 238 P. 980 (1925). Juneau, PLH and Henry Gerhard, PLH's vice president of acquisition, acknowledged that Olson performed work on the whole subdivision and all work was done for the project as a whole. (CP 816-CP 845, 849)

The courts in Washington have routinely and consistently held that even if work is performed by a lien claimant on only a portion of real property, all of the property is subject to a construction lien by the party performing the work. In *Caine-Grimshaw*, the contractor was engaged in the business of house moving and repairing. The contractor entered into an oral contract with appellants to repair their dwelling house, which was

situated on a lot that was contiguous with three other lots owned by the appellants, and what the court deemed as manifestly constituting a single parcel of ownership by appellants for home purposes. In ruling that the construction lien attached to all four parcels, the court stated, “[t]he three lots being contiguous and constituting a single home premises, concededly ‘a small city farm,’ it seems plain to us that the lien claimants had the right to treat it as a single tract, all used with the house as necessary to its intended convenient use and enjoyment as a home.” *Caine-Grimshaw*, 136 Wash. at 101-102. Likewise, here, the Meriwether Property can be treated as a single development.

In *Keen v. Watson*, 149 Wash. 424, 428-429, 271 P. 73 (1928) the court permitted a lien on all 17 acres of a parcel because the entire tract was necessary for the operation and protection of a water system that was installed by the contractor. *Id.* at 428-429. In this case, Olson performed engineering, planning and surveying work, including the design and development of the master plan’s storm water and pump station for the entire Meriwether Property.

In *Standard Lumber Co. v. Fields*, 29 Wash.2d 327, 187 P.2d 283 (1947), the Washington Supreme Court held that where evidence showed that buildings involved were located on a farm of 160 acres, and that all the buildings were constructed for use in the operation of the farm as a

unit, the materialman was entitled to a lien upon the entire farm even though there was no allegation in the complaint as to the amount of land necessary to satisfy the lien. *Standard Lumber*, 29 Wash.2d at 349-350.

In line with these decisions, all the work and services performed by Olson were done for the development of the Meriwether Property as a whole. Olson is thus entitled to a lien upon the entire Meriwether Property.

Keybank cites *Hoagland v. Magarrell*, 115 Wash. 259, 262, 197 P. 20 (1921) in support of its position. However, *Hoagland* is clearly distinguishable from this case. In *Hoagland*, the Plaintiff entered into a contract to perform work within five separate residential units at a cost of \$125.00 per unit. The owner failed to pay the Plaintiff so the contractor filed a blanket lien on all five units. The Court determined that where one contract is made for the construction of, or for work upon, several different buildings located on as many different lots or tracts of land, for a lump sum, one lien may be filed for the total sum and foreclosed as against all of the lots and the improvements thereon. However, where the contract requires various buildings be constructed on various lots, work is performed on various buildings at a designated and fixed price per building, then each lot should be liable only for the value of the contract price of the improvement on it. While there was but one contract in

*Hoagland*, it was severable as to each lot and the improvements on it, and each lot should be made to bear only the contract cost of the improvement on it. *Hoagland*, 115 Wash. at 262. This decision was later codified as RCW 60.04.101. Based on the facts of *Hoagland* and the codification of its holding, its application is confined to situations where the lien claimant is working on separate residential units.

Here, Olson was not working on separate residential units. When Olson began work on the Meriwether Property, the property consisted of bare land. Olson was hired to perform all surveying, engineering and planning work for the Meriwether Property. To do this, Olson was required to coordinate the entire project and ensure all phases fit within and operated appropriately within the confines of the entire Meriwether Property.

In line with this legal authority and the fact that Olson was hired to perform work on the entire Meriwether Property from the very start, Olson's lien was and is valid and enforceable against the entire Meriwether Property.

**3. Uncontroverted facts support correctness and validity of Olson's lien.**

As the trial court stated, the undisputed facts of this case require that Olson's lien be deemed valid and enforceable. In particular, the trial court

singled out the Declaration of Henry Gerhard as evidence uncontroverted and dispositive of this issue. In its decision the trial court stated:

“Henry Gerhard was the vice-president for acquisition for Pacific Lifestyle and Juneau during the time at issue. He claims the contract with Olson was for work on the entire property rather than separate agreements for individual subdivisions. He says that Olson was actually hired prior to the purchase of the two parcels that made up the entire property (subsequently turned into the current four parcels). At paragraph 18 of his declaration he states:

‘Olson, as the engineer on this project, worked on the project as a whole and as part of its scope of work, modified the internal boundaries of the subparts so that all the property would fit within the boundaries of the Meriwether Master Plan Property. At all times, Olson was performing work on the entire Meriwether Master Plan Property and all work whether designated for a particular sub-part, was done for the project as a whole.’” (CP 1021-CP1022)

The trial court continues to state that:

“In the face of this evidence, I am compelled to find that there are no material issues of fact, that the intention of the parties was to create one contract, and would therefore grant Olson’s motion for summary judgment and deny the motion for KeyBank.” (CP 1022)

It is clear Olson did everything correctly, both statutorily and mechanically, and its lien was valid, justifying the trial court’s judgment of foreclosure against the bond proceeds. Olson was entitled as a matter of law to summary judgment foreclosing on the “release of lien” bond proceeds and

a judgment against KeyBank for all interest, attorney fees and costs which exceeded the bond proceeds.

In addition KeyBank, through both its actions and words, make it clear that the Meriwether Property was one big project which had phases, and Olson provided engineering, planning and survey work for the project as a whole. The record clearly shows that KeyBank's position in this appeal contradicts its own view of the Meriwether Property. Following foreclosure, its subsidiary Oreo Corp, through its broker Marcus & Millichap, marketed the entire Meriwether Property as one parcel except for a number of individual lots that had already been sold. Obviously, Keybank always considered this one large parcel and one project. (CP 812-CP 815)

To quote from Marcus & Millichap's marketing material:

“The subject property consists of 273 lots located in the Meriwether Master Plan Community in the City of Woodland, Washington. The property has 62 finished lots, 55 approved lots and 155 previously approved hilltop lots. Community benefits from a private clubhouse, which includes a pool, fitness center, kitchen, shower, two bathrooms, two offices, sport court and playground. There is also a dog park and a larger project east of the subject lots along Ensel Road.”

Furthermore, the marketing material indicated that the total acreage is 83.66 acres and its proposed use is a Master Plan Community. As Olson has argued and the uncontroverted evidence proved, all the property subject

to Olson's lien was part of one big project known as the Meriwether Master Plan Community.

Under the original concept for the Meriwether Property, Phase II was part of Phase I of the Meriwether Property. However, to address concerns due to storm water runoff issues, the original Phase I was separated into Phases I and II. Olson performed surveying, engineering and planning work for segregation of the phases and amended the internal boundaries for the entire Meriwether Property. (CP 872-CP 873)

Keybank's underwriter Kevin Mellor even acknowledged in his deposition dated September 15, 2010, that the Meriwether Property was one big project that was being performed in phases. (CP 881)

Mellor further acknowledged that flood zone and drain issues affected the entire Meriwether Property and soil from one portion of the Meriwether Property was transported over to a portion of the original Phase I to deal with flood zone concerns. (CP 878, CP 880) The flood zone issue and flood zone certificates were all matters Olson handled. (CP 701-CP807)

Additionally, the lots were numbered on the proposed plat map for Phase I, Phase II and the PURD. Phase I contains 68 lots, numbered 1 through 68, Phase II contains 35 lots, numbered 69 through 104, and the PURD contains 19 lots, numbered 105 through 124, together with

common area lots A through E located throughout all the phases. (CP 1003-CP 1018) Obviously this number scheme is further indication that this was one project. Even Mellor did not delineate between the phases but referred to it as one phase:

"I remember that Phase I was in the flood plain and they needed to bring it out of the flood plain. It was 132 lots that we originally approved. That was elevated budget costs because of the bringing it out of the flood plain. I don't recall anything specific beyond that." (CP 878)

Obviously, KeyBank did not distinguish the property between phases but considered it one project.

In addition, the appraisal for the Hilltop portion of the Meriwether Property also reflects that all of the property contained in the assemblage was one big project. On page 3 of the appraisal under history and ownership, it states:

"The subject property includes 56.05 acres in seven abutting tax parcels that were annexed into the City of Woodland on April 17, 2006. This is a part of a larger 91.47 acre ten parcel assemblage currently under contract ..." (CP 883) (Emphasis added)

The above information is consistent with Olson's position that all work performed on this project was for the Meriwether Property as a whole. Further evidence that all work was performed on the project as a

whole is Exhibit 35, of Peter Tuck's deposition, which depicts all work done on the Meriwether Property, and shows how from the beginning Olson was providing services on the entire Meriwether Property. (CP 703-CP 806;CP 885-CP 988) Despite work tapering off towards the end as the real estate market slowed, Olson continued to perform work on the site for all phases through the end of July 2008. While Peter Tuck in his deposition indicated that it appeared all pump station work was completed on April 14, 2008, (which was for the benefit of all property in the Meriwether Property), Tuck also clarified that Olson was still performing work in regards to the pump station through July of 2008. (CP 702)

It is without question that the Olson's lien was correct and valid and that the trial court was correct when it ruled as a matter of law that Olson was entitled to summary judgment.

**C. Professional services provided by Olson were at the instance of the owner.**

Washington's lien statute authorizes a lien for labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner. RCW 60.04.021. The priority date of a construction lien relates back to the date of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant. RCW 60.04.061. KeyBank

argues that because Olson did its work at the instance of Juneau, and Juneau did not become the legal holder of title to the property until May 30, 2006, Olson's work was not performed at the instance of the owner until May 30, 2006, and therefore for priority purposes, Olson's work did not commence until May 30, 2006.

**1. The issue of priority is not relevant.**

At the outset, Olson notes that this issue relates only to the priority of Olson's lien and not to its validity. If the Court finds that issues of priority are irrelevant, as Olson argues above, whether Olson's lien priority date is May 30, 2006, or earlier, is irrelevant. On the other hand, even if the Court determines that issues of priority are relevant, Olson's lien has priority over KeyBank's mortgage.

**2. Regardless, Olson's lien has priority over KeyBank's mortgage.**

This issue was decided by the Washington State Supreme Court in its *Mut. Sav. & Loan Assn. v. Johnson, et al.*, 153 Wn. 41, 279 P. 108 (1929) decision. In *Mutual Savings*, the Shanks, husband and wife, entered into an unrecorded contract to sell property to H. C. Peters, a third party. Peters then arranged to sell 22 lots within the property to Isak Johnson. *Id.* at 42. Johnson then engaged a builder to begin construction

on 14 houses on the property prior to transfer of title to either Peters or Johnson. *Mutual Savings*, 153 Wn. at 43.

Despite the fact that work had commenced on the property, Mutual Savings and Loan Association executed and recorded 14 first mortgages, and began to disburse the proceeds of the loan to Johnson. *Id.* at 44. Subsequently, lien claimants made claims of lien under the Mechanics' and Materialmen's Lien statute claiming that the priority of their liens related back to the commencement of their work. Mutual Savings and Loan Association argued that because the lien claimants began performing their work at the instance of Johnson prior to Johnson taking title to the property, the lien claimants' work was not performed at the instance of the owner until after the mortgage and deed were recorded. Therefore, Mutual Savings and Loan Association asserted priority over the lien claimants. *Id.* at 45.

The Supreme Court determined that the legislature intended to protect those who furnish labor and material to the detriment of mortgages that are not of record before the commencement of construction. *Id.* at 46. Further, the Supreme Court noted that laborers and materialmen rely upon the lien statute for their protection, and that it is impractical and rare for a laborer or materialman to examine the record to ascertain ownership prior to performing labor or furnishing material. *Id.* at 46. The lien claimants

would have believed they were dealing with the owner as all of the parties involved, the Shanks, Peters, and Johnson, knew from the very start, and intended that the property should be immediately improved. *Mutual Savings*, 153 Wn. at 48. Thus the Supreme Court held as follows.

The loan association had actual knowledge of the fact that work had commenced several days before the mortgages were executed and was in position to fully protect itself and others by refusing to proceed with the loan, or by requiring releases to be obtained from all who had by their labor and material, begun to improve the property. From a practical standpoint, at the time the inspection was made and the fact that the work was in progress was ascertained, *the loan association was the only one who could have prevented the possibility of loss and therefore under well-settled principle of equity but failed to do so, it should bear the loss.*

*Id.* at 47 (emphasis added).<sup>3</sup>

*Mutual Savings* is controlling here. Under the purchase and sale agreement, Juneau, its agent PLH, and the Antonsen Group agreed and all were responsible for cooperating in authorizing and obtaining necessary plans, surveys, and preliminary plats to submit to the City of Woodland's Planning Department so the Meriwether Property could be approved. (CP848) (App. A). The parties put together a framework whereby Juneau and its agent, PLH, hired Olson to perform engineering, planning and

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<sup>3</sup> The Supreme Court also noted in dicta that if it were necessary to the decision of the case, it would seem to take no violent construction of either the facts or of the law to hold that the owners so dealt with Johnson as to permit and impliedly authorized him to do what he did, and that he thus became their statutory agent under the lien law. *Id.* at 48.

surveying work in January 2006. KeyBank had actual notice of the professional services provided by Olson prior to recording its Deeds of Trust on the property. At that point, KeyBank was in a position where it could have prevented the possibility of loss. Therefore, under well-settled principals of equity, having failed to do so, KeyBank should bear the loss.

KeyBank relies on distinguishable authority for the proposition that “[w]hen one who is neither the property owner nor the property owner’s agent requests labor, services, materials, or equipment, no lien that can be foreclosed upon attaches to the property.” Appellant’s Br. 26 (Sept. 7, 2011); (citing *Hewson Constr., Inc. v. Reintree Corp.*, 101 Wn.2d 819, 823-825, 685 P.2d 1062 (1984); *Pitcher v. Ravven*, 137 Wash. 343, 242 P. 375 (1926); *Iloff v. Forssell*, 7 Wash. 225, 34 P. 928 (1893); *Colo. Structures, Inc. v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 246 P.3d 835 (2011)).

In *Hewson*, the issue was whether individuals who had purchased lots in a subdivision were subject to a contractor’s lien for work performed building sidewalks. There was no question the developer, which had contracted for the construction of the sidewalks, did not own the individual lots. The issue was whether the developer acted as the individual lot owners’ agent. *Hewson*, 101 Wn.2d at 822-823. Agency is not an issue on appeal in the case at bar; however, if it was, circumstances

exist that would support a finding that Juneau & PLH were agents of the Antonson Group. The issue here is whether, based on the equities, KeyBank should bear the loss. The *Mutual Savings* decision mandates that KeyBank should bear the loss. KeyBank also cited the *Pitcher* decision, which supports this result.

The *Pitcher* court considered a scenario where an owner had sold property with an apartment building on it under a recorded contract for sale. *Pitcher*, 137 Wash. at 344. The contract did not address whether the purchaser could make improvements to the property prior to transfer of the deed to the purchaser. Subsequently, without the seller's consent, the purchaser's assignee contracted for an addition to the apartments. When that party failed to pay its contractors, the court determined that the contractors' liens did not extend to the seller's fee interest in the property. *Id.* at 345-346. The *Pitcher* court noted that, "the general rule is that the interest of the person who cause the work to be done or the materials furnished is subject to a lien for labor and materials, but that such a relation may exist between the owner of the fee and the holder of the lesser interest that the fee will be subjected to the lien." *Id.* at 346 (citing *Adams v. Dose*, 87 Wash. 575, 152 P. 9 (1915)). In *Pitcher*, the actual holder of the fee interest on the property had no knowledge of and did not approve of the construction efforts, whereas in the case at bar, the holders

of the fee interest on the property had knowledge of and involvement in the development of the property.

Keybank's reliance on *Colorado Structures* is also misplaced. The facts in *Colorado Structures* are so clearly distinguishable from the case at bar that one only needs to read the first paragraph of the opinion to draw the distinctions. It states in part, "...the core samples CSI had drilled on the property to check soil conditions before bidding on the project did not constitute an improvement under our lien statutes." *Colorado Structures*, 159 Wn. App. at 657. In *Colorado Structures*, the lien claimant was a prospective bidder that dug test pits to evaluate the level of the ground water prior to bidding on the project, at the instance of a potential purchaser of the property. *Id.* The court denied the lien claim because the work did not constitute an improvement on the property, the lien claimant did not have a contract when it performed the work, and the improvement was not performed at the request of the owner. *Id.* at 662-665.

There is no argument here whether the work performed by Olson constitutes an improvement on the property-it does. RCW 60.04.011(4). Further, there should be no confusion over the fact that Olson had a contract with Juneau. Olson and Juneau had an agreement. Olson regularly submitted payment requests to Juneau, and for a period of time, Juneau regularly paid Olson. The contract price for Olson's work is the

price that Olson billed Juneau for its work. In contrast, the lien claimant in *Colorado Structures* did not have a contract with the prospective owner and did not even submit a bill for the work associated with performing the test pits. *Colorado Structures*, 159 Wn. App. at 658. The court in *Colorado Structures* reasoned that “[a]ny other construction (of the statute) would leave property owners subject to multiple liens from failed bidders who performed tests or other services to facilitate the bidding decision.” *Id.* at 664. In the case at bar, this is not a concern. Olson had a contract with Juneau and was the only party performing surveying work on the project.

*Colorado Structures* deals with the familiar scenario where work is performed at the instance of a prospective owner who does not ultimately become the owner of the property. *Id.* Further, in *Colorado Structures*, the actual owner of the property repeatedly refused to let the lien claimant perform any work on the property. *Id.* at 665. The court was concerned that expanding the meaning of the term owner in this instance would open the door to multiple liens from multiple prospective bidders from multiple prospective owners. *Id.* at 665.

Furthermore, the holdings in *Colorado Structures* are rooted in the notion that liens are in derogation of common law and are to be strictly construed. *Id.* at 662-665. This expanding trend in lien law was

thoroughly addressed in *Williams v. Athletic Field, Inc.*, \_\_\_ Wash.3d \_\_\_, 261 P.3d 109 (2011), which stated that “[t]o the extent Lumberman's or other cases suggest that the statute's mandate of liberal construction has been supplanted by a common law rule of strict construction, we disapprove them.” *Id.* at 117. Thus, to the extent the holdings in *Colorado Structures* are predicated on the false presumption of strict construction, they should not be followed.

The controlling cases here are *Mutual Savings* and *Adams v. Dose*. There, the courts recognized that a relation may exist between the owner of the fee and the holder of the right to purchase, such that the fee will be subjected to the lien. In the instant case, the owner of the fee and the parties with the right to purchase put together a scheme whereby the purchaser began construction prior to taking title. KeyBank had actual notice of the professional services provided by Olson and was the only one who could have prevented the possibility of loss. Therefore, under well-settled principals of equity, having failed to do so, KeyBank should bear the loss.

**D. ATTORNEY FEES AND COSTS AUTHORIZED BY  
RCW 60.04.181(3)**

RCW 60.04.181(3) allows the prevailing party to recover its reasonable attorney fees. After ruling for Olson and against KeyBank,

finding that Olson's lien was correct and valid and that as a result of KeyBank bonding off Olson's construction lien KeyBank could no longer assert priority to challenge Olson's lien, the trial court correctly awarded Olson its reasonable attorney fees and costs incurred in litigating this matter against KeyBank, and correctly ordered deficiency judgment against KeyBank for all amounts that exceeded the "release of lien" bond.

## VI. CONCLUSION

Based on the authority cited and argument set forth above, the decision of the trial court was correct and should be affirmed. Despite KeyBank's arguments to the contrary, there is really no factual dispute that Olson's lien was correct and valid lien against the Meriwether Property described in its complaint to foreclose its construction lien. The trial court's interpretation of RCW 60.04.161 was correct when it disallowed KeyBank from asserting priority after it chose to bond off Olson's lien as to do so prejudices a lien claimant.

Respectfully submitted this 10<sup>th</sup> day of November, 2011.

DUGGAN SCHLOTFELDT & WELCH PLLC

  
\_\_\_\_\_  
SHAWN A. ELPEL, WSBA# 21898  
Of Attorneys for Appellant

**Appendix A**

Document

Declaration of Henry Gerhard

## APPENDIX A

ENDORSED  
FILED  
SUPERIOR COURT

JUN 08 2010

COWLITZ COUNTY  
RONIA A. BOOTH, Clerk

1  
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7 IN THE SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

8  
9 OLSON ENGINEERING, INC., )

10 Plaintiff, )

11 vs. )

12 )  
13 PL LAND COMPANY II, LLC, a )  
14 Delaware Limited Liability Company; )  
15 JUNEAU INVESTMENTS, LLC, a )  
16 Washington Limited Liability Company; )  
17 KEYBANK NATIONAL )  
18 ASSOCIATION, A District of Columbia )  
19 Corporation; TAPANI )  
20 UNDERGROUND, INC., a Washington )  
21 Corporation; ECOLOGICAL LAND )  
22 SERVICES, INC., a Washington )  
23 Corporation. )

24 Defendants. )

NO. 09-2-01117-7

DECLARATION OF HENRY  
GERHARD

25 I, Henry Gerhard, declare as follows:

26 1. I am over the age of 18, am competent to be a witness herein, and base the  
27 following on my own, personal knowledge.

28 2. I was the Vice-President of Acquisition and Development for Pacific Lifestyle  
29 Homes and Juneau Development, LLC during the acquisition and development of the  
30 Meriwether Master Plan Property in Cowlitz County, Washington.

DECLARATION OF HENRY GERHARD - 1

S:\Clients\17105\17105027\17105027 P34 Dec Juneau.doc (6/8/2010)

DUGGAN SCHLOTFELDT & WELCH PLLC  
ATTORNEYS AT LAW  
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Vancouver, Washington 98666-0570  
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1           3.     On or about January 10, 2005, Pacific Lifestyle Development, Inc./Pacific  
2 Lifestyle Homes, Inc. and/or its assigns ("PLH") entered into a real estate purchase and sale  
3 agreement ("P&S Agreement") with Chet Antonsen and Thomas Skaar and/or Pacific  
4 Western, Inc. (collectively referred hereto as "Antonsen Group"), to purchase that certain  
5 real property described in the attached Exhibit "C" ("Antonsen Property"), and depicted on  
6 the sketch attached as Exhibit "D".

7           4.     Subsequently, the buyers' interest in the P&S Agreement was assigned by  
8 PLH to Juneau Investments, LLC, a Washington limited liability company ("Juneau").  
9 Juneau was formed as a single purpose entity by PLH and its President Kevin Wann to hold  
10 title to the Property. At all times PLH acted as and was an agent for Juneau.

11           5.     Prior to Antonsen Group entering into the P&S Agreement with PLH, on or  
12 about May 13, 2004, Antonsen Group entered into an agreement with Mr. and Mrs. Jay  
13 Whitaker for the purchase of property ("Whitaker Property") adjacent to the Antonsen  
14 Property. This property is described in the attached Exhibit "E", depicted on the sketch  
15 attached hereto as Exhibit "F".

16           6.     The Antonsen Group subsequently assigned the P&S Agreement for the  
17 Whitaker Property to Juneau.

18           7.     All of the property described in attached Exhibit "C" and in attached Exhibit  
19 "E" was part of an assemblage of property for the purpose of developing a subdivision in  
20 Woodland, Washington. This assemblage of property was commonly known as the  
21 Meriwether Master Plan Subdivision. Attached as Exhibit "G" is the complete legal  
22 description for the Meriwether Master Plan Subdivision ("Meriwether Master Plan  
23 Property") and is comprised of the Antonsen Property and the Whitaker Property. Attached  
24 as Exhibit "H" is a sketch of the Meriwether Master Plan Property.

25           8.     As part of the P&S Agreement, Antonsen Group would cooperate and PLH  
26 was responsible to obtain the approvals from the City of Woodland for the development of  
27 the Meriwether Master Plan Property. This included obtaining planning, surveying and  
28

1 engineering work to develop plans for the development of the Meriwether Master Plan  
2 Property.

3 9. The purchase and sale of all of the Meriwether Master Plan Property closed in  
4 2006 when Juneau acquired all of the property under two deeds.

5 10. The first deed was executed on May 31, 2006 in which the grantors, Thomas  
6 C. Skaar, as his separate estate, and Chet Antonsen, as his separate estate, conveyed the  
7 Antonsen Property to Juneau. The statutory warranty deed was recorded with the Cowlitz  
8 County Auditor's Office on June 1, 2006 under Auditor's No. 3299420. The purchase price  
9 for the Antonsen Property was \$9,545,000.00.

10 11. The remaining portion of the Meriwether Master Plan Property was also  
11 conveyed on May 31, 2006 when Jerome R. Whitaker and Karen R. Whitaker, husband and  
12 wife, conveyed the Whitaker Property by statutory warranty deed to Juneau. This deed was  
13 recorded with the Cowlitz County Auditor's Office on June 1, 2006 under Auditor's No.  
14 3299425. The purchase price for the Whitaker Property was \$1,135,700.00.

15 12. From the time the P & S Agreement was entered into until closing, Juneau,  
16 PLH and the Antonsen Group had agreed and all were responsible for cooperating in  
17 authorizing and obtaining the necessary plans, surveys, and preliminary plats to submit to the  
18 City of Woodland's Planning Department so the Meriwether Master Plan Property could be  
19 approved.

20 13. Prior to the closing of both the Antonsen Property and the Whitaker Property,  
21 Olson was hired to provide engineering, surveying, and planning services for the Meriwether  
22 Master Plan Property.

23  
24 14. As plans were developed to subdivide the Meriwether Master Plan Property,  
25 several different subdivision plans were considered, adopted and then amended to fit the  
26 physical nature of the property.

27 15. Initially it was proposed that the Meriwether Master Plan Property be divided  
28 into three sub-parts. Sub-part one was to be known as Meriwether Estates, Sub-part two was  
29

1 Meriwether Estates (Hilltop) and Sub-part three was Meriwether PURD. However, this  
2 initial proposal was modified due to a storm water issue, the proposed Meriwether Estates  
3 was broken into two parts and the boundaries of all the subparts were changed and modified.

4 16. To date, only one sub-part of the Meriwether Master Plan Property was  
5 approved and recorded as a final subdivision and that was Meriwether Phase I Final Plat. All  
6 other subparts of the Meriwether Mast Plan Property were in preliminary form only with  
7 boundaries subject to change.

8 17. During the period from on or about January 23, 2006 through July 29, 2008  
9 and beyond, Olson provided professional services for and in conjunction with the  
10 improvement of Meriwether Master Plan Property. The services were at the request of and  
11 for the benefit of, Juneau and PLH, as agent for Juneau. The work that Olson performed  
12 included engineering, planning, and surveying services together with materials and labor  
13 associated therewith. Olson continued providing these professional services, materials, and  
14 labor through and past July 29, 2008.

15 18. Olson, as the engineer on this project, worked on the project as a whole and as  
16 part of its scope of work, modified the internal boundaries of the subparts so that all the  
17 property would fit within the boundaries of the Meriwether Master Plan Property. At all  
18 times, Olson was performing work on the entire Meriwether Master Plan Property and all  
19 work, whether designated for a particular sub-part, was done for the project as a whole.

20 19. As of July 29, 2008 Olson was owed the unpaid sum of no less than  
21 \$74,508.51 plus interest accruing at a rate of twelve percent. Despite demands upon Juneau  
22 and its agent Pacific Lifestyle Homes, the outstanding amount owing for Olson was not paid.  
23 As a result of nonpayment, on or about October 1, 2008, Olson filed a construction lien  
24 ("Construction Lien") with the Auditor of Cowlitz County, Washington against the  
25 Meriwether Master Plan Property to recover the amounts it owed for the work done on this  
26 project. The Construction Lien was filed under Cowlitz County Auditor's No. 3377845.

27 20. Subsequent to Olson providing professional services, labor and material for  
28 and to the Meriwether Master Plan Property, KeyBank recorded with the Cowlitz County,  
29

1 WA Auditor's office a document entitled Construction Deed of Trust, Security Agreement,  
2 Assignment of Leases and Rents, and Fixture Filing (herein "Deed of Trust #1") against a  
3 portion of the Meriwether Master Plan Property which is described on the attached Exhibit  
4 "G" ("KeyBank Property #1"). Attached as Exhibit "H" is a sketch depicting KeyBank  
5 Property #1. The amount secured by Deed of Trust #1 was \$9,337,500.00. Deed of Trust #1  
6 was recorded on June 1, 2006 under Cowlitz County Auditor's Numbers 3299421, 3299422,  
7 3299423 and 3299424.

8 21. Subsequent to Olson providing professional services, labor and material for  
9 and to the Meriwether Mast Plan Property, KeyBank recorded with the Cowlitz County, WA  
10 Auditor's office a document entitled Construction Deed of Trust, Security Agreement,  
11 Assignment of Leases and Rents, and Fixture Filing ("Deed of Trust #2") against a different  
12 portion of the Meriwether Master Plan Property and which is described on the attached  
13 Exhibit "I" (KeyBank Property #2). Attached as Exhibit "J" is a sketch depicting KeyBank  
14 Property #2. The amount secured by Deed of Trust #2 was \$3,936,000.00. Deed of Trust #2  
15 was recorded on June 1, 2006 under Cowlitz County Auditor's Numbers 3299426,  
16 3299427, 3299428 and 3299429.

17 22. Prior to the KeyBank Construction Deeds of Trust going of record, Juneau,  
18 and PLH, applied for and received construction loan approval from KeyBank so that Juneau  
19 could proceed with the development of the Meriwether Master Plan Property. To the best of  
20 my recollection, during this process KeyBank was apprised that Olson was providing  
21 professional services for the project and was on site performing survey, engineering and  
22 planning work and were provided copies of Olson's preliminary plat maps submitted to the  
23 Woodland City Planning Department.

24 23. Evidence of Olson's engineering, surveying, and planning work was visible  
25 on the Meriwether Master Plan Property.

26 24. Prior to Olson filing its lien against the Meriwether Master Plan Property,  
27 Juneau conveyed a portion of the Meriwether Master Plan Property to Meriwether Estates,  
28 Inc., a Washington Corporation. This conveyance was recorded with the Cowlitz County  
29

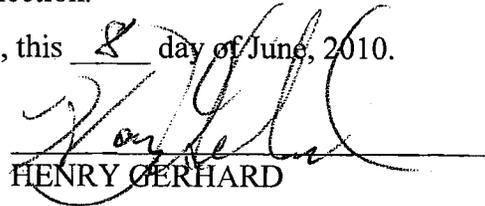
1 Auditor's Office on September 4, 2007 and recorded under Cowlitz County Auditor's No.  
2 3347068. The property described in this deed included portions of the Meriwether Master  
3 Plan Property, which were designated as "Meriwether Phase I" and "Meriwether Phase II",  
4 "Meriwether PURD" and "Meriwether Hilltop Phase I." Juneau retained ownership of any  
5 remaining property described in the original two warranty deeds.

6 25. Subsequent to Olson filing its lien, and only days before Meriwether Estates,  
7 Inc., together with its parent companies, Pacific Lifestyle Homes and Pacific Development,  
8 Inc., filed for Chapter 11 Bankruptcy protection, Meriwether Estates, Inc. and Juneau  
9 conveyed all of the Meriwether Master Plan Property, except that portion which was a part of  
10 the Meriwether Phase I Final Plat, to P.L. Land Company, LLC. Said deeds were recorded  
11 on November 18, 2008 under Cowlitz County Auditor Numbers 3381019 and 3381020.

12 26. P.L. Land Company, LLC is a single member LLC whose lone member is  
13 P.L. Land Management Company, LLC who holds this interest in trust for the benefit of  
14 KeyBank.

15 I declare under penalty of perjury of the laws of the State of Washington the  
16 foregoing is true and correct to the best of my recollection.

17 Executed at Vancouver, Washington, this 8 day of June, 2010.

18  
19   
20 HENRY GERHARD

PARCEL 1:

A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5 NORTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN IN COWLITZ COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY OF THE INSEL COUNTY ROAD, SAID POINT BEING 60.00 FEET SOUTH OF THE SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO HAROLD F. KOISTINEN IN DEED RECORDED UNDER AUDITOR'S FILE NO. 567441;  
THENCE NORTH 89°59'16" WEST 515.00 FEET TO AN IRON ROD AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;  
THENCE SOUTH 00°00'44" WEST 1237.33 FEET TO AN IRON ROD;  
THENCE NORTH 89°44'37" WEST 119.94 FEET TO AN IRON ROD;  
THENCE SOUTH 00°00'44" WEST 437.71 FEET TO AN IRON ROD;  
THENCE NORTH 89°59'16" WEST 1058.26 FEET TO AN IRON ROD IN THE OLD FENCE LINE;  
THENCE NORTH 02°21'17" EAST 382.39 FEET ALONG SAID FENCE LINE TO AN IRON ROD;  
THENCE SOUTH 77°07'30" EAST 169.52 FEET TO AN IRON ROD;  
THENCE NORTH 17°29'04" EAST 470.47 FEET TO AN IRON ROD;  
THENCE NORTH 13°07'13" EAST 507.63 FEET TO AN IRON ROD;  
THENCE NORTH 29°25'39" EAST 444.30 FEET TO AN IRON ROD;  
THENCE SOUTH 89°59'16" EAST 522.71 FEET TO THE PLACE OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO TCK, INC., A WASHINGTON CORPORATION BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 3242810.

Affects Parcel No. 5-0806-0100 and 5-0807-0100

PARCEL 2:

A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN COWLITZ COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY OF THE INSEL COUNTY ROAD, SAID POINT BEING 60.00 FEET SOUTH OF THE SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO HAROLD F. KOISTINEN IN DEED RECORDED UNDER AUDITOR'S FILE NO. 567441;  
THENCE NORTH 89°59'16" WEST 515.00 FEET TO AN IRON ROD;  
THENCE SOUTH 00°00'44" WEST 1237.33 FEET TO AN IRON ROD;  
THENCE NORTH 89°44'37" WEST 119.94 FEET TO AN IRON ROD;

THENCE SOUTH 00°00'44" WEST 437.71 FEET TO AN IRON ROD;  
SAID IRON ROD ALSO BEING ON THE NORTH LINE OF THE HEARTWOOD  
ESTATES AS RECORDED IN VOLUME 13 OF PLATS, PAGES 14, 15, AND 16;

THENCE EASTERLY ALONG SAID NORTH LINE OF HEARTWOOD ESTATES  
TO THE WESTERLY RIGHT-OF-WAY LINE OF THE INSEL COUNTY ROAD;  
THENCE NORTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE TO THE  
POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED UNDER AUDITOR'S FILE NO. 614770.  
Affects Parcel No. 5-0706

PARCEL 3:

A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM DESCRIBED AS  
FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT 10 OF SURVEY  
RECORDED IN VOLUME 2 OF SURVEYS, PAGE 62, AUDITOR'S FILE NO.  
805998;  
THENCE NORTH 00°00'44" EAST 60 FEET, MORE OR LESS, TO THE  
SOUTHWEST CORNER OF THAT TRACT OF LAND CONVEYED TO HAROLD F.  
KOISTINEN IN DEED RECORDED UNDER AUDITOR'S FILE NO. 567441;  
THENCE SOUTH 89°21'56" EAST 715.42 FEET, MORE OR LESS, TO THE WEST  
RIGHT OF WAY LINE OF INSEL ROAD;  
THENCE SOUTH ALONG SAID INSEL ROAD 60 FEET, MORE OR LESS, TO A  
POINT THAT IS SOUTH 89°21'56" EAST 715.42 FEET EAST OF THE POINT OF  
BEGINNING;  
THENCE WEST NORTH 89°21'56" WEST 715.42 FEET, MORE OR LESS, TO THE  
POINT OF BEGINNING,  
Affects Parcel Nos. 6-0121-01 and 50711

PARCEL 4:

STARTING AT THE NORTHEAST CORNER OF SOLOMON STRONG'S  
DONATION LAND CLAIM;  
THENCE SOUTH 11°06' WEST 8.09 CHAINS TO THE CORNER OF ARTHUR  
BOZARTH AND J.R. BOZARTH'S PORTION OF THE J.S. BOZARTH AND  
ASENATH BOZARTH DONATION LAND CLAIM;  
THENCE EAST ON THE DIVISION LINE BETWEEN THE ARTHUR BOZARTH  
AND J.S. BOZARTH'S PORTION OF SAID CLAIM 12.05 CHAINS;  
THENCE SOUTH 6.81 CHAINS TO THE PLACE OF BEGINNING;

THENCE EAST A DISTANCE OF 17.50 CHAINS;  
THENCE SOUTH A DISTANCE OF 3 CHAINS;  
THENCE WEST A DISTANCE OF 17.50 CHAINS;  
THENCE NORTH 3 CHAINS TO THE PLACE OF BEGINNING AND SITUATED IN  
THE J.S. AND ASENATH BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5  
NORTH, RANGE 1 WEST AND 1 EAST OF THE WILLAMETTE MERIDIAN.

ALSO: STARTING AT THE NORTHEAST CORNER OF THE SOLOMON  
STRONG'S DONATION LAND CLAIM;  
THENCE SOUTH 11°06' WEST 8.09 CHAINS TO THE CORNER OF ARTHUR  
BOZARTH AND JOHN L. BOZARTH'S PORTION OF THE J.S. AND ASENATH  
BOZARTH DONATION LAND CLAIM;

THENCE EAST ON THE DIVISION LINE BETWEEN ARTHUR BOZARTH AND  
J.R. BOZARTH'S PORTION OF SAID CLAIM 12.05 CHAINS TO THE PLACE OF  
BEGINNING;  
THENCE EAST A DISTANCE OF 17.50 CHAINS;  
THENCE SOUTH A DISTANCE OF 6.81 CHAINS;  
THENCE WEST A DISTANCE OF 17.50 CHAINS;  
THENCE NORTH 6.81 CHAINS TO THE PLACE OF BEGINNING AND SITUATED  
IN JOHN AND ASENATH BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5  
NORTH, RANGE 1 EAST AND 1 WEST OF THE WILLAMETTE MERIDIAN.

ALSO: STARTING AT THE NORTHEAST CORNER OF SOLOMON STRONG'S  
DONATION LAND CLAIM;  
THENCE SOUTH 11°06' WEST 8.09 CHAINS TO CORNER OF ARTHUR  
BOZARTH AND J.R. BOZARTH'S PORTION OF THE J.S. BOZARTH AND  
ASENATH BOZARTH DONATION LAND CLAIM;  
THENCE EAST ON THE DIVISION LINE BETWEEN ARTHUR BOZARTH AND  
J.R. BOZARTH'S PORTION OF SAID CLAIM 12.05 CHAINS TO THE PLACE OF  
BEGINNING;  
THENCE NORTH A DISTANCE OF 6.75 CHAINS;  
THENCE EAST A DISTANCE OF 5 CHAINS;  
THENCE NORTH A DISTANCE OF 3.50 CHAINS;  
THENCE NORTH 33° EAST A DISTANCE OF 3.29 CHAINS;  
THENCE NORTH 73° EAST A DISTANCE OF 2.25 CHAINS;  
THENCE EAST A DISTANCE OF 8.58 CHAINS;  
THENCE SOUTH A DISTANCE OF 13.64 CHAINS;  
THENCE WEST 17.50 CHAINS TO THE PLACE OF BEGINNING AND SITUATE  
IN THE JOHN S. BOZARTH AND ASENATH BOZARTH DONATION LAND  
CLAIM IN TOWNSHIP 5 NORTH, RANGE 1 WEST AND 1 EAST OF THE  
WILLAMETTE MERIDIAN.

Affects Parcel No. 6-0125

PARCEL 5:

LOT 3 OF SHORT SUBDIVISION NO. CC81-031 IN VOLUME 5 OF SHORT PLATS, PAGE 58, RECORDED UNDER AUDITOR'S FILE NO. 811021051, RECORDS OF COWLITZ COUNTY, WASHINGTON.  
Affects Parcel No. 6-0121-020

PARCEL 6:

A PORTION OF THE JOHN S. BOZARTH AND ASENATH BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE TRACT OF LAND CONVEYED BY ELIZA J. LAWYER AND HUSBAND TO SAM CONRAD, RECORDED IN VOLUME 39 AT PAGE 585, DEED RECORDS OF COWLITZ COUNTY, WASHINGTON;  
THENCE RUNNING WEST 237.44 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUING WEST A DISTANCE OF 806.68 FEET;  
THENCE SOUTH 00°50' EAST A DISTANCE OF 466.30 FEET;  
THENCE SOUTH 75°42'24" WEST A DISTANCE OF 155.83 FEET;  
THENCE SOUTH 19°41' EAST A DISTANCE OF 123.70 FEET;  
THENCE NORTH 66°14' EAST A DISTANCE OF 186.90 FEET;  
THENCE SOUTH 23°24' EAST A DISTANCE OF 148.30 FEET;  
THENCE NORTH 72°51' EAST A DISTANCE OF 83.20 FEET;  
THENCE NORTH 40°30' EAST A DISTANCE OF 363.10 FEET;  
THENCE NORTH 31°53' EAST A DISTANCE OF 167.00 FEET;  
THENCE NORTH 60°58' EAST A DISTANCE OF 240.40 FEET;  
THENCE NORTH 28°18'40" EAST 142.05 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT PORTION DEEDED TO THE TOWN OF WOODLAND IN DEED RECORDED JULY 12, 1961 UNDER AUDITOR'S FILE NO. 536171, ALSO EXCEPTING WARRANTY DEED DATED AUGUST 22, 1985 AND RECORDED UNDER AUDITOR'S FILE NO. 850822020.

Affects Parcel No. 6-0147

PARCEL 7:

BEGINNING AT A POINT 1.68 CHAINS EAST OF THE SOUTHEAST CORNER OF THE TRACT OF LAND DEEDED TO E. W. ROBINSON, SAID DEED BEARING THE DATE OF APRIL 25, 1896; RUNNING  
THENCE SOUTH A DISTANCE OF 7.17 CHAINS;

THENCE SOUTH 75°WEST A DISTANCE OF 6.25 CHAINS;  
THENCE NORTH 25.25° WEST A DISTANCE OF 2.24 CHAINS TO A SPRING;  
THENCE NORTH 51.25° WEST A DISTANCE OF 3.03 CHAINS;  
THENCE NORTH 18.25° WEST A DISTANCE OF 3.55 CHAINS;  
THENCE EAST A DISTANCE OF 3.11 CHAINS;  
THENCE NORTH A DISTANCE OF 1.28 CHAINS;  
THENCE EAST A DISTANCE OF 6.63 CHAINS TO THE POINT OF BEGINNING.

EXCEPTING THAT PORTION DEEDED TO JAY C. FERIS, ET AL, IN DEED  
RECORDED FEBRUARY 24, 1979 UNDER AUDITOR'S FILE NO. 850073.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO MICHAEL L.  
HANSLITS AND CYNTHIA M. HANSLITS BY WARRANTY FULFILLMENT  
DEED RECORDED UNDER AUDITOR'S FILE NO. 930405183.  
Affects Parcel No. 6-0125.

PARCEL 8:

A PARCEL OF LAND LOCATED IN THE JOHN S. AND ASENATH BOZARTH  
DONATION LAND CLAIM IN SECTION 13, TOWNSHIP 5 NORTH, RANGE 1  
WEST OF THE WILLAMETTE MERIDIAN, COWLITZ COUNTY, WASHINGTON,  
DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 89°45'06" EAST 110.88 FEET OF THE  
SOUTHEAST CORNER OF THE TRACT OF LAND DEEDED TO E.W. ROBINSON,  
SAID DEED BEING RECORDED IN VOLUME 15 OF DEEDS, PAGE 689,  
RECORDED MAY 2, 1898 OF SAID COWLITZ COUNTY, WASHINGTON;  
THENCE SOUTH 00°14'54" WEST 300.54 FEET TO THE TRUE POINT OF  
BEGINNING SAID POINT BEING THE NORTHEAST CORNER OF THAT TRACT  
OF LAND DESCRIBED BY DEED RECORDED IN VOLUME 879 OF DEEDS,  
PAGE 816, RECORDS OF SAID COUNTY;  
THENCE CONTINUING SOUTH 00°14'54" WEST ALONG THE EAST LINE OF  
SAID TRACT 175.24 FEET TO THAT TRACT OF LAND CONVEYED BY DEED  
BY UNITED BULB COMPANY TO THE TOWN OF WOODLAND, RECORDED  
UNDER AUDITOR'S FILE NO. 536171, RECORDS OF COWLITZ COUNTY;  
THENCE SOUTH 73°57'31" WEST 138.14 FEET;  
THENCE NORTH 50°45'24" WEST 73.56 FEET;  
THENCE NORTH 57°06'11" WEST 70.64 FEET;  
THENCE NORTH 35°27'19" WEST 48.67 FEET;  
THENCE NORTH 09°28'54" WEST 42.77 FEET;  
THENCE NORTH 10°18'19" EAST 48.66 FEET TO THE NORTH LINE OF THAT  
TRACT OF LAND DESCRIBED BY DEED RECORDED IN SAID VOLUME OF 879  
OF DEEDS, PAGE 816;

THENCE SOUTH 89°45'06" EAST ALONG SAID NORTH LINE 276.38 FEET TO  
THE TRUE POINT OF BEGINNING.  
Affects Parcel No. 6-0125-02

SITUATE IN THE COUNTY OF COWLITZ, STATE OF WASHINGTON.

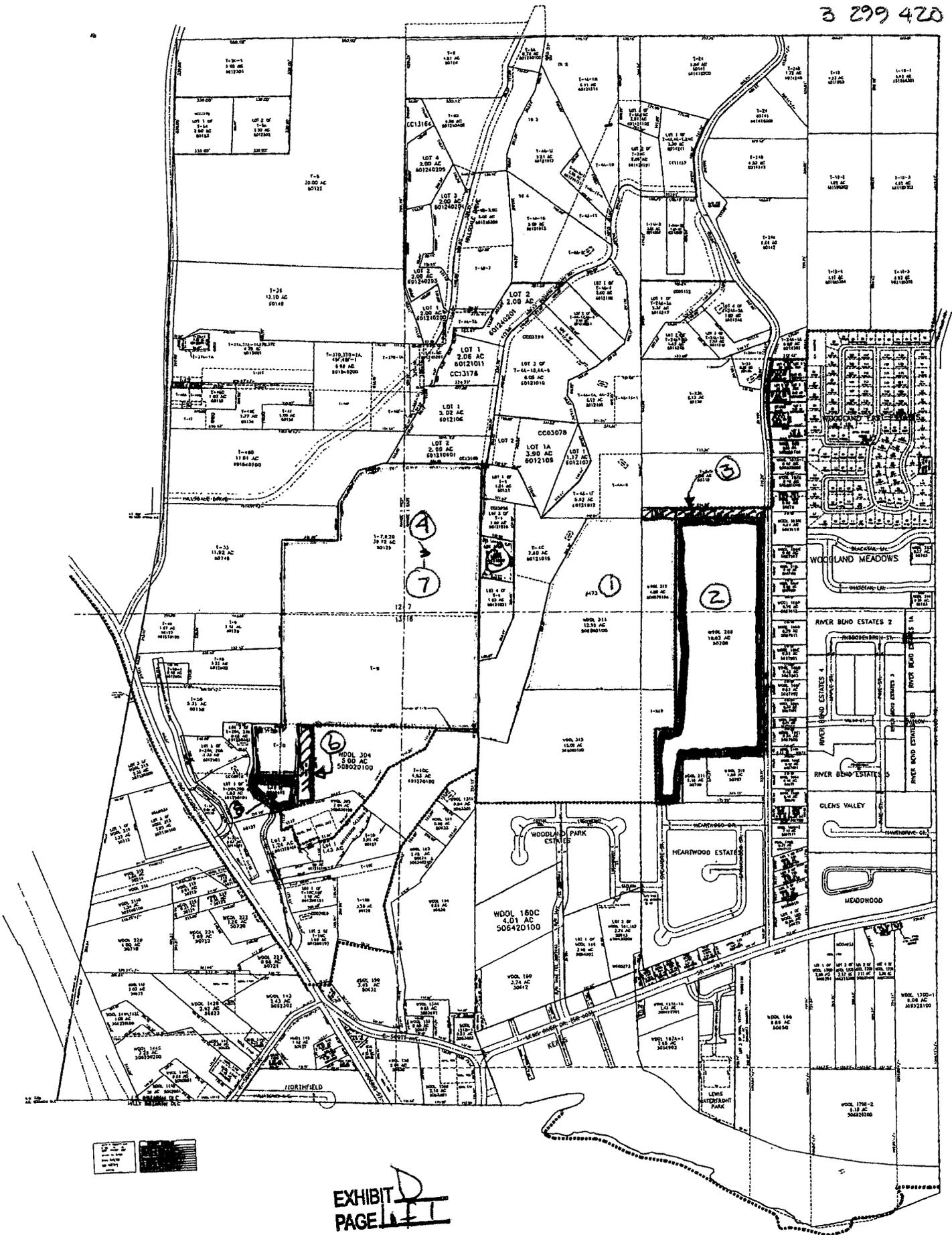


EXHIBIT D  
PAGE 1 of 1

PARCEL A:

TRACT 10 OF THAT CERTAIN SURVEY RECORDED UNDER AUDITOR'S FILE NO. 805998, IN VOLUME 2 OF SURVEYS, AT PAGE 62, RECORDS OF COWLITZ COUNTY, BEING A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM, IN SECTION 7, TOWNSHIP 5 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN.

Affects Parcel No. 6-0121-012

PARCEL B:

THAT PORTION OF LOT 1 OF SHORT PLAT 79-056, VOLUME 3, PAGE 78 OF SHORT PLATS, AS RECORDED UNDER AUDITOR'S FILE NO. 858867, AND BEING A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF TRACT 11 OF A SURVEY RECORDED IN VOLUME 2, PAGE 62 AND RUNNING THENCE SOUTH  $19^{\circ}16'00''$  EAST FOR A DISTANCE OF 234.06 FEET ALONG THE EAST BOUNDARY OF SAID TRACT 11;  
THENCE SOUTH  $31^{\circ}02'00''$  WEST FOR A DISTANCE OF 140.64 FEET ALONG THE EAST BOUNDARY OF SAID TRACT 11;  
THENCE SOUTH  $45^{\circ}32'18''$  WEST FOR A DISTANCE OF 310.14 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 11;  
THENCE NORTH  $21^{\circ}11'35''$  EAST FOR A DISTANCE OF 599.22 FEET TO THE PLACE OF BEGINNING.

Affects Parcel No. 6-0121-07

PARCEL C:

A TRACT OF LAND LOCATED IN THE J.S. BOZARTH DONATION LAND CLAIM, COWLITZ COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACTS 12 AND 13 OF SURVEY RECORDED JANUARY 31, 1977 IN VOLUME 2 OF SURVEYS, PAGE 62, UNDER AUDITOR'S FILE NO. 805998.

EXCEPT THAT PORTION SHORT PLATTED UNDER SHORT PLAT NO. 81-031, AS RECORDED IN VOLUME 5 OF SHORT PLATS, PAGE 58, UNDER AUDITOR'S FILE NO. 811021051.

TOGETHER WITH A 60 FOOT WIDE NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, AND UTILITIES OVER, UNDER AND ACROSS THE SOUTH 60 FEET OF THAT CERTAIN TRACT LAND CONVEYED TO JEROME R. WHITAKER UNDER AUDITOR'S FILE NO. 862052 AND EXTENDING EASTERLY TO INSEL ROAD.

AND TOGETHER WITH A 60 FOOT WIDE NON-EXCLUSIVE EASEMENT TO INSEL ROAD FOR INGRESS, EGRESS AND UTILITIES FROM THE NORTHERLY BOUNDARY OF SAID TRACT 13 OF SURVEY, AND SAID POINT ALSO BEING AON THE

SOUTHERLY BOUNDARY COMMON TO TRACTS 6 AND 11 OF SURVEY, AND RUNNING THENCE IN A NORTHERLY DIRECTION TO INSEL ROAD AS SHOWN ON SURVEY RECORDED JANUARY 31, 1977 IN VOLUME 2 OF SURVEYS, PAGE 62, UNDER AUDITOR'S FILE NO. 805998.

SITUATE IN THE COUNTY OF COWLITZ, STATE OF WASHINGTON.

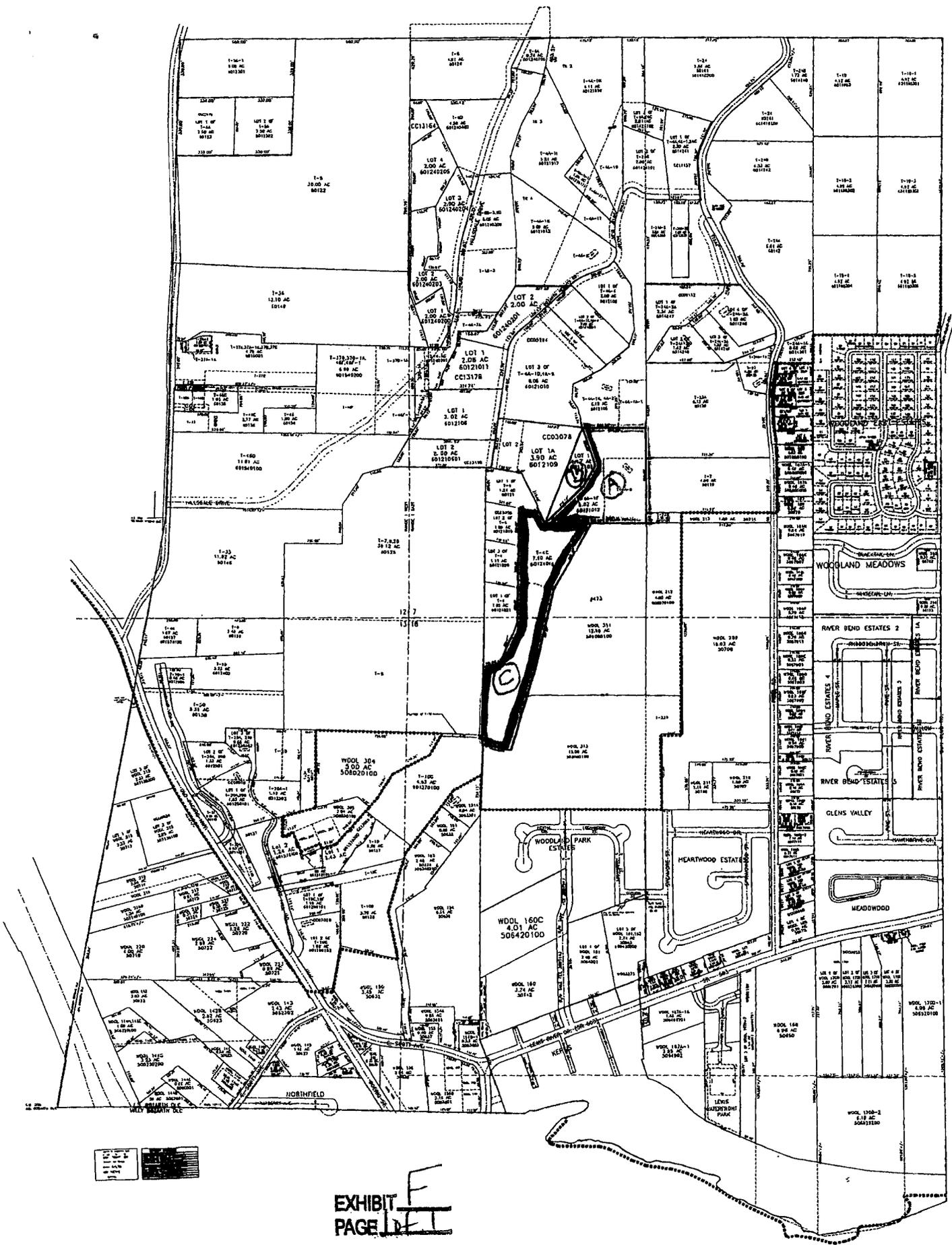


EXHIBIT **F**  
PAGE **1** OF **1**

PARCEL 1:

A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5 NORTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN IN COWLITZ COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY OF THE INSEL COUNTY ROAD, SAID POINT BEING 60.00 FEET SOUTH OF THE SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO HAROLD F. KOISTINEN IN DEED RECORDED UNDER AUDITOR'S FILE NO. 567441; THENCE NORTH 89°59'16" WEST 515.00 FEET TO AN IRON ROD AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 00°00'44" WEST 1237.33 FEET TO AN IRON ROD; THENCE NORTH 89°44'37" WEST 119.94 FEET TO AN IRON ROD; THENCE SOUTH 00°00'44" WEST 437.71 FEET TO AN IRON ROD; THENCE NORTH 89°59'16" WEST 1058.26 FEET TO AN IRON ROD IN THE OLD FENCE LINE; THENCE NORTH 02°21'17" EAST 382.39 FEET ALONG SAID FENCE LINE TO AN IRON ROD; THENCE SOUTH 77°07'30" EAST 169.52 FEET TO AN IRON ROD; THENCE NORTH 17°29'04" EAST 470.47 FEET TO AN IRON ROD; THENCE NORTH 13°07'13" EAST 507.63 FEET TO AN IRON ROD; THENCE NORTH 29°25'39" EAST 444.30 FEET TO AN IRON ROD; THENCE SOUTH 89°59'16" EAST 522.71 FEET TO THE PLACE OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO TCK, INC., A WASHINGTON CORPORATION BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 3242810.

Affects Parcel No. 5-0806-0100 and 5-0807-0100

PARCEL 2:

A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN COWLITZ COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY OF THE INSEL COUNTY ROAD, SAID POINT BEING 60.00 FEET SOUTH OF THE SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO HAROLD F. KOISTINEN IN DEED RECORDED UNDER AUDITOR'S FILE NO. 567441; THENCE NORTH 89°59'16" WEST 515.00 FEET TO AN IRON ROD; THENCE SOUTH 00°00'44" WEST 1237.33 FEET TO AN IRON ROD; THENCE NORTH 89°44'37" WEST 119.94 FEET TO AN IRON ROD;

EXHIBIT G

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"Meriwether Master Plan Property"

THENCE SOUTH 00°00'44" WEST 437.71 FEET TO AN IRON ROD;  
SAID IRON ROD ALSO BEING ON THE NORTH LINE OF THE HEARTWOOD  
ESTATES AS RECORDED IN VOLUME 13 OF PLATS, PAGES 14, 15, AND 16;

THENCE EASTERLY ALONG SAID NORTH LINE OF HEARTWOOD ESTATES  
TO THE WESTERLY RIGHT-OF-WAY LINE OF THE INSEL COUNTY ROAD;  
THENCE NORTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE TO THE  
POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED UNDER AUDITOR'S FILE NO. 614770.  
Affects Parcel No. 5-0706

PARCEL 3:

A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM DESCRIBED AS  
FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT 10 OF SURVEY  
RECORDED IN VOLUME 2 OF SURVEYS, PAGE 62, AUDITOR'S FILE NO.  
805998;  
THENCE NORTH 00°00'44" EAST 60 FEET, MORE OR LESS, TO THE  
SOUTHWEST CORNER OF THAT TRACT OF LAND CONVEYED TO HAROLD F.  
KOISTINEN IN DEED RECORDED UNDER AUDITOR'S FILE NO. 567441;  
THENCE SOUTH 89°21'56" EAST 715.42 FEET, MORE OR LESS, TO THE WEST  
RIGHT OF WAY LINE OF INSEL ROAD;  
THENCE SOUTH ALONG SAID INSEL ROAD 60 FEET, MORE OR LESS, TO A  
POINT THAT IS SOUTH 89°21'56" EAST 715.42 FEET EAST OF THE POINT OF  
BEGINNING;  
THENCE WEST NORTH 89°21'56" WEST 715.42 FEET, MORE OR LESS, TO THE  
POINT OF BEGINNING,  
Affects Parcel Nos. 6-0121-01 and 50711

PARCEL 4:

STARTING AT THE NORTHEAST CORNER OF SOLOMON STRONG'S  
DONATION LAND CLAIM;  
THENCE SOUTH 11°06' WEST 8.09 CHAINS TO THE CORNER OF ARTHUR  
BOZARTH AND J.R. BOZARTH'S PORTION OF THE J.S. BOZARTH AND  
ASENATH BOZARTH DONATION LAND CLAIM;  
THENCE EAST ON THE DIVISION LINE BETWEEN THE ARTHUR BOZARTH  
AND J.S. BOZARTH'S PORTION OF SAID CLAIM 12.05 CHAINS;  
THENCE SOUTH 6.81 CHAINS TO THE PLACE OF BEGINNING;

THENCE EAST A DISTANCE OF 17.50 CHAINS;  
THENCE SOUTH A DISTANCE OF 3 CHAINS;  
THENCE WEST A DISTANCE OF 17.50 CHAINS;  
THENCE NORTH 3 CHAINS TO THE PLACE OF BEGINNING AND SITUATED IN  
THE J.S. AND ASENATH BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5  
NORTH, RANGE 1 WEST AND 1 EAST OF THE WILLAMETTE MERIDIAN.

ALSO: STARTING AT THE NORTHEAST CORNER OF THE SOLOMON  
STRONG'S DONATION LAND CLAIM;  
THENCE SOUTH  $11^{\circ}06'$  WEST 8.09 CHAINS TO THE CORNER OF ARTHUR  
BOZARTH AND JOHN L. BOZARTH'S PORTION OF THE J.S. AND ASENATH  
BOZARTH DONATION LAND CLAIM;

THENCE EAST ON THE DIVISION LINE BETWEEN ARTHUR BOZARTH AND  
J.R. BOZARTH'S PORTION OF SAID CLAIM 12.05 CHAINS TO THE PLACE OF  
BEGINNING;  
THENCE EAST A DISTANCE OF 17.50 CHAINS;  
THENCE SOUTH A DISTANCE OF 6.81 CHAINS;  
THENCE WEST A DISTANCE OF 17.50 CHAINS;  
THENCE NORTH 6.81 CHAINS TO THE PLACE OF BEGINNING AND SITUATED  
IN JOHN AND ASENATH BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5  
NORTH, RANGE 1 EAST AND 1 WEST OF THE WILLAMETTE MERIDIAN.

ALSO: STARTING AT THE NORTHEAST CORNER OF SOLOMON STRONG'S  
DONATION LAND CLAIM;  
THENCE SOUTH  $11^{\circ}06'$  WEST 8.09 CHAINS TO CORNER OF ARTHUR  
BOZARTH AND J.R. BOZARTH'S PORTION OF THE J.S. BOZARTH AND  
ASENATH BOZARTH DONATION LAND CLAIM;  
THENCE EAST ON THE DIVISION LINE BETWEEN ARTHUR BOZARTH AND  
J.R. BOZARTH'S PORTION OF SAID CLAIM 12.05 CHAINS TO THE PLACE OF  
BEGINNING;  
THENCE NORTH A DISTANCE OF 6.75 CHAINS;  
THENCE EAST A DISTANCE OF 5 CHAINS;  
THENCE NORTH A DISTANCE OF 3.50 CHAINS;  
THENCE NORTH  $33^{\circ}$  EAST A DISTANCE OF 3.29 CHAINS;  
THENCE NORTH  $73^{\circ}$  EAST A DISTANCE OF 2.25 CHAINS;  
THENCE EAST A DISTANCE OF 8.58 CHAINS;  
THENCE SOUTH A DISTANCE OF 13.64 CHAINS;  
THENCE WEST 17.50 CHAINS TO THE PLACE OF BEGINNING AND SITUATE  
IN THE JOHN S. BOZARTH AND ASENATH BOZARTH DONATION LAND  
CLAIM IN TOWNSHIP 5 NORTH, RANGE 1 WEST AND 1 EAST OF THE  
WILLAMETTE MERIDIAN.

Affects Parcel No. 6-0125

PARCEL 5:

LOT 3 OF SHORT SUBDIVISION NO. CC81-031 IN VOLUME 5 OF SHORT PLATS, PAGE 58, RECORDED UNDER AUDITOR'S FILE NO. 811021051, RECORDS OF COWLITZ COUNTY, WASHINGTON.

Affects Parcel No. 6-0121-020

PARCEL 6:

A PORTION OF THE JOHN S. BOZARTH AND ASENATH BOZARTH DONATION LAND CLAIM IN TOWNSHIP 5 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE TRACT OF LAND CONVEYED BY ELIZA J. LAWYER AND HUSBAND TO SAM CONRAD, RECORDED IN VOLUME 39 AT PAGE 585, DEED RECORDS OF COWLITZ COUNTY, WASHINGTON;  
THENCE RUNNING WEST 237.44 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUING WEST A DISTANCE OF 806.68 FEET;  
THENCE SOUTH 00°50' EAST A DISTANCE OF 466.30 FEET;  
THENCE SOUTH 75°42'24" WEST A DISTANCE OF 155.83 FEET;  
THENCE SOUTH 19°41' EAST A DISTANCE OF 123.70 FEET;  
THENCE NORTH 66°14' EAST A DISTANCE OF 186.90 FEET;  
THENCE SOUTH 23°24' EAST A DISTANCE OF 148.30 FEET;  
THENCE NORTH 72°51' EAST A DISTANCE OF 83.20 FEET;  
THENCE NORTH 40°30' EAST A DISTANCE OF 363.10 FEET;  
THENCE NORTH 31°53' EAST A DISTANCE OF 167.00 FEET;  
THENCE NORTH 60°58' EAST A DISTANCE OF 240.40 FEET;  
THENCE NORTH 28°18'40" EAST 142.05 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT PORTION DEEDED TO THE TOWN OF WOODLAND IN DEED RECORDED JULY 12, 1961 UNDER AUDITOR'S FILE NO. 536171, ALSO EXCEPTING WARRANTY DEED DATED AUGUST 22, 1985 AND RECORDED UNDER AUDITOR'S FILE NO. 850822020.

Affects Parcel No. 6-0147

PARCEL 7:

BEGINNING AT A POINT 1.68 CHAINS EAST OF THE SOUTHEAST CORNER OF THE TRACT OF LAND DEEDED TO E.W. ROBINSON, SAID DEED BEARING THE DATE OF APRIL 25, 1896; RUNNING  
THENCE SOUTH A DISTANCE OF 7.17 CHAINS;

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THENCE SOUTH 75°WEST A DISTANCE OF 6.25 CHAINS;  
THENCE NORTH 25.25° WEST A DISTANCE OF 2.24 CHAINS TO A SPRING;  
THENCE NORTH 51.25° WEST A DISTANCE OF 3.03 CHAINS;  
THENCE NORTH 18.25° WEST A DISTANCE OF 3.55 CHAINS;  
THENCE EAST A DISTANCE OF 3.11 CHAINS;  
THENCE NORTH A DISTANCE OF 1.28 CHAINS;  
THENCE EAST A DISTANCE OF 6.63 CHAINS TO THE POINT OF BEGINNING.

EXCEPTING THAT PORTION DEEDED TO JAY C. FERIS, ET AL, IN DEED  
RECORDED FEBRUARY 24, 1979 UNDER AUDITOR'S FILE NO. 850073.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO MICHAEL L.  
HANSLITS AND CYNTHIA M. HANSLITS BY WARRANTY FULFILLMENT  
DEED RECORDED UNDER AUDITOR'S FILE NO. 930405183.  
Affects Parcel No. 6-0125.

PARCEL 8:

A PARCEL OF LAND LOCATED IN THE JOHN S. AND ASENATH BOZARTH  
DONATION LAND CLAIM IN SECTION 13, TOWNSHIP 5 NORTH, RANGE 1  
WEST OF THE WILLAMETTE MERIDIAN, COWLITZ COUNTY, WASHINGTON,  
DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 89°45'06" EAST 110.88 FEET OF THE  
SOUTHEAST CORNER OF THE TRACT OF LAND DEEDED TO E.W. ROBINSON,  
SAID DEED BEING RECORDED IN VOLUME 15 OF DEEDS, PAGE 689,  
RECORDED MAY 2, 1898 OF SAID COWLITZ COUNTY, WASHINGTON;  
THENCE SOUTH 00°14'54" WEST 300.54 FEET TO THE TRUE POINT OF  
BEGINNING SAID POINT BEING THE NORTHEAST CORNER OF THAT TRACT  
OF LAND DESCRIBED BY DEED RECORDED IN VOLUME 879 OF DEEDS,  
PAGE 816, RECORDS OF SAID COUNTY;  
THENCE CONTINUING SOUTH 00°14'54" WEST ALONG THE EAST LINE OF  
SAID TRACT 175.24 FEET TO THAT TRACT OF LAND CONVEYED BY DEED  
BY UNITED BULB COMPANY TO THE TOWN OF WOODLAND, RECORDED  
UNDER AUDITOR'S FILE NO. 536171, RECORDS OF COWLITZ COUNTY;  
THENCE SOUTH 73°57'31" WEST 138.14 FEET;  
THENCE NORTH 50°45'24" WEST 73.56 FEET;  
THENCE NORTH 57°06'11" WEST 70.64 FEET;  
THENCE NORTH 35°27'19" WEST 48.67 FEET;  
THENCE NORTH 09°28'54" WEST 42.77 FEET;  
THENCE NORTH 10°18'19" EAST 48.66 FEET TO THE NORTH LINE OF THAT  
TRACT OF LAND DESCRIBED BY DEED RECORDED IN SAID VOLUME OF 879  
OF DEEDS, PAGE 816;

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THENCE SOUTH 89°45'06" EAST ALONG SAID NORTH LINE 276.38 FEET TO THE TRUE POINT OF BEGINNING.  
Affects Parcel No. 6-0125-02

SITUATE IN THE COUNTY OF COWLITZ, STATE OF WASHINGTON.

PARCEL A:

TRACT 10 OF THAT CERTAIN SURVEY RECORDED UNDER AUDITOR'S FILE NO. 805998, IN VOLUME 2 OF SURVEYS, AT PAGE 62, RECORDS OF COWLITZ COUNTY, BEING A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM, IN SECTION 7, TOWNSHIP 5 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN.  
Affects Parcel No. 6-0121-012

PARCEL B:

THAT PORTION OF LOT 1 OF SHORT PLAT 79-056, VOLUME 3, PAGE 78 OF SHORT PLATS, AS RECORDED UNDER AUDITOR'S FILE NO. 858867, AND BEING A PORTION OF THE J.S. BOZARTH DONATION LAND CLAIM, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF TRACT 11 OF A SURVEY RECORDED IN VOLUME 2, PAGE 62 AND RUNNING THENCE SOUTH 19°16'00" EAST FOR A DISTANCE OF 234.06 FEET ALONG THE EAST BOUNDARY OF SAID TRACT 11;  
THENCE SOUTH 31°02'00" WEST FOR A DISTANCE OF 140.64 FEET ALONG THE EAST BOUNDARY OF SAID TRACT 11;  
THENCE SOUTH 45°32'18" WEST FOR A DISTANCE OF 310.14 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 11;  
THENCE NORTH 21°11'35" EAST FOR A DISTANCE OF 599.22 FEET TO THE PLACE OF BEGINNING.  
Affects Parcel No. 6-0121-07

PARCEL C:

A TRACT OF LAND LOCATED IN THE J.S. BOZARTH DONATION LAND CLAIM, COWLITZ COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACTS 12 AND 13 OF SURVEY RECORDED JANUARY 31, 1977 IN VOLUME 2 OF SURVEYS, PAGE 62, UNDER AUDITOR'S FILE NO. 805998.

EXCEPT THAT PORTION SHORT PLATTED UNDER SHORT PLAT NO. 81-031, AS RECORDED IN VOLUME 5 OF SHORT PLATS, PAGE 58, UNDER AUDITOR'S FILE NO. 811021051.

TOGETHER WITH A 60 FOOT WIDE NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, AND UTILITIES OVER, UNDER AND ACROSS THE SOUTH 60 FEET OF THAT CERTAIN TRACT LAND CONVEYED TO JEROME R. WHITAKER UNDER AUDITOR'S FILE NO. 862052 AND EXTENDING EASTERLY TO INSEL ROAD.

AND TOGETHER WITH A 60 FOOT WIDE NON-EXCLUSIVE EASEMENT TO INSEL ROAD FOR INGRESS, EGRESS AND UTILITIES FROM THE NORTHERLY BOUNDARY OF SAID TRACT 13 OF SURVEY, AND SAID POINT ALSO BEING AON THE

SOUTHERLY BOUNDARY COMMON TO TRACTS 6 AND 11 OF SURVEY, AND RUNNING THENCE IN A NORTHERLY DIRECTION TO INSEL ROAD AS SHOWN ON SURVEY RECORDED JANUARY 31, 1977 IN VOLUME 2 OF SURVEYS, PAGE 62, UNDER AUDITOR'S FILE NO. 805998.

SITUATE IN THE COUNTY OF COWLITZ, STATE OF WASHINGTON.

EXHIBIT G

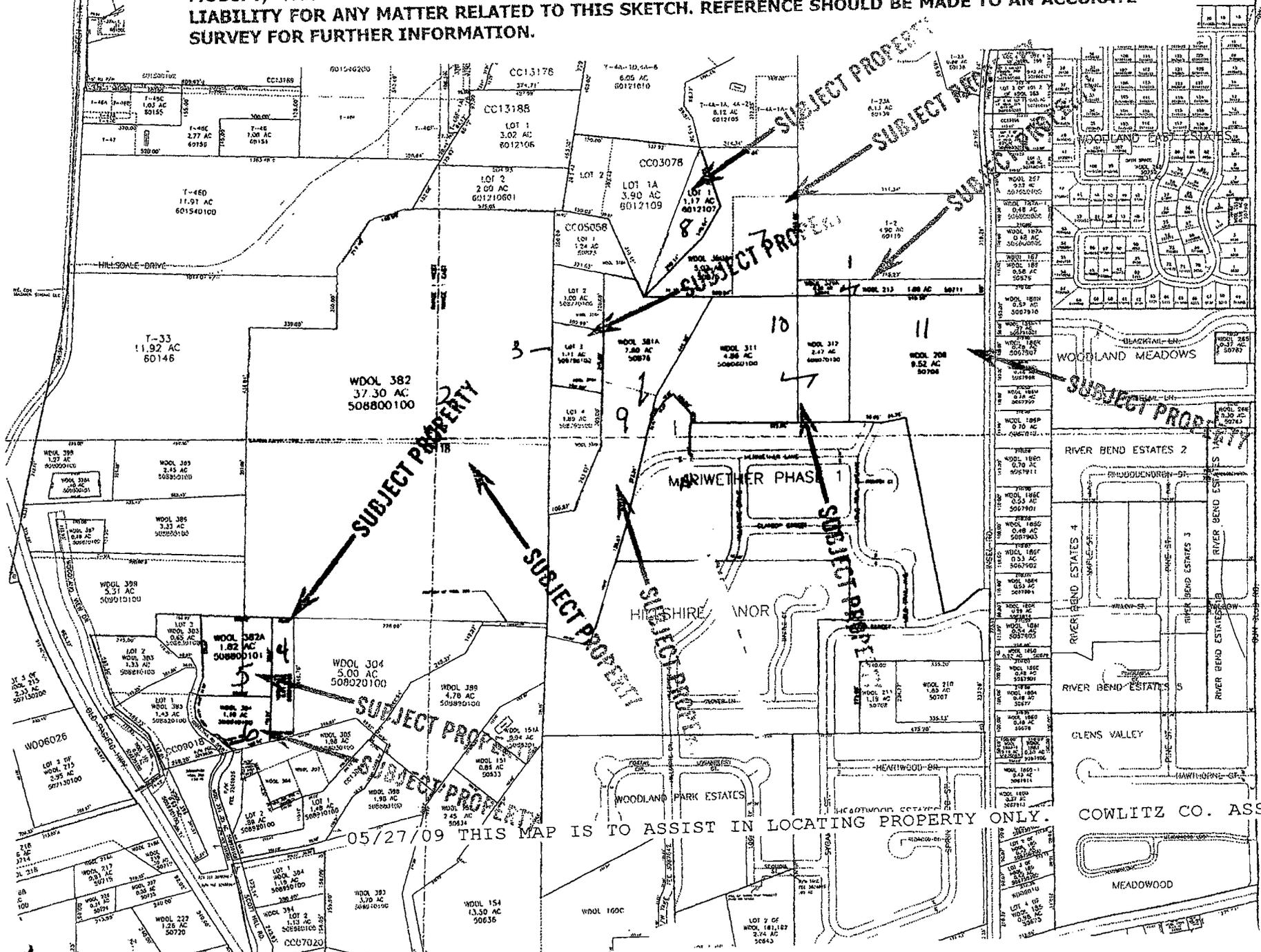
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"Meriwether Master Plan Property"

THIS SKETCH IS PROVIDED, WITHOUT CHARGE, FOR YOUR INFORMATION. IT IS NOT INTENDED TO SHOW ALL MATTERS RELATED TO THE PROPERTY INCLUDING, BUT NOT LIMITED TO, AREA, DIMENSIONS, EASEMENTS, ENCROACHMENTS, OR LOCATION OF BOUNDARIES. IT IS NOT PART OF, NOR DOES IT MODIFY, THE COMMITMENT OR POLICY TO WHICH IT IS ATTACHED. THE COMPANY ASSUMES NO LIABILITY FOR ANY MATTER RELATED TO THIS SKETCH. REFERENCE SHOULD BE MADE TO AN ACCURATE SURVEY FOR FURTHER INFORMATION.

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92 AC  
180305

EXHIBIT  
PAGE 1 of 1



COWLITZ CO. ASSESSOR





SHAWN A. ELPEL, being first duly sworn upon oath, hereby  
deposes and says:

1. I am one of Respondent's attorneys, I am competent to  
testify herein, and I base the following on my own, personal knowledge.

2. On November 10, 2011, I caused true and correct copies of  
the Brief of Respondent and this Affidavit of Service to be served on the  
following by hand-delivery:

Jill D. Bowman  
600 University Street, Ste. 3600  
Seattle WA 98101

D. Jeffrey Courser  
805 Broadway, Ste. 275  
Vancouver WA 98660  
Of Attorneys for Appellant KeyBank National Association

Malcolm E. Johnson  
211 East McLoughlin Blvde., Ste. 110  
Vancouver, WA 98663  
Attorney for Defendant Tapani Underground, Inc.

And by depositing in the United States Mail, postage prepaid, addressed as  
follows:

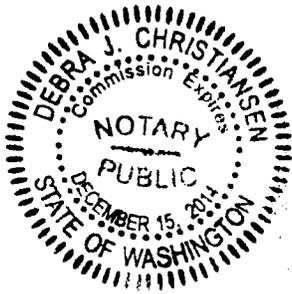
Reed Sherar  
300 North Peking Rd  
P.O. Box 942  
Woodland, WA 98674  
Registered Agent for Defendant Ecological Land Services, Inc.

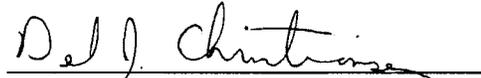
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R. Darrin Class  
700 Sleater Kinney Rd SE# B-157  
Lacey, WA 98503-1150  
Of Attorneys for Defendants PL Land Co. II, LLC and Juneau  
Investments, LLC

  
SHAWN A. ELPEL, WSBA# 21898

SUBSCRIBED AND SWORN to before me this 10 day of  
November, 2011.



  
Notary Public in and for the State of  
Washington, residing at Vancouver  
Commission expires: 12/15/2014