

No. 42907-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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DALE R. HARKINS and ELISABETH H. HARKINS, a married couple,

Plaintiffs,

vs.

CARRIE L. MERRILL, a single woman,

Defendant.

FILED  
COURT OF APPEALS  
DIVISION II  
2012 MAY 10 PM 1:38  
STATE OF WASHINGTON  
BY *S*  
DEPUTY

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Roger Bennett, Judge  
Clark County Cause No. 05-2-02006-1

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BRIEF OF PLAINTIFFS DALE R. HARKINS and ELISABETH H.  
HARKINS

---

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PM 5-4-12

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### **ASSIGNMENTS OF ERROR**

1. The Court erred when it awarded attorney fees to the Defendant who was not the prevailing party.
2. The Court erred when it determined that it could not exercise its discretion in enlarging the 10-day filing period set forth in CR 54(d)(2) and declined to award attorney fees to the Plaintiffs who it determined were the prevailing parties as set forth in the Purchase and Sale Agreement, and as defined in RCW 4.84.330.

### **ISSUES**

- i. Whether the Court erred when it awarded the Defendant attorney fees pursuant to the Purchase and Sale Agreement.*
- ii. Whether the Court may exercise its discretion to enlarge the 10 day filing period of CR 54(d)(2)?*

### **STATEMENT OF THE CASE**

On April 19, 2004, Plaintiffs accepted an offer from Defendant to purchase their home of 25 years. Plaintiffs and Defendant agreed the closing date would occur between May 20, 2004 and June 10, 2004. Plaintiffs' Trial Exhibit 2, attached.

The parties executed a Purchase and Sale Agreement which provided that the Seller (Plaintiffs) would remove all of Seller's personal

property, trash, debris, and all other articles not agreed to be left at closing and that all terms not satisfied or waived before closing would survive closing. *Id.* The terms that survived closing included *inter alia* seller's representations, among which representations was the aforementioned provision related to removal of all of Seller's personal property, trash, debris, and all other articles not agreed to be left at closing. *Id.* The Purchase and Sale Agreement also provided an integration clause stating that no agreements existed except those provided in the Purchase and Sale Agreement. *Id.*

Also included in the Agreement was the following provision:

If the Buyer, Seller, or any real estate licensee or broker involved in this transaction is involved in any dispute relating to this transaction, any prevailing party shall recover reasonable attorney's fees and costs (including those for appeals) which relate to the dispute.

*Id.*, at page 3.

On April 19, 2004, the parties executed an Addendum or Amendment to the Purchase and Sale Agreement that expressly excluded certain items of personal property, including but not limited to, winches, vices (sic) and lumber in the barn, two power saws, and other tools. *Id.*

Throughout the time of the sale and the negotiations therefor, Plaintiff Dale Harkins was ill with lymphoma. On May 13, 2004. CP 2. On

the date the Plaintiffs were preparing to vacate the premises, Plaintiff Dale Harkins became violently ill as a result of the stress of moving. Id.

Plaintiffs asked Defendant for additional time to complete the removal of all their property. Defendant demanded \$5000 for permission for the Plaintiffs return, reduced her demand to \$1000, and reiterated the demand on May 14, 2004 to Plaintiffs' attorney even though under the Purchase and Sale Agreement Plaintiffs were under a continuing obligation to remove their personal property and despite the fact that Plaintiffs were being forced to vacate two days earlier than the earliest date they otherwise would have been if Defendant had complied with the terms of the Purchase and Sale Agreement. Id.

Once Plaintiffs were permitted to return to their former home on May 18, 2004, they discovered that Defendant had disposed of any items of value that the Plaintiffs were unable to remove on May 13, 2004. As a result of Defendant's actions and Plaintiffs' inability to recover the majority of items the Defendant wrongfully disposed of, Plaintiffs filed this lawsuit for damages under a number of alternative theories. CP 2.

After several years of litigation and a number of delays, a bench trial was held starting April 25, 2011 and the Court issued a written ruling on June 2, 2011. In the ruling, Plaintiffs were awarded \$5,200.00 for damages under a bailment their, one theory for recovery roughly pursuant to their

Complaint. CP 47. Defendant made no counterclaims and was awarded nothing. CP 7, 51.

Judge Bennett retired from the bench shortly thereafter, and went into private practice, but retained jurisdiction over this matter.

POST TRIAL:

A Judgment was entered in favor of the Plaintiffs at a hearing held on September 2, 2011, before the Honorable Judge Roger Bennett, now Pro Tem. Also before the court at that hearing was Defendant's motion for reasonable attorney fees. The Court reserved on attorney fees, but found that Plaintiffs, as prevailing parties, were entitled to reasonable attorney fees pursuant to the broad language of the attorney fee provision of the Purchase and Sale Agreement. CP 51, RP (9-2-11), at 11, 16.

11 days later, having been unable to gather timekeeping records for the first three years of litigation, Plaintiffs filed a Motion for Extension of Time in which to file their Motion for Attorney Fees. CP 53, 65, RP (10-10-11), at 7, 14. Judge Bennett no longer held a regular docket and no immediate citation for a hearing on the motion was filed. Plaintiff's motion for attorney fees was ultimately filed on October 12, 2011.

On October 20, 2011, the Court denied Plaintiffs motion for attorney fees based upon the motion to extend time was untimely by one day under the Court's reading of the 10 day filing requirement of CR

54(d)(2), and based upon the conclusion that the Court therefore had no discretion to enlarge the 10 day filing requirement once the initial 10 days had elapsed. CP 59.

On November 4, 2011, Plaintiffs' attorney filed a Motion for Reconsideration, based in part upon Plaintiffs claim that the "law was inaccurately applied to this matter". In a written Ruling filed with the court on November 21, 2011 the court denied oral argument on the Motion for Reconsideration based upon its conclusion that "the Court lacks authority to disregard strict timeliness under the Washington Rules of Court". CP 63.

Also on November 21, 2011, the Court signed a Judgment and Order awarding Defendant attorney fees in the amount of \$8,452.00, denied Plaintiffs' request for fees in the amount of \$27,260.86 as untimely, resulting in a net judgment in favor of the Defendant in the amount of \$3,252.00. CP 64. In it's Final written ruling the Court stated:

The ruling granting attorney fees to Defendant is not a ruling I found pleasant. Under the procedural posture of this case, however, I felt I had no discretion. If I am wrong, I should be, and hope to be reversed.

CP 71A.

As for the Motion for Extension of Time, the court ruled that, as a matter of law, it was not timely due to being filed on the 11th day following entry of the judgment. The court did not, however, rule upon whether

Plaintiffs' counsel's declaration under oath that he was unable to timely recovered the necessary billing records for the first half of the present litigation, constituted "good cause". The Court rather ruled that the Motion for Extension of Time did not comply with the 10 day rule. CP 59, 63.

### ARGUMENT

*i. The Court erred when it awarded the Defendant attorney fees pursuant to the Purchase and Sale Agreement..*

RCW 4.84.330 provides that

In any action on a contract ... where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party ... shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

...

As used in this section "prevailing party" means the party in whose favor final judgment is rendered.

At trial, only Plaintiffs obtained a judgment in their favor, therefore, only Plaintiffs are entitled to an award of attorney fees, both pursuant to the Purchase and Sale agreement, and pursuant to RCW 4.84.330.

Though the attorney fee provision itself states that "any prevailing party" may be entitled to fees, it merely incorporates the possibility that

even third parties to the Agreement, ie; the “real estate licensee or broker”, would be entitled to recover such fees in the event of a dispute.

***ii. May the Court exercise its discretion to enlarge the 10 day filing requirement of CR 54(d)(2)?.***

The Court may exercise its discretion to enlarge the 10 day filing requirement of CR 54(d)(2).

This issue involves the Courts application of a court rule. “Application of a court rule to a particular set of facts is a question of law reviewed de novo”. *Kim v. Pham*, 95 Wn.App 439, 441, 975 P.2d 544 (1999).

CR 54(d)(2) reads,

*Attorney’ Fees and Expenses.* Claims for attorneys fees and expenses, other than costs and disbursements, shall be made by motion unless the substantive law governing the action provides for the recovery of such fees and expenses as an element of damages to be proved at trial. Unless otherwise provided by statute or order of the court, the motion must be filed no later than 10 days after entry of judgment.

CR 54(d) was amended in 2007 by the Supreme Court to add the 10 day provision. Following, is the Purpose Statement of the amendment:

Suggested Amendment to Civil Rule (CR) 54 concerning Judgment and Costs Submitted

by the Board of Governors of the  
Washington State Bar Association:

**Purpose:** These suggested amendments are based in part on a recommendation of the judges and clerks of the Court of Appeals. By imposing a ten-day deadline on the filing of motions for attorneys' fees, costs, and the like, the amendment to CR 54(d) is intended to prevent parties from raising trial-level attorney fee issues very late in the appellate process, sometimes after one or all appellate briefs have been submitted.

Currently, the Civil Rules contain no deadline by which a party must file a motion for an award of fees in the trial court. Yet RAP 2.4(g) and 7.2(i) allow an appeal of an award of attorney fees (and/or costs) to automatically join an appeal on the merits of the case anytime after the appellate court has accepted review. This can create delay at the appellate level when an aggrieved party seeks to obtain appellate review of a subsequently entered attorney fee award.

The primary purpose of the proposed amendments is to require a prevailing party to move for attorneys' fees (and any other costs not provided by the statute) within 10 days of the entry of judgment—the same deadline imposed for other post-judgment motions. This is done by adding a new section (d)(2) to CR 54.

A secondary purpose of the proposed amendment is to better harmonize the language of the applicable Civil Rules with each other and with the relevant statutes (in particular, RCW 4.84.010, .030, and .090). Language added

to new subsection (d) (1) of CR 54 and the amendment to CR 78(e) are designed to expressly include both "costs" and "disbursements" and to clarify that the disbursement "affidavit" can be part of the "cost bill."

The stated purpose of the rule change was intended to address confusion and delay at the appellate level, not to deprive a litigant entitled to attorney fees of such relief by a mechanical application of the rule.

The Rule itself is silent as to when and by what procedure the "order of the court" must be rendered. CR 6(b) provides that

**Enlargement.** When by these rules... an act is required... to be done at or within a specified time, the court for cause shown may at any time in its discretion... (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under these rules CR50 (b), 52 (b), 59 (b), 59 (d), and 60 (b) .

The "enlargement" here applies to 54(d)(2), not to the "motion made after the expiration of the specified period ". The Motion for Extension of Time is not the "act to be done where the failure to act was result of excusable neglect". Rather, the "act to be done" is the Motion for Attorney Fees. Prong (2) of CR6(b), by its grammatical separation from prong (1), is to be read in conjunction with "[w]hen by these rules... an act is required... to be

done at or within a specified time, the court for cause shown may at any time in its discretion”, and independently of prong (1). Further, the Motion for Extension of Time is not a required filing under CR6(b)(2) or CR54(d).

By its very language CR 54(d)(2) gives the court discretion to enlarge the 10 day time limit. The deadline applies “[u]nless otherwise provided by ... order of the court.” CR6(b), which addresses the court's discretion to extend deadlines, lists rules for which the court may not enlarge a period of time. CR54(d) is not among them. Implicit in the court's ruling here is an extension of time to the extent required.

Further, the 10 day time limit under CR 52(d)(2) is “intended to prevent parties from raising trial-level attorney fee issues very late in the appellate process, sometime after one or all appellate briefs have been submitted.”<sup>1</sup> It is unlikely that the Supreme Court contemplated the 10 day time limit as a means of denying the prevailing party the remedy to which she is entitled.<sup>2</sup>

Here, a Motion for Extension of Time was filed in an abundance of caution after the court had already made a ruling that the Plaintiffs would

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<sup>1</sup> 4 Karl B. Tegland, *Washington Practice: Rules Practice* § 54, Supp. 40 (5th ed. 2006 & Supp. 2010) (drafters' comment on 2007 amendment to CR 54(d)(2)). The drafters also note intent to harmonize the language of the applicable civil rules with each other and with the relevant statutes (particularly RCW 4.84.010, .030, .090). *Id.*

<sup>2</sup> See *Mitchell v. Wash. State Inst. of Public Policy*, 153 Wn. App. 803, 823, 225 P.3d 280 (2009) (discussing CR 78(e)) (absent clear language to the contrary, court would not apply rule mechanically to deprive a litigant of costs to which he is justly entitled or to enrich a litigant with costs he has unjustly secured), review denied, 169 Wn.2d 1012 (2010).

be entitled to reasonable attorney fees as prevailing parties. Under the facts of this case, this Court may exercise its discretion to award Plaintiffs reasonable attorney fees.

#### REQUEST FOR ATTORNEY FEES ON APPEAL

Pursuant to RCW 4.84.330, the attorney fee provision of the Purchase and Sale Agreement between the parties, and RAP 18.1(a) and (b), Plaintiffs request reasonable attorney fees and expenses for this appeal.

#### CONCLUSION

Following seven years of litigation and a bench trial in this matter, the Court determined that the Plaintiffs were entitled to reasonable attorney fees as provided in the Purchase and Sale Agreement. Due to difficulty in obtaining billing records which reached back seven years (collection effort preceding the filing of the Complaint included), Plaintiffs attorney was unable to assemble the necessary records in time to comply with the 10 day rule of CR 54(d)(2). Though not required by CR 6(b)(2) or CR 54(d)(2), Plaintiff's attorney filed a motion requesting that the Court extend the 10 day period in which to file the motion for attorney's fees. Due to filing motion for extension one day beyond the 10 day filing requirement, the Court awarded attorney fees to the non-prevailing party, and determined that it lacked the authority to exercise its discretion to award attorney fees to the Plaintiff. This is contrary to the law. This is an inequitable result

obtained by a mechanical application of a court rule, one not contemplated by the Supreme Court. Under these facts, whether to enlarge the time in which to file the motion for attorney fees is purely a matter of the court's discretion. For these reasons, Defendant should not have been awarded attorney fees, the Court's ruling that it lacked discretion to extend the time for the motion should, and as it hopes to be, reversed, and Plaintiff's request for reasonable attorney fees for the trial court litigation, and for this appeal, should be allowed.

DATED this 21 day of May, 2011.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'B. Walker', written over a horizontal line.

BRIAN A. WALKER, WSBA # 27391  
Of Attorneys for Appellants Harkins



RESIDENTIAL PURCHASE and SALE AGREEMENT  
THIS CONTRACT CONTROLS THE TERMS OF THE SALE OF THE PROPERTY



(Please read carefully before signing)  
Vancouver, Washington, April 19, 04

AGENCY DISCLOSURE: At the signing of this Agreement, the Selling Agent (insert name of selling agent) Emily Lazarati represented  Buyer,  Seller,  Both parties,  Neither party and the Listing Agent (insert name of listing agent) Sharnie Nelson & William Nelson represented  Seller,  Both Parties. Buyer and Seller both confirm that prior oral and/or written disclosure of agency was provided to each of them in this transaction. If Selling Agent and Listing Agent are different licensees affiliated with the same broker, then both parties consent to that broker acting as a dual agent. If Selling Agent and Listing Agent are the same person representing both parties, then both parties confirm their consent to that agent and his/her broker acting as dual agents. Both parties acknowledge receipt of a copy of the pamphlet entitled "The Law of Real Estate Agency."

1. PARTIES: This RESIDENTIAL PURCHASE and SALE AGREEMENT ("Agreement") is made between Carne Merrill (single person) as "Buyer", and Harkins as "Seller". Buyer agrees to purchase Seller's property on the following terms and conditions.

2. PROPERTY: Common Address 4008 NE 110th St.  
City: Vancouver County: Clark State of Washington.  
Zip: 98686 (Tax Parcel Number) 189934010  
Legal Description: 190BSEC36T3NRIEWM AKA LOT 35P1337 1.13A

If Legal Description is not attached at final acceptance of this Agreement, Buyer shall have three (3) business days after receiving the Legal Description to approve the Legal Description as accurately reflecting the Property which the parties intend to be the subject of this Agreement. Failure to give written disapproval shall be deemed to be approval.

3. PURCHASE PRICE/FINANCING: The Purchase Price is (\$ Two hundred sixty five thousand), payable as follows:  
 All cash at closing (not conditioned on buyer obtaining a loan).  
 Proceeds of Buyer Financing (attach a Financing Addendum). \$265,000  
 Other (attach a Method of Payment Addendum).

Buyer Representation: Buyer represents that Buyer has sufficient funds available to close this sale in accordance with this Agreement, and is not relying on any contingent source of funds unless otherwise set forth in this Agreement.

4. EARNEST MONEY: The amount of Earnest Money is: (\$ 1500.00). Selling Agent acknowledges receipt of Earnest Money from Buyer in the form of:  check for \$ 1500.00,  cash of \$ \_\_\_\_\_,  note for \$ \_\_\_\_\_, due as stated in the note (copy attached), and/or  other \$ \_\_\_\_\_.  
 in the form of: PATCO. These funds shall be deposited into the selling broker's trust account or PATCO to be credited to Buyer at closing. Any checks shall be deposited by the close of the business day following the day of mutual acceptance of this Agreement, or as otherwise agreed by the parties.

5. ADDITIONAL CONTINGENCIES: This Agreement is contingent on:  
 The sale of Buyer's property (attach Sale of Buyer's Property Contingency Addendum).  
 Inspections (attach Inspection Contingency Addendum).  
 Other: The ~~sale~~ of 2904 NE 54th St. - ~~contingent on the sale of 2904 NE 54th St.~~

Selling Broker shall deposit any check given as deposit money within five (5) days after mutual acceptance of this agreement.

6. CONVEYANCE OF TITLE: Conveyance of fee title shall be by  statutory warranty deed  other: \_\_\_\_\_ (statutory warranty deed if not filled in).

Buyer and Seller understand that the form of the deed may affect significant legal rights as to which a real estate licensee is not licensed to give advice. If this Agreement provides for the sale and transfer of the vendee's interest under an existing real estate contract, Seller shall convey Seller's interest by an assignment of contract and deed sufficient in form to convey after acquired title.

7. CLOSING: Closing shall be within ten (10) days after satisfaction or waiver of all contingencies and "subject to's", but not earlier than May 20, 04, nor later than June 10, 04, the latest of which shall be the termination date of this Agreement. Closing shall mean the date on which all documents are recorded and the net sales proceeds are available for disbursement to Seller. Buyer and Seller shall deposit, when notified and without delay, in escrow with the closing agent all instruments, monies, and other documents reasonably required to complete the closing of the transaction in accordance with the terms of this Agreement.

8. POSSESSION: Buyer shall take physical possession of the Property (and all existing keys to locks and alarms, and any portable control devices for accessing the Property):  
 on closing  
 other (specify) \_\_\_\_\_

Seller shall maintain the property in its current condition until Buyer takes possession.

9. ESCROW/CLOSING COSTS: Closing shall occur at PATCO, who shall act as the escrow/closing agent unless the parties agree in writing otherwise. Unless limited by law or modified by the terms of this Agreement, Buyer and Seller shall pay at closing all customary and usual closing costs and fees, including but not limited to the following: Seller shall pay the Seller's excise tax, the cost of the owner's standard form of title insurance, recording fees, and Seller's half share of escrow fees (unless Buyer obtains VA financing in which case Seller shall pay all escrow fees); Buyer shall pay all costs and fees associated with the financing, any other costs agreed to under the terms of this Agreement, and Buyer's half share of the escrow fees (unless prohibited by government regulation). Taxes for the current year, rents, interest, association or homeowner's fees, if any, shall be pro-rated as of the date of closing. Except as described in Paragraph 10(b) of this Agreement, all utility charges shall be paid and/or pro-rated outside escrow directly between Buyer and Seller.

Buyer's Initials CM Seller's Initials \_\_\_\_\_

67 10. SELLER'S DISCLOSURE AND REPRESENTATIONS: If Buyer has any questions regarding the following, Buyer should make Buyer's offer  
68 subject to relevant inspections and reports.

69 (a) Utilities: The Seller represents that the Property is served by the following utilities:  private/community water system,  private well,  
70  community well,  private irrigation system,  septic system,  natural gas,  telephone,  cable TV,  public water,  electricity,  
 sewer,  other \_\_\_\_\_

73 (b) Governmental Utilities: Pursuant to RCW 60.80, Buyer and Seller  do request  do not request (If neither box is checked, then "do  
74 request" applies.) the escrow/closing agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges  
75 affecting the Property. Seller represents that the Property is served by the following utilities operated by the state, county, city or other  
76 governmental agencies which have lien rights against the Property. The parties authorize the Listing Agent or the Selling Agent to insert,  
77 over their signatures, the name and addresses of the following utility providers:

Name of Provider		Address	Name of Provider		Address
<input type="checkbox"/> Sewer	_____	_____	<input type="checkbox"/> Electricity	_____	_____
<input type="checkbox"/> Storm Water	_____	_____	<input type="checkbox"/> Garbage	_____	_____
Drainage	_____	_____	<input type="checkbox"/> Irrigation	_____	_____
<input type="checkbox"/> Water	_____	_____	<input type="checkbox"/> Special Districts	_____	_____
			(LID's and ULID's)		

86 Seller will pay for all utilities through the date of closing and keep all utilities/services presently connected until closing or occupancy by the  
87 Buyer, whichever is sooner, except: \_\_\_\_\_  
88

89 Shares in light and/or water companies and associations, if any,  will  will not be included in the sale. If the Property is served by a  
90 septic system, Seller  will  will not have the septic tank pumped prior to closing. If the Property is served by a septic system, Seller  will  
91  will not provide a septic system inspection report from the controlling regulatory authority, or a private inspector approved by the  
92 controlling regulatory authority. If the Property is served by an individual private well, Seller  will  will not provide a basic water test  
93 (bacteriological test) of well water,  will  will not provide a quantity test, and Seller  will  will not provide an additional water test  
94 (primary inorganic chemical test) of well water which meets State Department of Health Services standards. If Buyer wishes any additional  
95 type of water test, Buyer should make such request in an addendum attached to this Agreement.

96 (c) Leased Fixtures: The following fixtures presently are leased:  furnace,  gas conversion burner,  hot water heater,  soft water unit,  
97  security/fire alarm system,  propane tanks,  other \_\_\_\_\_. Buyer  does  does not agree  
98 to assume such lease(s) at closing. If Buyer does not agree to assume such leases, or if Buyer cannot assume such leases because of the  
99 requirements of the lessor or a lender providing financing, then  Buyer  Seller shall purchase such fixtures and they shall be included in  
100 this sale.

101 (d) Property Maintenance: Seller will perform ordinary maintenance on the Property and yard as presently exists until closing or as otherwise  
agreed. Seller will remove all of Seller's personal property, trash, debris, and all articles not agreed to be left at closing.

104 (e) Boundaries/Square Footage: Seller makes no representations regarding the locations or length of the boundary lines, size of lot, or the  
105 square footage of the house and other improvements. Buyer has personally observed the property and has reached Buyer's own  
106 conclusions as to the adequacy and acceptability of the Property based upon such personal inspection.

107 (f) Lead Based Paint: If the Property includes a house built before 1978, then the addendum entitled "Disclosure of Information on Lead-  
108 Based Paint and Lead-Based Paint Hazards" must be attached to this Agreement.

109 11. SELLERS LEAD-BASED PAINT DISCLOSURE If Seller is required to provide Buyer a "Disclosure of Information on Lead-Based Paint and  
110 Lead-Based Paint Hazards", and has not done so prior to mutual execution of this Agreement, then Buyer shall have the unconditional right to  
111 terminate this Agreement for three days following Buyer's receipt of the Disclosure. In addition, Buyer shall have ten days following receipt of  
the Disclosure to conduct an inspection for lead-based paint hazards.

112 12. INCLUDED ITEMS: All fixtures and fittings that are attached to the Property are included, free of liens, in the purchase price including, plumbing  
113 and light fixtures and bulbs (except floor, standing, and swag lamps), attached television antenna, satellite dish and equipment, all attached floor  
114 coverings, trees, plants and shrubs in the yard, built-in appliances, shades, blinds, curtain rods, window treatments, bathroom fixtures, awnings,  
115 attached heating and cooling systems, attached irrigation equipment, screens, shutters storm windows; screen doors, fireplace inserts,  
116 attached fireplace screens, electric garage door openers, wall to wall carpeting, gas logs and lighters, and all oil or other fuel on hand at the time  
117 of possession and, firewood in pasture  
118 \_\_\_\_\_

119 except \_\_\_\_\_  
120

121 13. TITLE: FATCO

122 (a) Title Insurance to be Issued by: \_\_\_\_\_  
123 Title insurance provided at closing shall be  Standard Title Insurance  Extended Title Insurance. (If no box is checked, Standard Title  
124 Insurance shall be provided.) Seller will pay the cost of Standard Title Insurance. If Buyer requires Extended Title Insurance, Buyer agrees  
125 to pay all costs in excess of those charged for the standard form including, without limitation, increased premiums and survey costs. If a  
126 survey is required, Buyer shall order the survey within three (3) business days of receiving notice from the title company that a survey is  
127 required and Buyer shall pay the estimated cost of the survey prior to performance of any survey work or Buyer can waive requirement for  
an extended policy and accept standard title insurance.

128 (b) Title Insurance Commitment: Within five (5) days of mutual acceptance, Seller shall arrange for the  Listing Agent or  Closing Agent, at  
129 Seller's expense, to apply for a preliminary commitment ("Commitment") for an ALTA form Owner's policy of title insurance ("Policy") as  
130 described in subparagraph (a) above, with homeowner's additional protection and inflation protection endorsements, if available at no  
131 additional charge, to be issued by the above title company. Seller shall pay title insurance cancellation fees.

132 (c) Extended Title Insurance: Buyer acknowledges that the coverage afforded by a standard form policy of title insurance provides limited or  
133 no coverage for loss by reason of conflicts in boundary lines, shortage in area, encroachments, or any other matters which an accurate

Buyer's Initials CM Seller's Initials \_\_\_\_\_

- 134 survey would disclose. More extensive coverage through an extended policy of title insurance may be available for an additional charge  
 135 and subject to additional requirements imposed by the title company including a survey.
- 136 (d) **Title Insurance Exceptions and Exclusions:** The title policy shall contain no exceptions to or exclusions from coverage other than those  
 137 generally provided in the specified title policy form and those which are consistent with subparagraph (e) below. If title cannot be made so  
 insurable by closing, and if Buyer does not elect to waive any exceptions to coverage which are not consistent with this subparagraph and  
 subparagraph (e) below, this Agreement shall terminate at Buyer's option.
- 140 (e) **Condition of Title:** Unless otherwise specified in this Agreement, title to the Property at closing shall be free of all encumbrances and  
 141 defects provided that presently recorded reservations, covenants, conditions and restrictions, easements and existing building or zoning  
 142 regulations or restrictions, reserved oil and/or mining rights, and rights reserved in federal patents or state deeds which do not interfere with  
 143 Buyer's intended use of the Property shall not be considered encumbrances or defects. Monetary obligations not assumed by Buyer shall  
 144 be paid from Seller's funds at closing.
- 145 14. **ASSIGNMENT:** Buyer may not assign Buyer's interest in this Agreement without Seller's prior written consent.
- 146 15. **DEFAULT/TERMINATION:** If this Agreement is terminated for any reason, any costs authorized under this Agreement to be advanced from the  
 147 earnest money deposit shall be deducted before the remaining earnest money is refunded to the Buyer or forfeited to Seller. If a dispute should  
 148 arise regarding the disbursement of any earnest money, the party holding the earnest money may interplead the funds into court and that party  
 149 shall recover all costs and attorney fees associated with the interpleader action from the earnest money before any other disbursements are  
 150 made. Furthermore, if either Buyer or Seller defaults, the non-defaulting party may seek specific performance or damages, except that the  
 151 Seller's remedy shall be limited as follows if the box below has been checked.
- 152  In the event the Buyer fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the  
 153 Buyer shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure. Furthermore, if the  
 154 earnest money deposited exceeds five percent (5%) of the sale price, Seller may retain as liquidated damages and as Seller's sole  
 155 remedy earnest money equaling only five percent (5%) of the purchase price; any additional earnest money shall be refunded to Buyer.  
 156 If the earnest money is forfeited as liquidated damages, the money shall be divided fifty percent (50%) to Seller, twenty-five percent  
 157 (25%) to the listing broker, and twenty-five percent (25%) to the selling broker provided, however, that the amount paid to the real  
 158 estate brokers shall not exceed the agreed brokerage fee.
- 159 16. **ATTORNEYS FEES/COSTS AND MEDIATION:** If the Buyer, Seller, or any real estate licensee or broker involved in this transaction is involved  
 160 in any dispute relating to this transaction, any prevailing party shall recover reasonable attorney's fees and costs (including those for appeals)  
 161 which relate to the dispute. In the event of a dispute, it is recommended (but not required) that the parties engage in mediation in an effort to  
 162 resolve the dispute without the need for a lawsuit. The Washington Association of REALTORS® does offer a mediation service. For  
 163 information, call 1-800-562-6024.
- 164 17. **FIRPTA COMPLIANCE:** If Buyer does not intend to use the property as a principal residence, or if the purchase price exceeds \$300,000.00, this  
 165 sale may be subject to the withholding and reporting requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), unless Seller  
 166 furnishes to Buyer an affidavit of non-foreign status. Seller and Buyer agree to comply with FIRPTA, if applicable.
- 167 18. **CASUALTY/LOSS:** If, prior to closing, the Property or improvements on the Property are destroyed or materially damaged by fire or other  
 168 casualty, Buyer may elect to terminate this Agreement, and the earnest money shall be refunded to Buyer.
- 169 19. **COMPUTATION OF TIME:** Unless specified otherwise herein, any periods of time referenced in this Agreement shall expire at 9:00 p.m. (Pacific  
 Time Zone) of the last calendar day of the specified time period, unless the last day is a Saturday, Sunday, or legal holiday as prescribed in  
 RCW 1.16.050, in which event the specified period of time shall expire at 9:00 p.m. (Pacific Time Zone) on the next business day. Any specified  
 period of three (3) days or less shall include business days only.
- 172 20. **PROFESSIONAL ADVICE:** Buyer and Seller each acknowledge that it is advisable to have the terms and conditions of this Agreement reviewed  
 173 by independent legal counsel and/or a tax advisor, as the terms and conditions affect the parties' rights and may have tax implications. Each  
 174 party is specifically aware that issues such as form of deed used for conveyance, agency representation, financing documents, liquidated  
 175 damages, title insurance and seller representations are complicated and that the parties may require advice that a real estate licensee is not  
 176 licensed to give and for which the parties should contact their own attorney or accountant. Furthermore, Buyer and Seller agree that: (a) they  
 177 are not relying on any representations or advice by the real estate licensees involved in this transaction; and, (b) they have satisfied themselves  
 178 as to the terms and conditions of this sale.
- 179 21. **GENERAL PROVISIONS:**
- 180 (a) **Notices:** Unless otherwise specified in this Agreement, any notice required or given under the terms of this Agreement must be written.  
 181 Receipt of any notice shall be defined as the earlier of: three (3) business days following the postmark date; or the date the notice is  
 182 actually received by the party or at the office of the Listing Agent for Seller and Selling Agent for Buyer regardless of the agency  
 183 relationships involved. For the purposes of this Agreement, receipt by the appropriate agent (as set forth above) of a copy of a Real  
 184 Property Transfer Disclosure Statement, Condominium Public Offering Statement and Condominium Resale Certificate or any other  
 185 documents related thereto, as applicable, shall constitute receipt by the party. Seller must keep the Listing Agent advised of the Seller's  
 186 whereabouts, and Buyer must keep the Selling Agent advised of Buyer's whereabouts. The Listing Agent's responsibility to the Seller and  
 187 the Selling Agent's responsibility to the Buyer for delivery of notices is limited to calling the party and if the party is not available by phone,  
 188 mailing the notice to the party's last known address.
- 189 (b) **Faxes and Counterparts:** Facsimile transmission of any signed original document, and retransmission of any signed facsimile  
 190 transmission shall be the same as delivery of an original. At the request of either party, or the closing agent, the parties will confirm  
 191 facsimile transmitted signatures by signing an original document. This Agreement may be signed in counterparts.
- 192 (c) **Integration:** There are no verbal agreements or understandings which modify this Agreement. This Agreement constitutes the full  
 193 understanding between Buyer and Seller.
- 194 (d) **Time is of the Essence:** Time is of the essence as to all terms and conditions of this Agreement.
- 195 (e) **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. These plans may provide  
 196 additional protection and benefit to Seller or Buyer. Cost of coverage may vary.
- 197 (f) **Backup Offers:** Buyer is aware that during the term of this Agreement, Seller may continue to market the Property and solicit and accept  
 198 backup offers.
- 199 (g) **Venue/Applicable Law:** This Agreement shall be interpreted and construed according to the laws of the state of Washington; venue shall  
 200 be in the county in which the Property is located.
- 201

Buyer's Initials CM

Seller's Initials \_\_\_\_\_

No. 66675

202 (h) Survival: All terms of this Agreement, which are not satisfied or waived prior to closing, shall survive closing. These terms shall include,  
203 but not be limited to, representations and warranties, attorney's fees and costs, disclaimers, repairs, rents and utilities, etc.,  
204 22. ADDITIONAL TERMS AND CONDITIONS: vacate property to its entirety.  
205 seller to take washer + dryer.

208 23. ADDENDA/ATTACHMENTS: At the time of Buyer's offer, the following addenda/attachments are part of this Agreement: Financing A, Inspection B, Addendum C  
209 Buyer and Seller may only amend this Agreement by mutual written consent.  
210

211 24. AGREEMENT TO PURCHASE: Buyer offers to purchase the Property on the above terms and conditions. Buyer hereby acknowledges receipt  
212 of a copy of this Agreement. Seller shall have until 12  a.m./ p.m., April 20, 04 to  
213 accept this offer unless sooner withdrawn by delivering a signed copy to Buyer or Selling Agent's office. Acceptance shall not be effective until a  
214 signed copy hereof is actually received by Buyer or at the office of the Selling Agent.  
215

216  
217 Carin Merrill 4-19-04  
218 Buyer's Signature Date

Century 21 Americana Prop.  
Selling Broker (Name)  
Emily Cazaroti 04/01/04  
Selling Agent's (Name) Date

222 Buyer's Signature Date

687-2600 / 921-7022  
Selling Agent's Phone (work)/(home)

225 Buyer's Phone (work)/(home)

687-6083  
Selling Agent's FAX Number

231 Buyer's Address (City, State, Zip)

232 25. SELLER'S ACCEPTANCE: Subject to Seller's counteroffer or modifications, if any, Seller agrees to sell the Property on the terms and  
233 conditions specified herein. Upon Buyer's and Seller's mutual acceptance of terms, Seller confirms by signing this Purchase and Sale  
234 Agreement that the Listing Agent has performed Listing Agent's obligations to Seller by procuring a buyer, and has earned the compensation  
235 described in the listing agreement referenced by MLS number 4005727. Seller confirms that Broker(s) is entitled to collect  
236 Broker's compensation directly from the escrow agent at closing from proceeds of the sale. Seller acknowledges receipt of a copy of this  
237 Purchase and Sale Agreement, signed by both parties.  Seller's Counteroffer or modifications are made a part of this Agreement. Buyer shall  
238 have until  a.m./ p.m., \_\_\_\_\_, \_\_\_\_\_, unless sooner withdrawn within which to accept  
239 same. Acceptance shall not be effective until a signed copy hereof is actually received by Seller or at the office of the Listing Agent.  
240

242 Seller's Signature Date

Listing Broker (Name)

245 Seller's Signature Date

Listing Agent's (Name) Date

248 (Seller's Name Printed)

Listing Agent's Phone (work)/(home)

251 Seller's Phone (work)/(home)

Listing Agent's FAX Number

254 Seller's Address (City, State, Zip)

257 Mortgagee's Name

Seller's Loan Number

260 Mortgagee's Phone Number

Mortgagee's Address

262 There are \_\_\_\_\_ additional mortgages on this property.

264 26. BUYER'S RECEIPT: A true copy of the foregoing signed by Seller, is hereby received on: \_\_\_\_\_  
265  
266  
267

268 Buyer

Buyer

Apr 25 04 03:04p  
Apr 25 04 02:44p

Friendly Agent  
Em J, Santino Lazaroti

509 477-7928  
360-41585

p. 2  
p. 10

FROM : CENT-21CP SHERRIE NELSON  
04/19/2004 15:24 3606976083

FAX NO. : 360-896-5997  
AMERICANA

Apr. 24 2004 07:51AM P10

PAGE 13/13

NWMLS Form No. 34  
Addendum/Amendment to P & S  
Rev. 5/95  
Page 1 of 1

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Northwest Multiple Listing Service  
ALL RIGHTS RESERVED

ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated April 19, 2004 1  
between Carrie Merrill ("Buyer") 2  
and Harkins ("Seller") 3  
concerning: 4008 NE 110th St. Vanc, Wa 98686 ("the Property"). 4  
IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS: 5

1) ~~Buyer to waive \$1800.00 paint allowance~~  
for purchase price of ~~\$265,000.~~ \$267,500. 9

2) Sale Price is \$267,500. (Two hundred sixty seven thousand five hundred) 10

3) Closing date is no sooner than May 15, 04 nor later than May 20, 04. 12

4) Exclude Winch, Vice & Sander in Saw. Also 2 power saws & all tools. 16

5) Seller to pay up to \$5,000.00 of Buyer Closing Costs including prepaids & escrow fees.  
C. Merrill 21

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged. 25  
AGENT (COMPANY) Century 21 Americana Prop. 26  
BY: Santino Lazaroti 27

Initials: BUYER: CM Date: 4-19-04 SELLER: [Signature] Date: 04/23/04 28  
RIVCO. Date: SELLER CO. Date: 04/23/04

No. 66675



RESIDENTIAL PURCHASE and SALE AGREEMENT  
THIS CONTRACT CONTROLS THE TERMS OF THE SALE OF THE PROPERTY



(Please read carefully before signing)  
Vancouver, Washington, April 19, 04

AGENCY DISCLOSURE: At the signing of this Agreement, the Selling Agent (insert name of selling agent) Emily Lazaroff represented  Buyer,  Seller,  Both parties,  Neither party and the Listing Agent (insert name of listing agent) Shorne Nelson & William Nelson represented  Seller,  Both Parties. Buyer and Seller both confirm that prior oral and/or written disclosure of agency was provided to each of them in this transaction. If Selling Agent and Listing Agent are different licensees affiliated with the same broker, then both parties consent to that broker acting as a dual agent. If Selling Agent and Listing Agent are the same person representing both parties, then both parties confirm their consent to that agent and his/her broker acting as dual agents. Both parties acknowledge receipt of a copy of the pamphlet entitled "The Law of Real Estate Agency."

1. PARTIES: This RESIDENTIAL PURCHASE and SALE AGREEMENT ("Agreement") is made between Carme Merrill (single person) as "Buyer", and Harkins as "Seller". Buyer agrees to purchase Seller's property on the following terms and conditions.

2. PROPERTY: Common Address 4008 NE 110th St.  
City: Vancouver County: Clark State of Washington,  
Zip: 98646 (Tax Parcel Number) 189934010  
Legal Description: 1908SEC36T3NRT1EWM AKA LOT 35P1337 U3A

If Legal Description is not attached at final acceptance of this Agreement, Buyer shall have three (3) business days after receiving the Legal Description to approve the Legal Description as accurately reflecting the Property which the parties intend to be the subject of this Agreement. Failure to give written disapproval shall be deemed to be approval.

3. PURCHASE PRICE/FINANCING: The Purchase Price is (Two hundred Sixty Thousand), payable as follows:  
 All cash at closing (not conditioned on buyer obtaining a loan) Two hundred Sixty Seven Thousand  
 Proceeds of Buyer Financing (attach a Financing Addendum) Two hundred Sixty Seven Thousand  
 Other (attach a Method of Payment Addendum) Five hundred

Buyer Representation: Buyer represents that Buyer has sufficient funds available to close this sale in accordance with this Agreement, and is not relying on any contingent source of funds unless otherwise set forth in this Agreement.

4. EARNEST MONEY: The amount of Earnest Money is: (\$ 1500.00). Selling Agent acknowledges receipt of Earnest Money from Buyer in the form of:  check for \$ 1500.00,  cash of \$ \_\_\_\_\_  
 note for \$ \_\_\_\_\_, due as stated in the note (copy attached), and/or  Other \$ \_\_\_\_\_  
in the form of: FATCO. These funds shall be deposited into the selling broker's trust account or FATCO to be credited to Buyer at closing. Any checks shall be deposited by the close of the business day following the day of mutual acceptance of this Agreement, or as otherwise agreed by the parties.

5. ADDITIONAL CONTINGENCIES: This Agreement is contingent on:  
 The sale of Buyer's property (attach Sale of Buyer's Property Contingency Addendum).  
 Inspections (attach Inspection Contingency Addendum).  
 Other: The sale of 2904 NE 54th St. - proof of offer by May 5, 04

6. CONVEYANCE OF TITLE: Conveyance of fee title shall be by  statutory warranty deed  Other: \_\_\_\_\_ (statutory warranty deed if not filled in).

Buyer and Seller understand that the form of the deed may affect significant legal rights as to which a real estate licensee is not licensed to give advice. If this Agreement provides for the sale and transfer of the vendee's interest under an existing real estate contract, Seller shall convey Seller's interest by an assignment of contract and deed sufficient in form to convey after acquired title.

7. CLOSING: Closing shall be within ten (10) days after satisfaction or waiver of all contingencies and "subject to's", but not earlier than May 20, 04, nor later than June 10, 04, the latest of which shall be the termination date of this Agreement. Closing shall mean the date on which all documents are recorded and the net sales proceeds are available for disbursement to Seller. Buyer and Seller shall deposit, when notified and without delay, in escrow with the closing agent all instruments, monies, and other documents reasonably required to complete the closing of the transaction in accordance with the terms of this Agreement.

8. POSSESSION: Buyer shall take physical possession of the Property (and all existing keys to locks and alarms, and any portable control devices for accessing the Property):  
 on closing  
 other (specify) \_\_\_\_\_

Seller shall maintain the property in its current condition until Buyer takes possession.

9. ESCROW/CLOSING COSTS: Closing shall occur at FATCO, who shall act as the escrow/closing agent unless the parties agree in writing otherwise. Unless limited by law or modified by the terms of this Agreement, Buyer and Seller shall pay at closing all customary and usual closing costs and fees, including but not limited to the following: Seller shall pay the Seller's excise tax, the cost of the owner's standard form of title insurance, recording fees, and Seller's half share of escrow fees (unless Buyer obtains VA financing in which case Seller shall pay all escrow fees); Buyer shall pay all costs and fees associated with the financing, any other costs agreed to under the terms of this Agreement, and Buyer's half share of the escrow fees (unless prohibited by government regulation). Taxes for the current year, rents, interest, association or homeowner's fees, if any, shall be pro-rated as of the date of closing. Except as described in Paragraph 10(b) of this Agreement, all utility charges shall be paid and/or pro-rated outside escrow directly between Buyer and Seller.

Buyer's Initials CM

Seller's Initials EN WN

No. 666675

10. SELLER'S DISCLOSURE AND REPRESENTATIONS: If Buyer has any questions regarding the following, Buyer should make Buyer's offer subject to relevant inspections and reports.

(a) Utilities: The Seller represents that the Property is served by the following utilities:  private/community water system,  private well,  community well,  private irrigation system,  septic system,  natural gas,  telephone,  cable TV,  public water,  electricity,  sewer,  other \_\_\_\_\_

(b) Governmental Utilities: Pursuant to RCW 60.80, Buyer and Seller  do request  do not request (if neither box is checked, then "do request" applies.) the escrow/closing agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges affecting the Property. Seller represents that the Property is served by the following utilities operated by the state, county, city or other governmental agencies which have lien rights against the Property. The parties authorize the Listing Agent or the Selling Agent to insert over their signatures, the name and addresses of the following utility providers:

Name of Provider	Address	Name of Provider	Address
<input type="checkbox"/> Sewer _____	_____	<input type="checkbox"/> Electricity _____	_____
<input type="checkbox"/> Storm Water _____	_____	<input type="checkbox"/> Garbage _____	_____
<input type="checkbox"/> Drainage _____	_____	<input type="checkbox"/> Irrigation _____	_____
<input type="checkbox"/> Water _____	_____	<input type="checkbox"/> Special Districts _____	_____
		(LID's and ULID's)	

Seller will pay for all utilities through the date of closing and keep all utilities/services presently connected until closing or occupancy by the Buyer, whichever is sooner, except: \_\_\_\_\_

Shares in light and/or water companies and associations, if any,  will  will not be included in the sale. If the Property is served by a septic system, Seller  will  will not have the septic tank pumped prior to closing. If the Property is served by a septic system, Seller  will  will not provide a septic system inspection report from the controlling regulatory authority, or a private inspector approved by the controlling regulatory authority. If the Property is served by an individual private well, Seller  will  will not provide a basic water test (bacteriological test) of well water,  will  will not provide a quantity test, and Seller  will  will not provide an additional water test (primary inorganic chemical test) of well water which meets State Department of Health Services standards. If Buyer wishes any additional type of water test, Buyer should make such request in an addendum attached to this Agreement.

(c) Leased Fixtures: The following fixtures presently are leased:  furnace,  gas conversion burner,  hot water heater,  soft water unit,  security/fire alarm system,  propane tanks,  other \_\_\_\_\_ Buyer  does  does not agree to assume such lease(s) at closing. If Buyer does not agree to assume such leases, or if Buyer cannot assume such leases because of the requirements of the lessor or a lender providing financing, then  Buyer  Seller shall purchase such fixtures and they shall be included in this sale.

(d) Property Maintenance: Seller will perform ordinary maintenance on the Property and yard as presently exists until closing or as otherwise agreed. Seller will remove all of Seller's personal property, trash, debris, and all articles not agreed to be left at closing.

(e) Boundaries/Square Footage: Seller makes no representations regarding the locations or length of the boundary lines, size of lot, or the square footage of the house and other improvements. Buyer has personally observed the property and has reached Buyer's own conclusions as to the adequacy and acceptability of the Property based upon such personal inspection.

(f) Lead Based Paint: If the Property includes a house built before 1978, then the addendum entitled "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards" must be attached to this Agreement.

11. SELLERS LEAD-BASED PAINT DISCLOSURE If Seller is required to provide Buyer a "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards", and has not done so prior to mutual execution of this Agreement, then Buyer shall have the unconditional right to terminate this Agreement for three days following Buyer's receipt of the Disclosure. In addition, Buyer shall have ten days following receipt of the Disclosure to conduct an inspection for lead-based paint hazards.

12. INCLUDED ITEMS: All fixtures and fittings that are attached to the Property are included, free of liens, in the purchase price including, plumbing and light fixtures and bulbs (except floor, standing, and swing lamps), attached television antenna, satellite dish and equipment, all attached floor coverings, trees, plants and shrubs in the yard, built-in appliances, shades, blinds, curtain rods, window treatments, bathroom fixtures, awnings, attached heating and cooling systems, attached irrigation equipment, screens, shutters storm windows, screen doors, fireplace inserts, attached fireplace screens, electric garage door openers, wall to wall carpeting, gas logs and lighters, and all oil or other fuel on hand at the time of possession and firewood in pasture

except \_\_\_\_\_

13. TITLE:

(a) Title Insurance to be issued by: FATCO  
Title insurance provided at closing shall be  Standard Title Insurance  Extended Title Insurance. (If no box is checked, Standard Title Insurance shall be provided.) Seller will pay the cost of Standard Title Insurance. If Buyer requires Extended Title Insurance, Buyer agrees to pay all costs in excess of those charged for the standard form including, without limitation, increased premiums and survey costs. If a survey is required, Buyer shall order the survey within three (3) business days of receiving notice from the title company that a survey is required and Buyer shall pay the estimated cost of the survey prior to performance of any survey work or Buyer can waive requirement for an extended policy and accept standard title insurance.

(b) Title Insurance Commitment: Within five (5) days of mutual acceptance, Seller shall arrange for the  Listing Agent or  Closing Agent, at Seller's expense, to apply for a preliminary commitment ("Commitment") for an ALTA form Owner's policy of title insurance ("Policy") as described in subparagraph (a) above, with homeowner's additional protection and inflation protection endorsements, if available at no additional charge, to be issued by the above title company. Seller shall pay title insurance cancellation fees.

(c) Extended Title Insurance: Buyer acknowledges that the coverage afforded by a standard form policy of title insurance provides limited or no coverage for loss by reason of conflicts in boundary lines, shortage in area, encroachments, or any other matters which an accurate

Buyer's Initials CM Seller's Initials EW BT

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- 34 survey would disclose. More extensive coverage through an extended policy of title insurance may be available for an additional charge  
 35 and subject to additional requirements imposed by the title company including a survey.  
 36 (d) Title Insurance Exceptions and Exclusions; The title policy shall contain no exceptions to or exclusions from coverage other than those  
 37 generally provided in the specified title policy form and those which are consistent with subparagraph (e) below. If title cannot be made so  
 38 insurable by closing, and if Buyer does not elect to waive any exceptions to coverage which are not consistent with this subparagraph and  
 39 subparagraph (e) below, this Agreement shall terminate at Buyer's option.  
 40 (e) Condition of Title: Unless otherwise specified in this Agreement, title to the Property at closing shall be free of all encumbrances and  
 41 defects provided that presently recorded reservations, covenants, conditions and restrictions, easements and existing building or zoning  
 42 regulations or restrictions, reserved oil and/or mining rights, and rights reserved in federal patents or state deeds which do not interfere with  
 43 Buyer's intended use of the Property shall not be considered encumbrances or defects. Monetary obligations not assumed by Buyer shall  
 44 be paid from Seller's funds at closing.  
 45 14. ASSIGNMENT: Buyer may not assign Buyer's interest in this Agreement without Seller's prior written consent.  
 46 15. DEFAULT/TERMINATION: If this Agreement is terminated for any reason, any costs authorized under this Agreement to be advanced from the  
 47 earnest money deposit shall be deducted before the remaining earnest money is refunded to the Buyer or forfeited to Seller. If a dispute should  
 48 arise regarding the disbursement of any earnest money, the party holding the earnest money may interplead the funds into court and that party  
 49 shall recover all costs and attorney fees associated with the interpleader action from the earnest money before any other disbursements are  
 50 made. Furthermore, if either Buyer or Seller defaults, the non-defaulting party may seek specific performance or damages, except that the  
 51 Seller's remedy shall be limited as follows if the box below has been checked.  
 52  In the event the Buyer fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the  
 53 Buyer shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure. Furthermore, if the  
 54 earnest money deposited exceeds five percent (5%) of the sale price, Seller may retain as liquidated damages and as Seller's sole  
 55 remedy earnest money equaling only five percent (5%) of the purchase price; any additional earnest money shall be refunded to Buyer.  
 56 If the earnest money is forfeited as liquidated damages, the money shall be divided fifty percent (50%) to Seller, twenty-five percent  
 57 (25%) to the listing broker, and twenty-five percent (25%) to the selling broker provided, however, that the amount paid to the real  
 58 estate brokers shall not exceed the agreed brokerage fee.  
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 60 in any dispute relating to this transaction, any prevailing party shall recover reasonable attorney's fees and costs (including those for appeals)  
 61 which relate to the dispute. In the event of a dispute, it is recommended (but not required) that the parties engage in mediation in an effort to  
 62 resolve the dispute without the need for a lawsuit. The Washington Association of REALTORS® does offer a mediation service. For  
 63 information, call 1-800-562-6024.  
 64 17. FIRPTA COMPLIANCE: If Buyer does not intend to use the property as a principal residence, or if the purchase price exceeds \$300,000.00, this  
 65 sale may be subject to the withholding and reporting requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), unless Seller  
 66 furnishes to Buyer an affidavit of non-foreign status. Seller and Buyer agree to comply with FIRPTA, if applicable.  
 67 18. CASUALTY/LOSS: If, prior to closing, the Property or improvements on the Property are destroyed or materially damaged by fire or other  
 68 casualty, Buyer may elect to terminate this Agreement, and the earnest money shall be refunded to Buyer.  
 69 19. COMPUTATION OF TIME: Unless specified otherwise herein, any periods of time referenced in this Agreement shall expire at 8:00 p.m. (Pacific  
 70 Time Zone) of the last calendar day of the specified time period, unless the last day is a Saturday, Sunday, or legal holiday as prescribed in  
 71 RCW 1.16.050, in which event the specified period of time shall expire at 8:00 p.m. (Pacific Time Zone) on the next business day. Any specified  
 72 period of three (3) days or less shall include business days only.  
 73 20. PROFESSIONAL ADVICE: Buyer and Seller each acknowledge that it is advisable to have the terms and conditions of this Agreement reviewed  
 74 by independent legal counsel and/or a tax advisor, as the terms and conditions affect the parties' rights and may have tax implications. Each  
 75 party is specifically aware that issues such as form of deed used for conveyance, agency representation, financing documents, liquidated  
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 77 licensed to give and for which the parties should contact their own attorney or accountant. Furthermore, Buyer and Seller agree that: (a) they  
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 83 actually received by the party or at the office of the Listing Agent for Seller and Selling Agent for Buyer regardless of the agency  
 84 relationships involved. For the purposes of this Agreement, receipt by the appropriate agent (as set forth above) of a copy of a Real  
 85 Property Transfer Disclosure Statement, Condominium Public Offering Statement and Condominium Resale Certificate or any other  
 86 documents related thereto, as applicable, shall constitute receipt by the party. Seller must keep the Listing Agent advised of the Seller's  
 87 whereabouts, and Buyer must keep the Selling Agent advised of Buyer's whereabouts. The Listing Agent's responsibility to the Seller and  
 88 the Selling Agent's responsibility to the Buyer for delivery of notices is limited to calling the party and if the party is not available by phone,  
 89 mailing the notice to the party's last known address.  
 90 (b) Faxes and Counterparts: Facsimile transmission of any signed original document, and retransmission of any signed facsimile  
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 92 facsimile transmitted signatures by signing an original document. This Agreement may be signed in counterparts.  
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 98 (f) Backup Offers: Buyer is aware that during the term of this Agreement, Seller may continue to market the Property and solicit and accept  
 99 backup offers.  
 00 (g) Venue/Applicable Law: This Agreement shall be interpreted and construed according to the laws of the state of Washington; venue shall  
 01 be in the county in which the Property is located.

Buyer's Initials

CLM

Seller's Initials

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(h) Survival: All terms of this Agreement, which are not satisfied or waived prior to closing, shall survive closing. These terms shall include, but not be limited to, representations and warranties, attorney's fees and costs, disclaimers, repairs, rents and utilities, etc.

22. ADDITIONAL TERMS AND CONDITIONS: Vacate property to its entirety. Seller to take washer + dryer.

23. ADDENDA/ATTACHMENTS: At the time of Buyer's offer, the following addenda/attachments are part of this Agreement: Financing A, Inspection B, Addendum C  
Buyer and Seller may only amend this Agreement by mutual written consent.

24. AGREEMENT TO PURCHASE: Buyer offers to purchase the Property on the above terms and conditions. Buyer hereby acknowledges receipt of a copy of this Agreement. Seller shall have until 12 04 a.m./p.m., April 20 04 to accept this offer unless sooner withdrawn by delivering a signed copy to Buyer or Selling Agent's office. Acceptance shall not be effective until a signed copy hereof is actually received by Buyer or at the office of the Selling Agent.

Carin Merrill 4-19-04  
Buyer's Signature Date

Century 21 Americana Prop.  
Selling Broker (Name)

Buyer's Signature Date

Emily Lazaroti 04/10/04  
Selling Agent's (Name) Date

3606959617 Hm  
Buyer's Phone (work)/(home)

687-2600/921-7022  
Selling Agent's Phone (work)/(home)

910 5428 cell  
2901 NE 54th Van wa  
Buyer's Address (City, State, Zip)

687-6083  
Selling Agent's FAX Number  
98003

25. SELLER'S ACCEPTANCE: Subject to Seller's counteroffer or modifications, if any, Seller agrees to sell the Property on the terms and conditions specified herein. Upon Buyer's and Seller's mutual acceptance of terms, Seller confirms by signing this Purchase and Sale Agreement that the Listing Agent has performed Listing Agent's obligations to Seller by procuring a buyer, and has earned the compensation described in the listing agreement referenced by MLS number 4005727. Seller confirms that Broker(s) is entitled to collect Broker's compensation directly from the escrow agent at closing from proceeds of the sale. Seller acknowledges receipt of a copy of this Purchase and Sale Agreement, signed by both parties. Seller's Counteroffer or modifications are made a part of this Agreement. Buyer shall have until 7 04 a.m./p.m., April 25 2004, unless sooner withdrawn within which to accept same. Acceptance shall not be effective until a signed copy hereof is actually received by Seller or at the office of the Listing Agent.

Elizabeth H. Harkins 04/23/04  
Seller's Signature Date

Century 21 Cascade Pacific  
Listing Broker (Name)

Dale R. Harkins 04/23/04  
Seller's Signature Date

Sherrie Nelson/Wendy Nelson 4/23/04  
Listing Agent's (Name) Date

Elizabeth H. Harkins  
(Seller's Name Printed)

360-896-5997 / 360-721-3610  
Listing Agent's Phone (work)/(home)

cell 509-350-0183  
Seller's Phone (work)/(home)

360-574-4065  
Listing Agent's FAX Number

PO Box 5056 Benton City, WA 99320  
Seller's Address (City, State, Zip)

Provident Funding Associates  
Mortgagee's Name

Seller's Loan Number

1800-696-8199  
Mortgagee's Phone Number

Mortgagee's Address

There are 0 additional mortgages on this property.

26. BUYER'S RECEIPT: A true copy of the foregoing signed by Seller, is hereby received on:

Carin Merrill  
Buyer

Buyer

FROM: CENT-21CP SHERRIE NELSON FAX NO.: 360-896-5997 Apr. 24 2004 07:51AM P12  
04/19/2004 15:24 3606876883 AMERICANA PAGE 13/13

NWMLS Form No. 14  
Addendum/Amendment to P & S  
Rev. 5/03  
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ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated April 19 2004  
between Carrie Merrill ("Buyer")  
and Harkins ("Seller")  
concerning: 4008 NE 110th St. Vanc, Wa 98686 ("the Property").  
IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS:

- 1) Buyer to waive \$1800.00 print allowance for purchase price of ~~\$265,000~~ \$267,500.
- 2) Sale price is \$267,500. (Two hundred sixty seven thousand five hundred)
- 3) Closing date is no sooner than May 15, 04 nor later than May 20, 04.
- 4) Expenses: Winch, Misc. E. Expenses in Escrow. Also 2 Power, Sewer + all taxes.
- 5) Seller to pay up to \$5,000.00 of Buyer's Closing Costs including prepaid + escrow fees.  
C. Merrill

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged.  
AGENT (COMPANY) Century 21 Americana Prop.  
BY: Emily Lazaretti

Initials: BUYER: CM Date: 4-19-04 SELLER: [Signature] Date: 04/23/04  
REF ID: [Signature] Date: 04/23/04

