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No. ~~87085-3~~

SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTOPHER R. LARSON,

Appellant,

v.

JULIA CALHOUN,

Respondent.

BRIEF OF RESPONDENT

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A. INTRODUCTION

Appellant Christopher Larson seeks direct review by this Court of the trial court's property division in a dissolution action issued after a 3-week trial. Larson *concedes* that the trial court properly characterized the parties' assets and that the trial court had the discretion to make a "just and equitable" distribution of the marital assets under RCW 26.09.080 and applicable case law. But he contends that the trial court somehow abused its discretion by awarding a small portion of his separate property¹ to respondent Julia Calhoun. He argues that because "ample provision" could allegedly be made for Calhoun from the parties' community estate, or that Calhoun was not "impoverished" by the disposition of the community property, his separate property should not have been awarded to Calhoun. Larson misrepresents the trial court's actual property division, and asks this Court to effectively overrule its long-standing precedents addressing the award of separate property in a dissolution action. He also ignores the fact that the trial court essentially made the distribution he requested.

¹ Larson contends that the trial court awarded Calhoun "a significant share" of his separate estate. Br. of Appellant at 4, 21. He is mistaken. The trial court awarded Calhoun roughly 11% of Larson's separate estate when it justly and equitably divided the marital assets in the original findings.

The trial court carefully exercised its discretion to award Calhoun a small portion of Larson's separate estate. At its root, Larson merely wants a "re-do" of the 3-week trial, a self-interested exercise meant to maximize his share of the marital assets. This Court should decline Larson's effort to disrupt Washington law governing the distribution of marital assets, and award fees to Calhoun for Larson's intransigence.

B. ASSIGNMENTS OF ERROR

Calhoun acknowledges Larson's assignments of error, but believes the issue pertaining to those assignments is more appropriately formulated as follows:

Where this Court in *In re Marriage of Konzen*, 103 Wn.2d 470, 693 P.2d 97, *cert. denied*, 473 U.S. 905 (1985) has properly interpreted RCW 26.09.080's direction that *all* marital property, both separate and community, is before a court in a dissolution action and that a court has discretion to make a just and equitable distribution of marital assets, including the award of separate property from one spouse to the other, and the Legislature has long acquiesced in that interpretation, should this Court disrupt Washington law by substantially modifying or overruling *Konzen*?

C. STATEMENT OF THE CASE²

² Larson's statement of the case is not a "fair statement of the facts and procedure relevant to the issues presented for review, without argument." RAP 10.3(a)(5). He omits key aspects of the facts, particularly his own proposals to the trial court on the property division and Calhoun's major contributions to their marriage. He does not address the supplemental findings by the trial court. The statement is replete with argumentative statements, as evidenced by the captions in that statement of the case. This Court should disregard Larson's inappropriate arguments and should be aware of the entirety of the facts herein.

Larson touches only briefly upon some of the key facts in this case, and, in particular, ignores, or seriously undervalues, the contributions that Calhoun made to the marriage and to the community estate. Br. of Appellant at 37. (Larson's only acknowledgement of Calhoun's contribution to the marriage.)

Larson and Calhoun were married for 24 years, although they were together for nearly 30 years. CP 280 (FF 1, 5). They met in 1979 when Larson was 20 and Calhoun was 22. RP 1470, 1490. They began dating exclusively in 1980, and began living together in July 1985 while they simultaneously planned their wedding and a move to Japan. RP 1473, 1479, 1481-84.

Calhoun contributed substantially to Larson's success. CP 280 (FF 4); RP 2010. Per the couples' agreement, Calhoun never worked outside of the home. CP 96, 328. Instead, she raised the couple's five children, three of whom were adopted, and was the driving force behind the couple's decision to serve for more than a decade as foster parents to over 100 foster children. CP 328; RP 1500-03, 1509-11, 1579. The couple also financially supported three other disadvantaged children. RP 1512-14, 1576-77.

Calhoun entertained for the couple and attended to their extensive charitable activities. CP 279, 280 (FF 2, 4); RP 218, 1590, 1606, 1815,

1982-83, 2010, 2012. She is the main benefactor for the non-profit agency, Treehouse for Kids, which provides support and assistance to foster children. RP 1581-82, 1984. She oversaw the construction of, and presently manages and supports, a Rainier Valley commercial building that houses several nonprofit organizations. RP 1802-04. She was also actively involved in the construction, remodeling, and furnishing of the couple's numerous residences. RP 1588, 1594-1601, 1612, 1777-78, 1789, 1798. As the trial court noted, she was "the approachable face" of the couple. CP 280 (FF 4).

Larson petitioned to dissolve the parties' marriage in the King County Superior Court on June 8, 2010. CP 1-5. The case was tried aggressively.³ The trial court heard multiple motions and cross-motions to address various issues, including temporary financial provisions, parenting, trial continuances, attorney fees, and discovery. *See, e.g.*, CP 303-77, 404-21, 432, 435-40, 519-32, 557-59, 568-71, 886-88, 991-93.

For example, after months of negotiations and multiple revisions to a proposed temporary order to maintain the parties' financial status quo, Calhoun was compelled to bring a motion for temporary relief on September 15, 2010. CP 303-07. Commissioner Meg Sassaman granted

³ The parties filed a joint motion in December 2010 to continue the trial date, which the trial court granted. CP 411-13, 417-21, 432. The trial court granted a second trial continuance to accommodate a scheduling conflict for Larson's counsel. CP 481-86.

Calhoun's requests, noting the fairness and trust that Calhoun had shown in Larson by allowing him to remain in exclusive control of the estate during the dissolution proceedings. CP 99, 404-410, 1610-11, 1734.

Each side engaged in extensive pre-trial discovery. CP 418, 436, 548, 1013-16, 1078-96, 1105-36, 1142-85. On May 2, 2011, Larson filed a motion to compel answers to interrogatories, accusing Calhoun of not working fast enough to provide inventories of thousands of items of personal property located in their many homes, office buildings, and rental properties in King County, Snohomish County, Hawaii, and England. CP 435-80, 1444-55. Given Larson's unwillingness or inability to produce discovery, Calhoun cross-moved to compel and requested the appointment of a special master to adjudicate the parties' discovery disputes. CP 991-93, 999-1011, 1186-97, 1444-55, 1515-23. Attorney Evan Schwab was appointed to serve as the special master. CP 510-13. He entered orders requiring the parties to provide certain documents. CP 534-37.

By June 2011, the parties could not agree on the payment of additional attorney fees. CP 99. Given that Larson had unilaterally allowed his \$30 million life insurance policy to lapse shortly before he filed the dissolution petition, Calhoun moved for an order requiring him to reinstate the policy; additionally, she requested an award of support and additional attorney fees. CP 519-21, 525-32, 550-53, 557-59, 692, 1602-

16. On June 16, 2011, Commissioner Jacqueline Jeske ordered Larson to obtain another life insurance policy of equal value and made provision for the payment of additional attorney fees to both parties. CP 568-71; RP 1996. Calhoun moved for revision. CP 574-81. The trial court entered an agreed order modifying the commissioner's ruling on July 7, 2011. CP 627-28.

The trial in the case took nearly three weeks before the Honorable William Downing. CP 277. The trial court heard testimony principally on the voluminous marital assets, the net value of which was estimated at over \$500 million and included extensive residential and commercial real property, vacation and investment real property, business ventures/investments, art, retirement accounts, Microsoft stock, cash, and personal property. *See, e.g.*, CP 281-85, 290-92; RP 371-532, 582-944, 993-1114, 1264-1463, 1624-1748, 1839-1974, 2082-2130. The court also heard testimony concerning the couple's debt, which included approximately \$187 million owed to Goldman Sachs, approximately \$40.1 million owed to J.P. Morgan, and charitable commitments of \$5.1 million. CP 285, 289; RP 120, 223-24, 231-32, 243-44, 546, 1232.

During the trial, Larson proposed that the trial court award Calhoun \$104 million comprised of approximately \$58 million in real and

personal property, approximately \$21 million in Microsoft stock,⁴ and \$25 million in cash. CP 70; RP 27, 549, 552. He also *agreed* to assume all of the couple's debt and their charitable liabilities. CP 41, 70-71; RP 1232, 2195. Calhoun proposed an equal distribution. CP 101. In lieu of a judgment, she proposed that Larson make a transfer payment of \$105 million to be amortized over four years. CP 136.

The trial court entered extensive findings of fact and conclusions of law on December 22, 2011 in which it identified the couple's assets and liabilities, determined the value of each, characterized each as either separate or community, and directed a division that was just and equitable. CP 277-302. The trial court divided the marital estate roughly 65% to Larson and 35% to Calhoun. *See Appendix.* Calhoun moved to clarify or alternatively for reconsideration. CP 722-46, 793-97. The trial court entered amended findings and conclusions, additional finding and conclusions, and the decree on February 3, 2012. CP 210-29, 261-76. *See Appendix.*

Although Larson does not dispute the findings and conclusions in his brief, he seriously misrepresents those relating to the trial court's

⁴ Larson proposed that Calhoun be awarded 800,000 shares of Microsoft stock, valued at \$26.63 per share. CP 70, 552, 555. The shares were comprised of community property book and certificate shares, a portion of Larson's separate property book and certificate shares, a portion of Larson's separate J.P. Morgan account, and a portion of the community Fidelity account. CP 214.

property award. Br. of Appellant at 15, 16, 18. He neglects to mention or to seriously analyze the trial court's additional findings that bore on the property division. For example, he misstates the total value of each party's property award when he states that the trial court awarded Calhoun a one-third interest in Swauk Valley Ranch, LLC, valued at \$1.85 million. Br. of Appellant at 16, 18. While initially true, the trial court later awarded that interest to Larson in the amended findings based on the couple's *post-trial agreement*. CP 212, 231, 262 (Amended FF 33).

Larson also seems to imply that the trial court should not have allocated any of his separate property Microsoft shares to Calhoun. Br. of Appellant at 15, 19. But *Larson* proposed that the trial court allocate 800,000 shares of Microsoft stock to Calhoun. CP 70; RP 552, 555.⁵ While the trial court allocated those shares to Calhoun in the original findings of fact, she did not receive them. CP 214, 231, 262, 300-01. Instead, following the trial, Larson proposed to Calhoun that the trial court award those shares to him and that he sell them and give the proceeds to her so that the gain could be reported on their 2011 joint tax return and netted against the loss carry-forward generated by Video Networks.

⁵ At one point, Larson even suggested that the trial court award Calhoun a portion of his interest in Mudville Nine, Inc., which owns an interest in the Seattle Mariners, if it determined that she should receive a greater property award than him. CP 74-75.

CP 214, 231, 261-62 (Amended FF 33); 738-40. In exchange, he offered to give Calhoun either a property in Hawaii or the Swauk Valley interest. CP 231.

Calhoun opted to receive the Hawaii property valued at \$1.69 million; Larson received the Swauk Valley interest valued at \$1.85 million. CP 212, 262, 272-73 (Amended FF 33; Amended CL 18). Calhoun then received approximately \$20 million from the sale of the stock based on the couple's post-trial agreement. CP 264. That agreement skewed the total property award even more in Larson's favor.

Calhoun later moved post-trial to clarify the decree, requesting exclusive occupancy of two of the couple's homes until she moved out and a restraining order preventing Larson from entering those homes during her occupancy. CP 860-74. No order was ever entered.

According to Larson, the trial court correctly characterized the marital assets but did not properly distribute them.⁶ The trial court, however, in the exercise of the discretion afforded to it under RCW 26.09.080, long-standing Washington case law, and the couple's agreement, awarded Calhoun a portion of Larson's separate property. CP 300-01. Larson does not address in detail *why* the trial court did so,

⁶ In addition to disputes about characterization, the valuation of Larson's 30.6% interest in the Seattle Mariners and two Highlands properties known as Norcliffe and The Gatehouse were also significant issues below. CP 282-83, 290-92 (FF 9, 25, 26).

referring only to a “lopsided division” of the assets. Br. of Appellant at 15. The court’s reference was taken out of context and ignores the couple’s post-trial agreement. See CP 261 (Amended FF 33), 273 (Amended CL 18), 295 (FF 29). The trial court, an experienced trial judge, did not make a capricious decision. Rather, the trial court properly articulated the applicable law in Conclusion of Law No. 5:

In applying RCW 26.09.080, no single factor such as the duration of the marriage or the extent of separate property is to be given undue weight. Rather, the statute “directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property. The character of the property is a relevant factor which must be considered, but is not controlling.” *In re Marriage of Konzen*, 103 Wn.2d 470, 478 (1985).

CP 297. The court chose to make the distribution that it did “to the extent necessary to achieve a just result,” for the reasons it discussed *at length* in the findings.⁷ CP 295 (FF 29d). The trial court clearly articulated its rationale for the award of a small portion of Larson’s separate estate to Calhoun:

e) This was, after all, a long-term marriage in which the wife made a major contribution to all that the community accomplished, measured in terms of their children, their foster children, their impact in the broad community and their more narrow business interests. It is not that she leaves the marriage in need but the fact is

⁷ Larson claims the trial court found that the parties could be amply provided for from the \$109 million community estate alone. Br. of Appellant at 21-22. The trial court did not make such a finding. CP 294 (FF 29(a)).

she will leave the marriage in a less advantageous position than her husband.

f) The division to be effectuated will provide the wife with substantial earning capacity, moderate liquidity and assets that can be liquidated prudently as time goes by. Meanwhile, the husband, while retaining a substantially greater paper value with his separate property assets, will shoulder all of the parties' debt, most of the risk, heavy carrying costs and interest payments and a considerable amount of trapped-in tax liability. Again, it must be emphasized that both will continue to do well and both will continue to do good.

CP 295 (FF 29(e), (f)). In any event, the trial court essentially divided the estate as Larson had requested.

Larson filed his notice of appeal on March 2, 2012. CP 207-302.

D. SUMMARY OF ARGUMENT

The trial court did not abuse its discretion by making a just and equitable distribution of the marital assets that resulted in roughly 65% of the assets going to Larson and 35% to Calhoun. The trial court properly followed this Court's decision in *Konzen* when distributing the marital assets; it properly required Larson to pay Calhoun a small portion of his separate property assets to achieve a just and equitable result.

Larson seeks to turn back the clock on the award of separate property as part of a just and equitable distribution of marital property under RCW 26.09.080. His contention that separate property should never be awarded to another spouse if the distribution of community property

makes “ample provision” for a spouse or unless the division of community property results in a spouse’s “impoverishment” is truly unwise. It is not supported by the language of RCW 26.09.080 or the case law construing it. Larson has not borne his high burden of justifying the modification or overruling of *Konzen*, a decision in place since 1985. The Legislature has long acquiesced in the *Konzen* court’s interpretation of RCW 26.09.080 allowing appropriate flexibility to trial courts in making a just and equitable distribution of marital property. The argument that Larson advances to justify a changed statutory interpretation will result in an unsound and harmful public policy that will disrupt dissolution law in Washington, primarily to the serious disadvantage of women.

The Court should award Calhoun her attorney fees on appeal for Larson’s intransigence in needlessly prolonging this litigation.

E. ARGUMENT⁸

⁸ Responding to Larson’s arguments in this case is made difficult because his case has morphed from his statement of grounds for direct review to his present brief, and the brief raises new issues for the first time on appeal. In that statement of grounds, Larson made more of a frontal attack on this Court’s *Konzen* decision, relying on *Bodine v. Bodine*, 34 Wn.2d 33, 207 P.2d 7213 (1949). Statement at 6-9. *Holm v. Holm*, 27 Wn.2d 456, 178 P.2d 725 (1947) is referenced only in a footnote. Statement at 7 n.3. The gravamen of Larson’s argument was that a trial court should only award the separate property of one spouse to another if “exceptional circumstances” were present. *Id.* at 7. Larson then suggested that *Konzen* should be modified to confine its reach to economically disadvantaged spouses who would otherwise become impoverished in the absence of a separate property award. *Id.* at 7-9. Larson’s main justification for changing this Court’s *Konzen* decision was its failure “to set out the factors that are relevant to the invasion of separate property.” *Id.* at 10. Larson *nowhere* addresses such factors in his opening brief, apparently *conceding* that Washington law already more than

(1) Standard of Review for Division of Property in a Dissolution Action

RCW 26.09.080 sets forth four distinct factors to guide a trial court's allocation of the marital assets. *See* Appendix. One of those factors is the economic circumstances of the parties. In addition to the statutory criteria of a fair, just and equitable distribution, the case law has offered a variety of circumstances governing a trial court's exercise of its discretion to award the separate property of one spouse to the other. "The statutory description of Washington's marital property system . . . is by no means complete and it is necessary to look for the decisions for amplifying detail." *Nat'l Bank of Commerce of Seattle v. Green*, 1 Wn. App. 713, 717, 463 P.2d 187 (1969). When making a just and equitable distribution of marital assets, the courts look at the four statutory factors as well as other factors such as the parties' relative health, age, education, and employability. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242-43, 170 P.3d 572 (2007), *review denied*, 163 Wn.2d 1055 (2008). As noted in Kenneth W. Weber, 20 *Wash. Practice, Family and Community Property Law* § 32.15, Washington courts have historically considered a variety of relevant factors involving the spouses when allocating marital property:

The court, for example, may consider the age and health of the parties; the existence and validity of any agreements

adequately addresses such factors, precisely as Calhoun contended in her answer to the statement of grounds for direct review.

between the parties that might affect the characterization or division of assets; the sources and dates of acquisition of property; the extent to which any of the property was acquired by one or both spouses during their cohabitation relationship before marriage; the extent to which the services of one spouse aided in acquiring and improving a community asset; the extent to which a right of reimbursement might be owed by one spouse to the other, or to the community estate; the extent to which a spouse is required to support a child of a prior marriage; the employment and/or business experience of the spouses, together with their education, training, and future earning prospects; the amount of temporary maintenance paid by one spouse to the other during the pendency of the proceeding; the fact that a spouse will have custody of the children, and the demands and needs placed upon that spouse by having custody; the extent to which one spouse has peculiar need for an asset or the involvement of one spouse in an asset with third persons; and the effect of appreciation or depreciation of property since separation of the parties. Additional factors will undoubtedly be relevant as well.

Thus, under RCW 26.09.080 and the case law interpreting it, trial courts have “broad discretion” when distributing marital assets in a dissolution action because those courts are in the best position to assess the parties’ assets and liabilities to determine what is fair, just and equitable under all of the applicable circumstances. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 776 P.2d 102 (1999). Washington courts are not held to a standard of “mathematical precision” when exercising their broad discretion to make a just and equitable distribution of marital assets. *Konzen*, 103 Wn.2d at 477-78. The trial court need not divide

community property equally, and it need not award separate property to its owner. *In re Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977) (noting community property is not required to be divided equally but equitably); *Blood v. Blood*, 69 Wn.2d 680, 682, 419 P.2d 1006 (1966) (noting the trial court is not bound to award separate property to the party acquiring it).

This Court reviews the trial court's division of property for a *manifest* abuse of discretion, meaning that the trial court's decision was plainly unreasonable or plainly based on untenable grounds or reasons. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). A decision is manifestly unreasonable *only* "if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

In assessing whether a trial court manifestly abused its broad discretion under RCW 26.09.080, this Court should be animated by its sage observation in *In re Marriage of Landry*, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985):

We once again repeat the rule that trial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. The trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion.

(Citations omitted.)

(2) Larson Invited the Error About Which He Now Complains

The trial court did not abuse its discretion here, if for no other reason than because it gave Larson essentially what he requested. But even if this Court determines that the trial court erred by invading Larson's separate property, Larson invited the error.

Under the doctrine of "invited error," a party may not set up an error by adopting a position that induces the trial court to take an action and then complain of the trial court's action on appeal. *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995) ("This court will deem an error waived if the party asserting such error materially contributed thereto."); *Casper v. Esteb Enters., Inc.*, 119 Wn. App. 759, 771, 82 P.3d 1223 (2004).

Here, Larson encouraged the trial court's decision to divide the marital estate the way that it did. Larson himself proposed that the trial

court award Calhoun \$104 million, comprised of approximately \$58 million in specific real and personal property, about \$21 million in Microsoft stock, and post-trial cash payments totaling \$25 million. CP 70; RP 27, 549, 552. He also proposed that he be allocated *all* of the couple's debt and their charitable liabilities. CP 41, 70-71; RP 1232, 2195. The trial court awarded Calhoun approximately \$139 million in real and personal property and approximately \$40 million of Larson's separate property, which was comprised of a portion of the Microsoft shares that Larson proposed Calhoun receive as well as a \$27 million transfer payment. CP 299-301. These figures shifted more in Larson's favor post-trial when he, not Calhoun, received the one-third interest in Swauk Valley, and Calhoun received \$611,309.73 less than anticipated for the sale of the allocated Microsoft stock. CP 262, 264, 299-301. His complaint that he has been "saddled" "with 100% of the bad things in the community estate (the debts), and no way to pay them all," br. of appellant at 38-39, should fall on deaf ears. Larson asked the trial court to allocate such debt to him. CP 41, 70-71; RP 1232, 2195. Any alleged error was invited by Larson.

- (3) Washington Law Since 1973 Has Allowed Trial Courts to Award the Separate Property of One Spouse to the Other in a Dissolution Action

Since the enactment of Washington's Dissolution Act in 1973, the statutory standard for the disposition of marital property has been clear. RCW 26.09.080(1-2) specifically provides that *all* property, community and separate, is before a court for distribution in a dissolution action. *In re Marriage of Kraft*, 119 Wn.2d 438, 447-48, 832 P.2d 871 (1992). This principle also applied under pre-Act law. *Friedlander v. Friedlander*, 80 Wn.2d 293, 305, 494 P.2d 208 (1972); *Morris v. Morris*, 69 Wn.2d 506, 509, 419 P.2d 129 (1966).

This Court cogently observed in *Baker v. Baker*, 80 Wn.2d 736, 745, 498 P.2d 315 (1972), a case *pre-dating* the Act, that characterization of the property is only a starting point in a court's analysis: "Characterization of the property, however, is not necessarily controlling; the ultimate question being whether the final division of the property is fair, just and equitable under all the circumstances." *Accord, Hadley*, 88 Wn.2d at 656.

In *Konzen*, this Court stated that a court in a dissolution action may award the separate property of one spouse to the other to achieve the statutorily required "fair, just and equitable" division of property. 103 Wn.2d at 478. *Konzen rejected* the concept that the separate property of one spouse could be awarded to the other only in "exceptional

circumstances,” a concept previously articulated in *Bodine*.⁹ This Court concluded that RCW 26.09.080 did not require anything more of a trial court than to make a just and equitable distribution of both community and separate property based upon the circumstances of the case. Accordingly, separate property is no longer entitled to special treatment:

This court will not single out a particular factor, such as the character of the property, and require as a matter of law that it be given greater weight than other relevant factors. The statute directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property. The character of the property is a relevant factor which must be considered, but is not controlling.

⁹ *Bodine* was decided under a predecessor to RCW 26.09.080, which stated:

In granting a divorce, the court shall also make such disposition of the *property of the parties* as shall appear just and equitable, having regard to the respective merits of the parties, and to the conditions in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage.

Rem. Rev. Stat. § 989. Plainly, the predecessor did not have the elements of RCW 26.09.080. While both separate and community property have always been considered to be before the court in a dissolution action, it was not until the Legislature revised the statute in 1949 that the allocation of separate property was explicitly governed by statutory criteria. *Konzen*, 103 Wn.2d at 477 (citing Laws of 1949, ch. 215, § 11, p. 698). Before this change, the courts were free to weigh the character of the property more heavily than the other factors. *Id.* Moreover, *Bodine* did not define what constituted “exceptional circumstances” and the cases it cited in support of that view likewise did not provide content for the principle. 34 Wn.2d at 35.

103 Wn.2d at 478.¹⁰ See also, *In re Marriage of Griswold*, 112 Wn. App. 333, 347-48, 48 P.3d 1018 (2002), review denied, 148 Wn.2d 1023 (2003) (noting that the exceptional circumstances concept in *Bodine* was superseded by the enactment of RCW 26.09.080).¹¹

In assessing the significance of *Konzen*, Larson mistakenly claims that the Court merely “distinguished” *Bodine*. Br. of Appellant at 25. On the contrary, *Konzen* expressly disproved the exceptional circumstances language of *Bodine* and effectively overruled it. 103 Wn.2d at 47-78. Apparently, Larson no longer argues that this Court should limit the award of separate property of one spouse to another except in exceptional circumstances, as he did in his statement of grounds for direct review.

Instead, Larson contends that the separate property of the spouse should not be awarded if “ample provision” can be made for the other spouse from the community property or unless the other spouse would be

¹⁰ Larson contends that the enactment of RCW 26.09.080, requiring a court to consider the nature and extent of both the community and the separate property before dividing property in a dissolution action, makes that factor even more important than it was previously. Br. of Appellant at 27. Not so. While the character of the property is a relevant factor, it is not controlling. *Konzen*, 103 W.2d at 478.

¹¹ It seems that Larson advocates a rule like that applicable to long-time intimate partners where “separate property” is not subject to distribution by a court at the termination of the relationship. *Connell v. Francisco*, 127 Wn.2d 339, 349-50, 898 P.2d 831 (1995); *In re Marriage of Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764 (2000). But the *Connell* court’s rationale for this rule was clear; “A meretricious relationship is not the same as marriage.” 127 Wn.2d at 348. For this reason, laws like RCW 26.09.080 “do not directly apply to the division of property following a meretricious relationship.” *Id.* at 349. Larson’s argument is contrary to RCW 26.09.080 and represents bad public policy.

“impoverished” by an award of community property alone, seemingly arguing that *Konzen* supports these new principles. *Konzen nowhere* so holds. Either of these proposed standards represents nothing more than a self-serving effort to concoct a rule to justify a maximum award to Larson. Larson provides virtually no analysis to define what “ample provision” or “impoverishment” means. Either proposed rule, not supported in case law, would disrupt existing law under RCW 26.09.080 and represents exceptionally unsound public policy.

Larson contends that Washington law generally prohibits the award of one spouse’s separate property to the other in a property division under RCW 26.09.080 if “ample provision” can be made for that spouse from the community property of the parties alone. Br. of Appellant at 21. Nowhere does RCW 26.09.080 so state. This formulation is contrary to the statutory direction that *all* property-separate and community-is before a court for division in a dissolution action.

Larson's principal authority by this proposition is *Stokes v. Polley*, 145 Wn.2d 341, 37 P.3d 1211 (2001). He vastly overstates the holding in that case. Unlike this case, *Stokes* was a quiet title and partition case, the essence of which involved interpreting the parties’ dissolution decree. The wife was awarded “one-half the equity” in some real estate owned by the husband. *Id.* at 344. This Court stated that words should be given

their ordinary meaning, and the ordinary meaning of 'equity' in property is the fair market value of the property over its debts. *Id.* at 348-49. Thus, while the decree awarded some monetary award, it did not award title or ownership. *Id.* at 351.

Larson's primary authority for his new gloss on *Konzen* is this Court's decision in *Holm*. He contends that *Holm* remains good law and that it precludes a trial court from awarding the separate property of one spouse to the other when ample provision can be made for both spouses from the parties' community estate.¹² *Holm* is no longer the governing standard after *Konzen*, particularly where *Holm* was decided under the same predecessor statute to RCW 26.09.080 as had been applied in *Bodine*.

Holm, like the cases that Larson now cites for his "impoverishment" rule, does not support the rule he seeks. In *Holm*, the trial court valued the husband's assets at approximately \$73,000 and found that those assets were commingled with the community property thereafter acquired by the parties. 27 Wn.2d at 460. The court then valued the community property at \$342,233.67 and divided it equally between the

¹² Despite Larson's contention in his brief at 25 that *Holm* precludes a trial court from awarding the separate property of one spouse to the other when ample provision can be made from the community estate, that is not why the case is typically cited. Instead, the majority of cases citing to *Holm* do so only to further define the term "abuse of discretion."

parties. *Id.* The husband appealed, arguing among other issues that the court did not make an equitable division of the property because it awarded the wife one-half of the entire property, without regard for the manner in which it was acquired. *Id.* at 462.

On appeal, this Court reiterated the factors that the trial court is required to consider when making a just and equitable disposition of the marital property. *Id.* at 462-63. Contrary to Larson's insinuation in his brief at 28, this Court did not hold that the necessitous condition of the wife is *the only basis* for making a just and equitable distribution; instead, the Court reiterated that it is merely *one* factor out of several that the trial court must consider.¹³ The Court also noted that the nature of the husband's business was such that it required a large amount of capital; that his working capital at the time of the marriage was approximately \$73,000; and that he needed that capital to successfully continue his business as it then existed. *Id.* at 464.

Larson cites *Oestreich v. Oestreich*, 2 Wn.2d 72, 97 P.2d 655, 656 (1939) for the proposition that this Court has allowed invasion of one spouse's separate property to prevent the other from becoming

¹³ In fact, it has long been Washington law that a trial court in making a division of marital property could look to the "necessities of the wife," and, in general terms, the court must look to "the economic condition in which the decree will leave the parties" as "the paramount concern." *DeRuwe v. DeRuwe*, 72 Wn.2d 404, 408, 433 P.2d 209 (1967).

impoverished. Br. of Appellant at 29. But what he fails to recognize is that this Court clearly stated that the trial court could award all of the property, both community and separate, to the wife *regardless of her financial situation*:

It has often been said by this court that, in a divorce action, *all the property of the spouses, both community and separate*, is brought within the jurisdiction of the court for disposal, and may be disposed of in any manner that may be equitable and just, *even to the extent of awarding it all to the wife*.

Oestreich, 2 Wn.2d at 75 (emphasis added).

Larson's citation to *Luithle v. Luithle*, 23 Wn.2d 494, 161 P.2d 152 (1945) is likewise unpersuasive. Unlike more recent cases holding that no one factor is determinative when justly and equitably dividing property in a dissolution action, the *Luithle* court held that the necessitous condition of the wife and the financial ability of the husband were the most important circumstances to be taken into consideration. *Id.* at 501, 503. With that standard in mind, the Court noted that the wife, upon her marriage, had relinquished permanently her monthly social security benefits. *Id.* at 503. It concluded that her loss in large part counterbalanced the separate property award and affirmed. *Id.*

This "economic circumstances" facet of a marital property division is now found in RCW 26.09.080(4).

Finally, Larson's reading of *In re Marriage of Bulicek*, 59 Wn. App. 630, 800 P.2d 394 (1990), *In re Marriage of Williams*, 84 Wn. App. 263, 927 P.2d 679 (1996), *review denied*, 131 Wn.2d 1025 (1997), and *Griswold*, 112 Wn. App. at 337 is extremely selective. Br. of Appellant at 30-31. Nowhere did the courts in those cases hold that the wives were "impoverished" as Larson suggests.

In *Bulicek*, the parties were married for more than two decades before they separated. The husband continued to work after the divorce and to earn retirement benefits. 59 Wn. App. at 631. The trial court used the time rule method to divide his pension. On appeal, the husband argued that the trial court should have valued and apportioned his pension at the time of trial so that the wife would not receive a portion of his post-separation retirement pension contributions. *Id.* at 636. The Court of Appeals noted the length of the couple's marriage before separation; the husband's "advancements and pay raises during that time came as a direct result of community effort and performance . . . [T]he prospective increase in retirement benefits due to increased pay after separation is founded on those 22 years of community effort." The court then stated:

We acknowledge that [the husband's] retirement fund may receive proportionately higher future contributions based upon his career longevity and anticipated increases in annual pay. We further acknowledge that the formula utilized for division of future retirement

benefits could result in [the wife's] sharing in those increases. However, far from condemning this apportionment method, we specifically approve it as a means of recognizing the community contribution to such increases.

Id. at 638-39. Accordingly, the wife could share in any increased pension benefits. *Id.*

Contrary to Larson's argument, the Court of Appeals did not affirm the wife's pension award because of her "necessitous circumstances," *i.e.*, ill health, collection of disability benefits, and limited job skills and experience. Br. of Appellant at 30. The court considered those factors only to affirm the trial court's *maintenance* award. *Bulicek*, 59 Wn. App. at 633-34. By contrast, it affirmed the pension award to recognize the wife's community contribution to the increase in the pension's value. *Id.* at 639.

In *Williams*, the couple separated after 27 years of marriage. 84 Wn. App. at 265. The husband's pension vested and matured one month before trial, but he decided to continue working. *Id.* 266. The trial court awarded the wife maintenance equal to one-half of the community share of the husband's retirement benefit, including four years of military service retirement he accrued before the marriage. *Id.*

The Court of Appeals affirmed, reiterating that the paramount concern in determining the appropriateness of maintenance is the post-

dissolution economic position of the parties. *Id.* at 268. Like the *Bulicek* court, the court only considered the wife's level of education and potential earnings as compared to her husband's financial circumstances when addressing the appropriateness of the trial court's maintenance award.

In *Griswold*, the couple married in 1983 and separated in 1998. 112 Wn. App. at 337. The trial court awarded each party all of his or her separate property and half of the community property. *Id.* On reconsideration, the court awarded the wife \$138,000 of the husband's separate property. *Id.* Both parties appealed. The husband argued in part that the trial court abused its discretion by awarding his wife a portion of his separate property because it failed to find there were unusual or exceptional circumstances to warrant such an award. *Id.* at 347.

Relying on *Konzen*, the Court of Appeals, held that the trial court did not abuse its discretion by failing to find there were exceptional circumstances because it was no longer required to do so. 112 Wn. App. at 348. Instead, the trial court properly weighed all of the facts to come to a fair, just and equitable distribution of property. The court concluded that the distribution as a whole was fair and equitable.

Konzen and the case law Larson cites do not support his position.

- (4) Larson Has Not Satisfied His Heavy Burden to Justify the Overruling or Substantial Modification of *Konzen*

At least implicitly, Larson asks this Court to overrule, or to decidedly narrow, *Konzen*. Br. of Appellant at 46. His approach to property division is narrow and ill-conceived and should be rejected.

First, Larson pays little heed to key principles of statutory interpretation. Washington law has long recognized that this Court's interpretation of a statute is as much a part of the statute as if it were originally written into it. *State v. Regan*, 97 Wn.2d 47, 51-52, 640 P.2d 725 (1982). Furthermore, the Legislature is presumed to be aware of judicial interpretations of a statute and its failure to amend the statute following judicial interpretation of it evidences legislative acquiescence in that interpretation. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009) (no amendment of PRA for 23 years since *Nast* decision); *Soproni v. Polygon Apartment Partners*, 137 Wn.2d 319, 327 n.2, 971 P.2d 500 (1999) (no change in product liability law for 10 years after decision); *Coulter v. Asten Group, Inc.*, 135 Wn. App. 613, 620-21, 146 P.3d 444 (2006), *review denied*, 161 Wn.2d 1011 (2007) (no changes by Legislature to interpretation of joint and several liability in asbestos cases for 17 years).

RCW 26.09.080 has been in place since 1973. *Konzen* has been the rule in interpreting that statute since 1985. The Legislature has expressed no interest in changing either one. There has certainly been no

public agitation for a change in the allocation of marital property under RCW 26.09.080. The Legislature has acquiesced in the *Konzen* court's analysis of RCW 26.08.090.

Second, this Court has indicated under principles of stare decisis that prior settled decisional law should not be lightly overturned. Indeed, once this Court has "decided an issue of state law, that interpretation is binding" until the Court overrules it. *Hamilton v. Dep't of Labor & Indus.*, 111 Wn.2d 569, 571, 761 P.2d 618 (1988). Stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L.Ed.2d 720 (1991). Thus, it is only when a party makes a *clear showing* that the applicable principle is incorrect and harmful that this Court will overrule prior settled precedent. *City of Federal Way*, 167 Wn.2d at 347; *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). Larson cannot make such a showing here.

Third, Larson's approach is contrary to the plain terms of RCW 26.09.080. In fact, Larson *ignores* the specific language of RCW 26.09.080 clearly articulating the factors the trial court is to consider when making a just and equitable property division and the case law

amply exploring the reasons to award the separate property of one spouse to the other when making that distribution. Larson offers an entirely new twist on *Konzen*, contending for the *first time on appeal*¹⁴ that it is confined to situations where a spouse would be “impoverished” by an award confined to community property, necessitating an award of separate property. *Compare* Br. of Appellant at 28-33 with CP 10-76. *Nowhere* does *Konzen* so hold. Larson would elevate the economic circumstances of a spouse to a *conclusive* factor when dividing property, rather than one of the factors in RCW 26.09.080.

Larson attempts to justify a departure from *Konzen* by arguing in passing that Washington law should reflect the law of other community property states prohibiting an award of one spouse’s separate property to the other. Br. of Appellant at 27 n.6. The law of other community property states is inapplicable. The policy of *Konzen* is sound and should be affirmed.

(a) The Law of Other Community Property States Is Simply Different than RCW 26.09.080

In support of his argument, Larson cites to authorities from other states prohibiting the award of one spouse’s separate property to the other if it is possible to provide for the other spouse from the community assets.

¹⁴ Larson’s new argument should be rejected under RAP 2.5(a).

Br. of Appellant at 27 n.5. Those authorities are *simply inapplicable*.¹⁵ Larson hopes that by repeatedly citing such inapplicable law, this Court might be persuaded to ignore RCW 26.09.080. Long ago, however, our Legislature adopted a different policy favoring a just and equitable allocation of all spousal property regardless of how it was characterized. Washington courts have faithfully applied that policy ever since.

A short survey of the law of other states confirms that the Legislatures in those states chose a different policy than that adopted by our Legislature in RCW 26.09.080 and as interpreted in *Konzen*.

Though adopted by nine states, community property law varies from state to state. Very few common threads exist between the nine different community property law jurisdictions.¹⁶ Washington is unique in that a trial court must make a just and equitable distribution of *all* property -- whether community or separate. RCW 26.09.080. No other community property state divides all property equitably, and therefore any authority from another jurisdiction is unpersuasive when applying RCW 26.08.090.

Larson cites to authority from Wisconsin, Minnesota, Alaska, and Mississippi as if each informs the jurisprudence of the other. Br. of Appellant at 27 n.5. They do not.

¹⁵ Most of the cases that Larson cites are not even community property states.

Wisconsin courts begin with the presumption that the community property will be divided equally. Wis. Stat. Ann. § 767.61. Wisconsin allows its courts to make an equitable adjustment to the presumptively equal award after considering a list of statutory factors. *Id.* While Wisconsin courts are permitted to award separate property in certain circumstances, they cannot consider separate property when making the initial division. The courts are permitted to award separate property in a fair and equitable manner, but only if a failure to do so would impose a hardship upon the other spouse or the children. Wis. Stat. Ann. § 767.61(2)(b). A court must find more than just an equitable reason to make an award based on hardship. Rather, the award must be necessary in the face of “financial difficulty or privation.” *Spindler v. Spindler*, 558 N.W.2d 645, 652 n.1 (Wisc. App. 1996).

Similarly, Minnesota has adopted a rule presumptively favoring equal division of property upon the dissolution of a long marriage. *E.g.*, *Miller v. Miller*, 352 N.W.2d 738 (Minn. 1984) (equal division of wealth accumulated through parties’ efforts is appropriate upon dissolution of a long-term marriage). Minnesota courts may apportion up to one-half of a spouse’s non-marital property, but only after finding unfair hardship based

¹⁶ See Kelly M. Cannon, *Beyond the “Black Hole” - A Historical Perspective on Understanding the Non-Legislative History of Washington Community Property Law*, 39 Gonz. L. Rev. 7, 10 (2004).

on all relevant statutory factors listed in Minn.Stat. 518.58, subd. 2 (2004). *Stageberg v. Stageberg*, 695 N.W.2d 609, 618 (Minn. App. 2005). “A very severe disparity between the parties is required to sustain a finding of unfair hardship necessary to apportion nonmarital property.” *Ward v. Ward*, 453 N.W.2d 729, 733 (Minn. App. 1990), *review denied*, (1990).

Alaska has repeatedly proclaimed a presumption that the most equitable division of marital property is an equal one. *Hayes v. Hayes*, 756 P.2d 298, 300 (Alaska 1988); *Bousquet v. Bousquet*, 731 P.2d 1211, 1217 (Alaska 1987). This starting point provides a “grounding point” for determining the relevance of the principal factors that Alaskan courts must consider when reaching a property division. *Wanberg v. Wanberg*, 664 P.2d 568, 574-75 (Alaska 1983). *See also, Brown v. Brown*, 947 P.2d 307, 313 (Alaska 1997) (“[T]he trial court generally should begin with the presumption that an equal division of marital property is most equitable.”). Alaskan courts will divide property substantially equally unless sound reason exists to divide the property otherwise. *Wanberg*, 664 P.2d at 574-75.

In Mississippi, the courts subject only the marital property of the parties to equitable division. *Messer v. Messer*, 850 So.2d 161, 167 (Miss.Ct.App. 2003) (citation omitted). After classifying the parties’ assets as either marital or non-marital, Mississippi courts then proceed

with the equitable division of the property using the factors set forth by the Mississippi Supreme Court in *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss. 1994). *Id.* at 167-68. Finally, the courts examine whether the equitable division of the marital property, considered in light of the non-marital assets, adequately provides for both parties. *Id.* at 168. If it does, then no more need be done. But if the distribution fails to adequately provide for the parties, then the courts are permitted to consider whether to award alimony to one of the parties. *Id.*

Washington takes a drastically different approach, allowing the courts to make a “just and equitable” determination of how to divide the “property and liabilities of the parties, *either community or separate.*” RCW 26.09.080 (emphasis added). This statutory language is unique to Washington, and looks nothing like the rules adopted by Wisconsin, Alaska, Minnesota, or Mississippi. Indeed, commentators have noticed that Washington’s community property system is unique.¹⁷ Only Washington places all property - separate or community - before the judge making the property division. Accordingly, the community property jurisprudence from any other state offers no help when construing

¹⁷ Dan Carvalho, *Dividing Community Property in an Equitable Division Jurisdiction - Nevada’s Confusion After McNabney v. McNabney*, 30 Idaho L. Rev. 755, 773 (1994); *see also*, Kenneth W. Kingma, *Property Division at Divorce or Death for Married Couples Migrating Between Common Law and Community Property States*, 35 ACTEC J. 74, 95 n.34 (2009).

RCW 26.09.080. A Washington court may award separate property for reasons other than maintenance and child support. And it need not find a hardship to do so. *Konzen*, 103 Wn.2d at 478 (disapproving of the notion that courts can only award separate property in exceptional circumstances).

Although some Washington courts have avoided awarding one spouse's separate property to the other, this does not lead to the automatic conclusion that the trial court's property division here was not just and equitable or that it was a manifest abuse of discretion. Rather, the trial court here properly looked to the economic circumstances of the parties that would follow from the decree. The trial court's main concern clearly was the economic condition in which the decree would leave Larson and Calhoun. The court took into account not only the ages and earning power of the couple, but the amount of resources that would be available to each after the dissolution, considering the great disparity between the value of the community assets and the value of Larson's separate property assets.

This division of property is analogous to that in *Rehak v. Rehak*, 1 Wn. App. 963, 964, 465 P.2d 687 (1970), a pre-Act case. There, the husband earned approximately twice the income of the wife. The community property consisted of approximately \$7,000 worth of assets, and the husband held approximately \$30,000 in separate property. The

court awarded the wife nearly all of the community property. On appeal, the Court of Appeals held:

Although the decree does award substantially all the community property to the wife, this was thought by the court, as indicated in its oral opinion, to be necessary to provide her an economic position more comparable to the husband due to the difference in their incomes, employability and job security.

The husband is not impoverished by the decree. [H]is sole ownership of his substantial separate property, as well as the other distinguishing economic factors between the husband and wife, do not make the disposition of the assets and liabilities of the parties by the trial court appear to us to be a manifest abuse of discretion.

Id. at 967. The critical factor for the Court of Appeals was that the disposition of the property be "just and equitable," recognizing the "wide latitude and discretion ... vested in the trial court." *Id.* at 966-67.

Similarly, the trial court here based its decision on the disparity in the parties' incomes, employability, job security, ages, present necessities, foreseeable future obligations, and, presumably, Larson's significant separate property. It then concluded that to place Calhoun in a secure economic position it was necessary to award her a small portion of Larson's separate property. Because of Larson's significant separate property, it was able to do so without jeopardizing his financial security.

Given the trial court's great discretion in dissolution matters, the disparity in the parties' economic situations, and the outcome, there has not been a manifest abuse of discretion.

(b) The Policy of *Konzen* Is Sound

This Court's decision in *Konzen* is sound and should not be changed. An adoption by this Court of an "ample provision" or "impoverishment" standard represents unsound public policy. First, not only is RCW 26.09.080, and the case law construing it, contrary to these proposed rules, such an approach would deny trial courts the opportunity to tailor their decisions allocating the marital assets to the circumstances of the parties before them. *All* property, community and separate, is before the trial court for a reason. A trial court should have flexibility. Larson's proposed rules would breed new dissolution litigation to determine what constitutes the appropriate circumstances for an award of separate property from one spouse to the other. Such uncertainty flies in the face of the wise admonition in *Landry* that certainty and finality in spousal property divisions is essential.

Moreover, the "exceptional circumstances" concept was largely unfair to women. It was the product of an era in which men were more likely to bring separate property assets to the marriage. RCW 26.09.080 was designed to remedy that unfairness. "Ample provision" or

“impoverishment” would be equally unfair and unworkable. How “ample” must the award of community property be before separate property could be awarded? No one, including this Court, can know. Nor does Larson offer a real analysis of this concept. If “impoverishment” is the standard, then *Konzen* is effectually overruled because few, if any, awards of community property will result in a spouse’s impoverishment. Again, what level of economic disadvantage is necessary to meet Larson’s new test?

Larson actually wants a result-oriented rule that benefits him as an individual with the good fortune to have become an early employee of Microsoft. But this Court better articulated a rule for all Washington citizens in *Konzen*, a rule consistent with RCW 26.09.080.

Larson has not demonstrated anything resembling a need to abandon *Konzen*, particularly where *Holm*, the case on which he relies, involved the predecessor to RCW 26.09.080.¹⁸ This Court should adhere to the wise policy it announced in *Konzen*.

(5) The Trial Court’s Findings Support the Award of a Portion of Larson’s Separate Property to Calhoun

¹⁸ Like the *Bodine* court, the *Holm* court construed an earlier version of RCW 26.09.080. The allocation of separate property was not explicitly governed by statutory criteria like it is now. *See n.8 supra*.

Larson argues in his brief at 33-42 that the trial court's findings do not support an award of his separate property to Calhoun. Larson is simply wrong.

Larson cannot demonstrate that the trial court manifestly abused its discretion in any way when dividing the couple's property. From Larson's point of view, it properly characterized the marital property.¹⁹ All of the parties' assets, both community and separate, were before the court for distribution. The trial court made a just and equitable distribution of the marital property in accordance with RCW 26.09.080, *Konzen*, and the parties' post-trial agreement. CP 297 (CL 5); 261-62, 272.

Larson complains that the trial court abused its discretion by awarding Calhoun property equal in value to 100% of the community estate free of debt, *at his suggestion*, and an additional \$70 million from his separate estate where the trial court originally awarded him a negative net of \$29 million of the community estate. Br. of Appellant at 2, 15. Larson conveniently neglects to mention that he retained \$356 million of

¹⁹ Larson spends a considerable amount of time arguing about the trial court's characterization of his separate property and claims that his "meticulous" efforts to keep his pre-marital assets separate from the community supports an award that preserves his estate, not one that invades it. Br. of Appellant at 35, 37. His arguments are unavailing because he *conceded* at the outset of his brief that the trial court properly characterized all of the property before it, both community and separate. *Id.* at 4. Unlike the mischaracterization cases that he cites at 35-36, there was no property mischaracterization here. Moreover, the trial court was not required to award Larson his separate property when justly and equitably dividing the estate. *Blood*, 69 Wn.2d at 682; *Oestreich*, 2 Wn.2d at 75.

his separate estate and that his *total* award was \$327 million. (calculated by subtracting his negative net of \$29 million in community property from his \$356 million separate property award). CP 299-301. By comparison, Calhoun's total award was originally \$180 million. *Id.* Those awards were later adjusted in Larson's favor based on the parties' post-trial agreement. CP 262.

Larson also complains that the trial court erred by failing to find that the award of his separate property was necessary to maintain Calhoun's lifestyle. Br. of Appellant at 34. Neither RCW 26.09.080 nor *Konzen* require the trial court to make that finding. They only require the trial court to make a fair, just and equitable distribution of both community and separate property based upon the circumstances of the case.

Larson then contends that because the community estate received significant benefits from his separately-maintained assets, that the trial court should have made a disproportionate award to him rather than to Calhoun. Br. of Appellant at 35. He argues, at least implicitly, that because he created the vast wealth of the parties, he should be the one to benefit from it. *Id.* at 39. Larson ignores three things. First, he proposed the allocation that the trial court essentially awarded. Second, he initially received an award of 65% of the marital estate, a total of \$327 million.

Third, the principle he advocates has already been *rejected* in *In re the Marriage of DeHollander*, 53 Wn. App. 695, 770 P.2d 638 (1989). There, the Court of Appeals, *rejected* the notion that because the wife was “the major income producer” she was entitled to a larger share of the couple’s community property. *Id.* at 701.

Larson ends by complaining that he has been left to shoulder all of the parties’ debt, most of the risk, heavy carrying costs and interest payments and a considerable amount of trapped in equity. Br. of Appellant at 38-41. The Court should ignore this contention. As noted *supra*, Larson himself proposed most of the distributions that the trial court made. CP 70; RP 27, 549, 552. He also volunteered to take all of the couple’s debt and specifically acknowledged that his award would be saddled with great risk, including high carrying costs and huge “trapped in” tax liabilities. CP 41, 71; RP 1232. He will walk away from his 24-year marriage to Calhoun with total assets of *more* than \$327 million, more than sufficient to satisfy a modern day Croesus.

The trial court divided the couple’s property in a just and equitable manner under RCW 26.09.080, and the case law construing it, after considering all of the attendant circumstances in which the parties found themselves at the time of trial and into their post-dissolution futures. CP 278. The trial court’s award should be affirmed.

(6) Calhoun Is Entitled to Her Attorney Fees on Appeal

While RCW 26.09.140 provides that a party in a dissolution action may recover his or her attorney fees on appeal, the statute is not the basis for Calhoun's fee request. Rather, she is entitled to her fees on appeal due to Larson's intransigent conduct. This basis for fees has its roots in the equitable exception to the American Rule for bad faith conduct.

If a party's conduct in a case is particularly litigious, causing the successful spouse to require additional legal services, fees and expenses will be awarded regardless of the financial resources of the prevailing party. *In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989) (13 days of trial, 127 trial exhibits, and 1,000 pages of testimony required to unravel husband's financial affairs); *Eide v. Eide*, 1 Wn. App. 440, 462 P.2d 562 (1969) (husband tampered with exhibits). *See also, In re Marriage of Wallace*, 111 Wn. App. 697, 45 P.3d 1131, *review denied*, 148 Wn.2d 1011 (2002) (at trial); *In re Marriage of Mattson*, 95 Wn. App. 592, 976 P.2d 157 (1999) (post-dissolution child support proceedings); *In re Marriage of Foley*, 84 Wn. App. 839, 930 P.2d 929 (1997) (pre-trial conduct).

In this case, there was no need for this appeal. Larson's exclusive purpose in pursuing it was simply to overturn the reasoned *discretionary*

decision of the trial court; he could not stand to “lose” to his former wife. He has forced her to needlessly expend additional fees on appeal.

In a series of cases like *Landry*, this Court has made clear that appellate courts should not tamper with discretionary decisions of trial courts in the disposition of marital property. This is particularly true after a lengthy trial in an exceedingly complex dissolution action, as here. An experienced trial judge ruled in Larson’s favor on the legal issue of the characterization of the marital property after a 3-plus week trial. The court then made a discretionary decision to allocate the spouses’ property on a 65-35 basis *that favored Larson*. That should have been the end of this case. But Larson could not stand the fact that his ex-wife received that allocation of marital property and he pursued this needless appeal, seeking to overturn established precedent.

This Court should not condone Larson’s intransigence. It should award Calhoun her fees on appeal.

F. CONCLUSION

Larson’s appeal is motivated by self-interest and spite. He merely wants the opportunity to “re-do” the trial court’s property division decision following a 3-week trial in which that court properly characterized the marital assets and made a “just and equitable” property division in accordance with RCW 26.09.080 and controlling case law in

place for decades. Moreover, Larson has not demonstrated any reason this Court should overrule, or substantially modify, its *Konzen* decision in favor of its out-dated decision in *Holm*.

Larson's suggestion that Calhoun be awarded only what she "needs" to prevent her impoverishment or to maintain her lifestyle is an archaic, non-egalitarian limitation on Calhoun's property rights that this Court should reject.

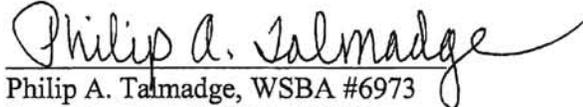
This Court should affirm the trial court's decree. Costs on appeal, including reasonable attorney fees, should be awarded to Calhoun.²⁰

²⁰ Should this Court decide to modify or overrule *Konzen*, the property division would be subject to a new trial on remand. Generally, were the Court to reverse the trial court's decision based on a modification of its rule in *Konzen*, Larson's relief would be a new trial. At such a retrial on the division of property, *all* issues relating to the property division should be before the trial court. This is consistent with how Washington courts have treated a reversal and remand for a retrial on a dissolution property division. Rather than dictating the outcome on remand, this Court should expect the trial court to exercise its discretion to decide any issue necessary to resolve the case on remand, including issues related to the distribution of the marital property. *In re Marriage of Sacco*, 114 Wn.2d 1, 784 P.2d 1266 (1990) (trial court was charged on remand with revisiting the original distribution of property); *In re Marriage of Rockwell*, 157 Wn. App. 449, 453-54, 238 P.3d 1184 (2010) (appellate opinion did not mandate that the trial court preserve the overall property division initially ordered, but simply reversed the trial court's characterization of property; trial court expected to exercise its discretion on remand). The trial court should be free to redetermine the value of the marital assets. *In re Marriage of Berg*, 47 Wn. App. 754, 737 P.2d 680 (1987) (reversing and remanding for redetermination of the value of a particular marital asset). This would require the trial court to revisit its decisions on the characterization of the spouses' assets and their valuation.

Emblematic of the need to revisit the characterization and valuation decisions are the trial court's valuation decisions as to the spouses' Seattle Mariners interest and Norcliffe/Gatehouse. Subsequent to the trial in this case, a federal bankruptcy court approved the sale of the Los Angeles Dodgers baseball franchise for a record \$2 billion. *In re Los Angeles Dodgers, LLC, et al.*, U.S. Bankruptcy Court, District of Delaware, Cause No. 11-12010. Major League Baseball approved the sale of the San Diego Padres in August 2012 for around \$800 million. See Corey Brock, *Sale official, new Padres*

DATED this 16th day of October, 2012.

Respectfully submitted,



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group sets sights high, August 29, 2012, available at http://sandiego.padres.mlb.com/news/article.jsp?ymd=20120829&content_id=37536728&vkey=news_sd&c_id=sd, last visited October 11, 2012. These sales evidence the fact that *both* spouses' experts, and the trial court, fundamentally undervalued the spouses' interest in the Seattle Mariners.

With respect to Norcliffe/Gatehouse, the trial court's decision came at the time of a serious downturn in real estate values in King County. Eric Pryne, *King County home sales rebound in 2011, but prices still falling*, *Seattle Times*, January 23, 2012 (number of houses sold in King County increased in 2011 over 2010, but median price of houses sold was \$340,000, down \$35,000 from 2011). The real estate market has begun to rebound. Eric Pryne, *House prices stay on rise in King and Snohomish Counties*, *Seattle Times*, June 25, 2012 (median price of single family house in King County up 4.9% from May 2011). It would be unfair to utilize a valuation that results from a severe real estate market downturn on remand.

APPENDIX

RCW 26.09.080 states, in part:

In a proceeding for dissolution of the marriage ... the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

| | | |
|--------------------------|---|----------------------|
| In re: the Marriage of: |) | |
| CHRISTOPHER ROSS LARSON, |) | |
| |) | |
| Petitioner, |) | NO. 10-3-04077-7 SEA |
| |) | |
| and |) | FINDINGS OF FACT AND |
| |) | CONCLUSIONS OF LAW |
| JULIA LARSON CALHOUN, |) | AT TRIAL |
| |) | |
| Respondent. |) | |
| _____ |) | |

INTRODUCTION

Before the undersigned Judge of the above-entitled Court, this matter came on for trial on November 28 – December 15, 2011. The Petitioner Christopher Larson was represented by attorney Thomas Hamerlinck and the Respondent Julia Calhoun was represented by attorney Janet George. The Court has listened closely to the testimony of the parties and ten additional witnesses, has reviewed the exhibits admitted into evidence as well as extensive legal briefing and heard closing arguments of counsel.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

Hon. William L. Downing
King County Superior Court
516 Third Ave
Seattle, WA 98104

Although the parties may have been more congenial, the issues more engaging and the lawyers considerably more skilled than is typical, it is now the job of the Court, as in any marital dissolution case, to identify the assets and liabilities of the parties, determine the value of each, characterize each as either separate or community, and direct a division that is just and equitable. The concept of fairness and equity requires that the Court state and give consideration to all of the attendant circumstances in which the parties find themselves now and into their post-dissolution futures. See, RCW 26.09.080. Of course, the past is relevant prologue.

To the credit of both the parties and their counsel, many potentially thorny points of contention have been agreed upon. This has left as the primary issues in serious dispute (a) the nature and extent of Mr. Larson's separate estate; (b) the value of certain assets before the court, notably the family residence and an ownership interest in the Seattle Mariners; (c) the dates to be used for the beginning and ending of the marital community; and, most significantly, (d) what division is just and equitable.

In consideration of the foregoing, the Court now makes and enters the following:

FINDINGS OF FACT

1. On the 5th of July, 1986, in Kirkland, Washington, Christopher Larson and Julia Calhoun were joined in marriage. Twenty-three years later, the marital community separated in the summer of 2009. Both agree their marital bond is broken beyond retrieval and ask the Court to dissolve their marriage.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 2

Hon. William L. Downing
King County Superior Court
516 Third Ave
Seattle, WA 98104

2. The marriage was blessed with five children who now range in age from 26 to 17. Geographically, they are spread out (oldest to youngest and as of the moment) in Seattle, New York, London, California and Massachusetts. With a shared view of the children's best interests, the parties have agreed as to all financial and residential matters that relate to them. A final parenting plan as to the one minor child has already been entered and any necessary orders for the support and education of the children are expected to be submitted in an agreed form.

3. As a student in the 7th grade at Seattle's Lakeside School, Mr. Larson first learned to program a computer. Not unusual today, that was quite remarkable in 1971 and it pointed him on a path that leads to the wealth that is before the Court today. A few years later, in early association with schoolmate Bill Gates (several years his senior), he began working part-time with a nascent company called "Microsoft" in 1975. During his college years at Princeton University (1977-81), where he majored in economics and computer science, he continued working intermittently for Microsoft. Upon graduation in 1981, he began as a fulltime Microsoft employee, significantly one who was granted an equity interest in the company which was not yet publicly traded. He continued as an employee through his marriage five years later in 1986 and up through his retirement in 2001. In recent years, he has stayed busy actively managing his extensive investments and philanthropic endeavors. Only 52 years of age, he leaves the marriage in excellent fiscal and physical health.

4. Having grown up in Wenatchee, Julia Calhoun moved to Seattle where she eventually earned a B.A. in English literature from Seattle University. In the late 1970's she socialized with the bright, young Microsoft crew through whom she met her future husband. During her marriage, she was active as a parent, foster parent, overseer of major construction projects and the generous and committed benefactor of numerous charitable organizations. Both the community at large and the marital community benefitted greatly from her serving as, in her phrase, the "approachable face" of the couple. She did not need to be gainfully employed during the marriage and will not need to be now. 54 years of age, her fiscal and physical conditions are likewise strong.

5. Displaying the keen business sense that would serve him well over the years, Mr. Larson wrote to Bill Gates from Princeton to say he thought he'd only come to work for Microsoft if he received an equity interest in the company. With that wish granted, he returned to Seattle where he and Ms. Calhoun continued the dating relationship they'd begun in 1980. Despite her investment of homemade cookies mailed to him during his senior year, her own businesslike appraisal of him as the next few years unfolded was that "his stock wasn't trading too high with me." In early 1985, he proposed marriage, she demurred, he "made his case" and they "negotiated." She insisted upon a one year engagement and, accordingly, they lived together for about a year (without establishing joint accounts or jointly acquiring any significant assets) before they sealed their commitment with the exchange of wedding vows in July of 1986.

6. By May of 2009, finding herself frustrated by a communications and cooperation gap she felt had been growing for several years, Ms. Calhoun moved out of the parties' primary residence. She briefly moved back in the following month but all agree they never resided together "as husband and wife" after July of 2009. Through that summer, fall and winter, they engaged in unproductive, cursory discussions of a need to formalize their separation or divorce. The Court will adopt July 31, 2009 as the parties' date of separation.

7. From the beginning of the parties' marriage through 2001, the husband was employed by Microsoft. During this time, he received a salary and took full advantage of his employer's stock option and stock purchase plans. Consequently, the marital community amassed considerable wealth. It was testified that the total number of split-adjusted, hypothetical shares of Microsoft stock (if none had been sold) that went into the community estate would be 23,577,316.

8. The marital estate indisputably characterized as community property is currently valued at something over \$100 million. It would be higher but for several factors. For one thing, when the community exercised stock options as it did to purchase millions of Microsoft shares, the strike price had to be paid as well as income tax on the "spread." Additionally, the community has had, and has acted upon, the ability to make substantial expenditures for purposes other than the production of income. These include pouring over \$165 million into acquisition and renovation of the properties in the Highlands, the purchase of expensive homes in London, Hawaii, Snohomish County and

elsewhere, the construction of a couple of commercial buildings, the purchase of millions of dollars' worth of collectibles such as baseball memorabilia (his interest), Victorian posy holders (her interest), and fine art (appreciated by both) and the altogether commendable charitable contributions in excess of \$120 million over the years of the marriage.

9. During the marriage, the community acquired several residential properties in the Highlands, a gated community in Shoreline overlooking Puget Sound. It is said that after acquiring the two properties known as Norcliffe and the Gatehouse for \$5.7 million, they invested an additional \$160 million in improvements. Included are such features as a ballroom to accommodate 200 guests, an underground parking garage to accommodate 24 vehicles and 13 water features including a turtle pond no doubt enjoyed by an untold number of turtles. In the real estate world, the term "superadequacy" (an improvement that costs more than its contributory value or that, due to its quality or uniqueness, is not fully valued in the marketplace) well describes the situation that has been produced; in fact, this is a rather extreme case.

Due to their physical, mechanical and aesthetic relationship, Norcliffe and the Gatehouse are best valued as a united estate. Having considered the opinions of Mr. Campos and Mr. Pope, the two real estate appraisal witnesses, the Court finds the current fair market value is \$20,000,000. This includes the fixtures in the home (such as fireplaces, mantles, chandeliers and windows) but neither the hanging art nor the outdoor art pieces. While this figure is far below the amount put into the unquestionably fabulous estate, the facts remain that the

current market is not strong and this would be an astounding, record-setting high price for non-waterfront property in King County. It has been agreed that Mr. Larson will retain the Norcliffe and Gatehouse properties (and the Court will simply note with approval his expressed willingness to allow Ms. Calhoun the continued use of the premises through the summer of 2012).

10. For an additional \$4.7 million, the community also acquired three adjoining homes in the Highlands. These are known as "Teltoft" ("a cute little Cape Cod"), "Jacob" ("dysfunctional and tired") and "Allen" ("an eclectic post-modern contemporary"). These properties are valued by the Court, respectively, at \$1,430,000, \$1,200,000 and \$1,500,000. Teltoft should stay with Norcliffe and so it is awarded to Mr. Larson; Jacob and Allen shall be awarded to Ms. Calhoun.

11. In addition, the marital community acquired a number of other pieces of real property that are unencumbered and have been valued by stipulation. They are referred to in shorthand as "London" (approximately £10,770,000 or \$17,055,803), "Hawaii" (\$13,290,000), "Lake Armstrong" (\$5,171,000), "Swauk Valley Ranch" (\$1,850,000), "Thistledown" (\$10,580,000 in commercial properties and \$1,487,000 in residential properties), and "The Rocks" (\$297,380). All of these are being awarded to Ms. Calhoun with the exception of The Rocks in Scottsdale, Arizona and the Thistledown residential property on Palatine Ave. N. and those pledged to Lakeside School.

12. As to the pieces of outdoor art on the Norcliffe grounds, it must be said that while they unquestionably add to the charm of the estate, they do not add value to match their value if sold separately. It is easily imaginable, for

instance, that a buyer who loved the house might not find it comforting to be always greeted by Diana's "restive dog"; he or she might well prefer a giant typewriter eraser or an Easter Island moai. As noted by both appraisers, those few in the market for a dream house in this price range will expect to indulge their own dream. Ms. Calhoun has expressed a wish to have certain of the outdoor pieces and the Court would award to her "Diana", "Undine", "Shivering Girl(s)", "Wood Nymph", "Girl with Basin" and her choice of either "Playdays" or "Joy of the Waters". To keep "Pan of Rohallion" with Norcliffe, the Court would award it to Mr. Larson. The paintings "Morning Sunshine" and "Sunny Window" would also be awarded to Ms. Calhoun. The stipulated value of these specific pieces awarded to each is approximately \$4,500,000. As to the remainder of the outdoor and indoor art works, the parties will need to devise a protocol for effectuating a 50-50 division. The same should be done with respect to an equal division of any other personal property that the Court may neglect to address in these findings or the attached appendix.

13. The parties have other community property assets (such as vehicles, bank accounts, retirement funds, etc.), most of which need not be addressed in these findings although they should find inclusion in the appendix and the eventual decree.

14. Back in 1981, in order to enlist Mr. Larson's services, Microsoft allowed him to purchase a 0.5% equity interest in the company for the grand sum of \$56.60. He willingly paid this price and in December of 1981 he was issued certificate number 8 for 56,600 shares in the company. These were his, free and

clear, as of that time. He did need to borrow from the company to pay the income taxes on the spread between the purchase price and the already appreciated value; this loan was repaid from his separate funds. This block of 56,600 pre-IPO shares of Microsoft stock, which subsequently underwent ten two-for-one splits, is the source of Mr. Larson's claimed separate estate. Hypothetically, if none were sold, these shares would have become 32,601,600 shares over time with a December 31, 2010 value of \$909,910,656.

15. Before his marriage, Mr. Larson established a separate margin account with Goldman Sachs with an account number ending in 047-8. It was into this account that he placed those separately acquired stocks. Over the years, as these shares grew in both number and value, he used them to borrow against, to secure lines of credit and as the pledges for variable prepaid forward contracts. With the funds thus acquired, he made various investments including some big winners (Dell Computers, Silver Lake Partners), some big losers (Video Networks, Promptu Systems) and some that have appreciated on paper while paying no dividends or profits (Mudville Nine). Within the marriage, it was openly discussed that Mr. Larson would not take such risks with community funds as he did with the funds that he considered his separate estate.

16. As a result of the expenditure of community funds for real estate acquisitions and improvements, for charity and for consumption, while the separate funds were being invested more aggressively, the net result today happens to be that the purported separate estate has maintained a significantly higher value than the community estate although it could have turned out

otherwise. A major disputed issue at trial was whether the present assets that grew from investments made with the funds originating in that pre-marriage stock purchase yet retain a separate character or if they lost it somewhere along the way through commingling with community property.

17. Certainly a key witness at trial, if not *the* key witness, was Gregory Porter. He is the Certified Forensic Financial Analyst (a CFFA who is also a CPA with an MBA and a MS in Taxation) who provided the "tracing" analysis on behalf of Mr. Larson. In court, besides those letters, he tossed around many big numbers, most of them relating to Microsoft shares or to units of currency (dollars, pounds and Euros), but they also included the pretrial hours his team spent on their task ("1700") and the number of pages of materials they reviewed ("several hundred thousand"). It must be stated without equivocation that the Court found Mr. Porter to be an exceedingly reliable witness. His quick mind and engaging presentation were simply a top layer resting upon a solid foundation of a daunting amount of thorough and conscientious work. When he says, as he did, that Mr. Larson maintained "a consistent pattern and practice of keeping his 56,600 shares, and what they grew into and were used for, separate from his later-acquired assets," this carries great weight. This opinion was backed up by a financial records "E-exhibit" the likes of which the Court has not previously seen. Through its live links, documentation was a click away from any entry that demonstrated the source of any funds and the uses to which they were put. As Mr. Porter convincingly stated: "Everything was accounted for and nothing was left over."

18. When gauging the extent to which Mr. Larson had the intention to retain his pre-marital assets as a separate estate, the Court would note the following circumstances:

a) The consistent effort he expended to keep things separate, most all of it successful;

b) The corrective actions he took when he became aware of record-keeping errors made by others; and

c) The open discussions within the marriage of the fact that he would make risky investments with separate funds but not with community funds.

19. Mr. Larson testified that he thought it "prudent" to see that all Microsoft shares were correctly registered either in his name only or in both names and Mr. Porter described him as "meticulous" about doing so. For example, on February 1, 1995, Mr. Larson discovered that 125,000 recently issued shares had been incorrectly registered in his name alone. He immediately directed Microsoft to fix their error, to reissue the certificate in both names and to make sure the records reflected joint ownership dating back to the original issuance.

20. 160 Microsoft shares purchased early during the marriage and 45 shares awarded to Mr. Larson (on the 10th, 15th and 20th anniversaries of his employment) should have been registered jointly but ended up in his name only and these went unnoticed. Together, these shares represent only .14% of his separate hypothetical shares, a *de minimis* amount relative to the 99.86% that were properly registered.

21. At a certain point, due to frequent stock splits, Microsoft stopped routinely issuing certificates to Mr. Larson, in favor of simply issuing "book shares" with registration records kept by a transfer agent. Through no fault on the part of Mr. Larson, and unbeknownst to him, some community-purchased shares were registered only in his name. In April of 2001, Mr. Larson became aware that 2 million mis-registered book shares and 200,000 mis-registered certificates (held in Microsoft's vault until transferred to a bank) were among a larger number that he had pledged to certain lending institutions as security. By June, he had seen that the records were corrected as to the book shares; it took a little longer to get the physical certificates returned and restored to the community but this was accomplished as expeditiously as possible. Through this mix-up, there was no loss to the community and no risk since Mr. Larson had millions of other separate property shares he could and would have used had he known of Microsoft's error. It is true that the community was deprived of the use of the shares during the time they were pledged but there is no indication at all that the community would have done anything other than continue holding the shares.

22. The unintentional use of a small amount of community property collateral to obtain funds (from margin loans, lines of credit or variable prepaid forward contracts) to be used for separate purposes neither harmed the community interest nor placed it in serious jeopardy of being harmed. The same is true as to the J.P. Morgan \$50 million line of credit taken out by Mr. Larson in

2008, secured primarily by his interest in Mudville Nine with a value more than twice the amounts he could borrow. For this LOC, because Mr. Larson's separate Goldman Sachs account (047-8) was cross collateralizing the community's Goldman Sachs account (839-5), it was necessary to also pledge, as secondary collateral, certain pieces of community artwork. Again, this did not harm or threaten to harm the community and would not serve to transform the character of the assets acquired (or paid down) with the funds received solely by Mr. Larson on his own separate promise to repay.

23. Into Mr. Larson's separate Goldman Sachs account (047-8), there were a total of four mistaken deposits of community funds over the course of 24 years. One involved a 401(k) dividend (\$9749), one involved a community dividend (\$2341) and one involved funds from a community account (\$23,224). The largest of the four errors (\$867,698) came from a \$6.6 million settlement of a dispute with UBS and Lydian, a dispute in which there had been separate claims on behalf of the community and Mr. Larson's separate estate. Significantly, Mr. Larson had given express instructions that the proceeds be distributed on a *pro rata* basis between the two accounts. He did not know until Mr. Porter's recent analysis that someone had made a miscalculation that favored the separate account. It sounds more than a little odd to term a cumulative \$900,000 error *de minimis* but the fact of the matter is that, over the 24 year span, this account saw deposits totaling \$1,800,318,815. Every dollar of this was traced and, of this amount, the mis-deposited funds represent .05%, a *de minimis* amount relative to the 99.95% traceable to separate sources. By comparison, during the same time

period, funds were taken from this separate account and used for community purposes at a rate Mr. Porter calculated at 100 times greater.

24. Mixing facts and law for a moment, the Court would conclude that the evidence has established clearly and convincingly that Mr. Larson's separate estate did not become commingled with the community estate. Funds used for his various post-marriage acquisitions (as discussed in paragraphs 25-27) have been clearly and convincingly traced to a separate source.

25. In 1992, Mr. Larson formed a new corporation and named it for a baseball team famous for leaving the tying runs stranded on base. "Mudville Nine, Inc." was created for the purpose of purchasing and holding a 30.636% interest in the Baseball Club of Seattle LLP, doing business as the Seattle Mariners. Despite the appearance of a couple of anomalous, inconsequential documents prepared by others, Mr. Larson has been at all times the sole shareholder in Mudville Nine. Over the years, Mr. Larson put approximately \$65 million into this enterprise which, per the above discussion, remains his separate property. The current fair market value of this separately held asset was in substantial dispute at trial.

26. Each party presented expert testimony from a highly respected appraiser of sports franchises. The husband called Mary Ann Travers of Chicago and the wife presented Don Erickson of Dallas. As to be expected, these CPA's both analyzed the valuation question in terms of team revenues, presupposing rational economic behavior by buyers and sellers. Of course, sports team sellers are often driven to sell by circumstances beyond their control and buyers may

often be buoyed by their egos or, as in the 1992 purchase of the M's, their public spiritedness. Nonetheless, both experts agreed on a general approach: take some recent comparable sales, calculate an average ratio between the sale price and the team's annual revenues, then apply this function to the subject team's revenues to produce a base price that a willing buyer would be expected to pay to a willing seller for the team.

Choosing among the purported comparable transactions, each of which is distinguishable due to its own circumstances involving divorces, bankruptcy filings or MLB pressures, and then "adjusting" the conclusions, injects a distinct subjective element into this mathematical exercise. The Court has reviewed the details of transactions involving the Houston Astros, Texas Rangers, San Diego Padres, Chicago Cubs and Atlanta Braves. The Court would find the May 2011 Astros transaction and the December 2010 Rangers transaction to be the best comparables due to their recency, similar attendance and other factors. The Seattle Mariners' on-field performance probably slides in between the two but, from a business point of view, they enjoy a superior demographic. Based on these comparables, the Court would utilize a revenue multiplier of 3.2.

Applying this multiplier to the Mariners' approximately \$190 million local revenue figure produces a value of \$608,000,000. To this figure must be added the non-operating assets of the team. Assets include vacant land (\$3,750,000), future receivables (\$21,250,000), and excess working capital (approximately \$20,000,000). There is also a liability for a deferred sales tax payment

(\$12,000,000). This produces a full enterprise value of \$641,000,000. The value, then, of Mudville Nine's 30.636% interest would be \$196,376,760.

Finally, in determining a *market* value, the Court finds it appropriate to apply a 10% discount based on the facts that Mudville's interest is a minority, non-controlling share and that the BCOS partnership agreement imposes restrictions on a partner's ability to broadly market his interest. This is a relatively low discount since the restrictions are not particularly onerous and were willingly accepted by the local owners with a view to keeping the Mariners "Safe at Home". While not being able to unilaterally hire and fire a field manager (*à la* Steinbrenner) or to prescribe players' facial hair or its absence (*à la* Finley), the local minority owners do retain an unusual level of control over certain key ownership decisions. Based on the foregoing, the Court would find the value of Mr. Larson's separate property interest in Mudville Nine, Inc. to be \$176,739,084.

27. There are other readily identifiable assets that were acquired as part of Mr. Larson's separate estate. These include interests in the Kelowna Rockets hockey team, Silver Lake Partners, Promptu Systems Corp., Video Networks Ltd., and assorted funds and accounts as well as a 1911 Rolls Royce Silver Ghost, and paintings by Winslow Homer and Norman Rockwell. A fuller listing, together with the agreed values, is contained in the appendix. As to his highly risky investments in the "crammed-down" Promptu Systems and Video Networks (thus far resulting in nothing but heavy losses), the Court will follow the close-to-agreed recommendation that, on the off-chance that one of them finds

success, Ms. Calhoun shall share equally in any profits once Mr. Larson has recouped his investment together with a 100% risk premium.

28. It has been suggested that, by virtue of the fact that the community estate did not experience growth like that of Mr. Larson's separate estate, the Court should find there was a breach of fiduciary duty on his part as manager of the community funds. Of course, the community estate *did grow* tremendously in the sense that it increased from the zero balance at time of marriage to what it is today. In hindsight, it may be noted that, in the risks he took with his separate funds, Mr. Larson had more good picks than bad ones and meanwhile, like many others, he failed to foresee either the failures in the real estate market or in his marriage. As with many other couples, their community estate ended up heavily leveraged as they made joint decisions regarding expenditures for the acquisition of real estate, home improvements and furnishings and for charitable donations. It had to be the expectation shared by the marital community that they would go on for years jointly enjoying their homes and art collection with a passion not measurable by market appraisals. Finally, the husband's cancellation of his life insurance policy (with the \$100,000 premium) was neither shown to have been ill-intentioned nor to have had any likelihood of causing harm. The Court would decline the invitation to find any breach of fiduciary duty.

29. As stated at the outset, the Court still must make a division of assets and liabilities that is just and equitable. Although deriving from the same root, the concept of equity refers not to an *equality* of result but rather is descriptive of a process. The result must be fair and the process of reaching it

must be even-handed. In applying this standard to the present case, the Court finds the following six points to be noteworthy:

a) To first address the "elephant in the ballroom", this is not a case like so many others where the concern is with making sure all in the family are housed, clothed and fed. Both of these impressive people will go on to do well and to do good. One has expressed a continuing commitment to fund efforts to ease the struggles of needy children while the other has pledged to continue giving generously to support education. The Court, of course, does not consider these intentions other than to applaud them.

b) Over the years, the community estate has received significant benefits from the husband's separately maintained assets. Of relative small significance is the separate estate's gift to the community that allowed for the purchase of the first family home on Capitol Hill. More significant is that Mr. Larson (and Mr. Porter) treated all Microsoft stock options exercised during the marriage as creating an entirely community asset, thus foregoing his claim under In re: Marriage of Short to his separate property portion of these stock grants that were received and partially earned before the marriage. Finally, over the years, the community has received substantial tax benefits due to the losses experienced by various separate assets.

c) The characterization of property as either separate or community is a legal conclusion that is driven by application of the law to the available evidence rather than by the more flexible notions of equity. In this case, the legal

conclusion as to the separate estate of the husband was compelled by evidence that was clear and convincing.

d) None of this is to say that, under its broad equitable powers, the Court cannot make a lopsided division of community assets and also invade a separate estate to the extent necessary to achieve a just result. It is the Court's intention to do both of these.

e) This was, after all, a long-term marriage in which the wife made a major contribution to all that the community accomplished, measured in terms of their children, their foster children, their impact in the broad community and their more narrow business interests. It is not that she leaves the marriage in need but the fact is she will leave the marriage in a less advantageous position than her husband.

f) The division to be effectuated will provide the wife with substantial earning capacity, moderate liquidity and assets that can be liquidated prudently as time goes by. Meanwhile, the husband, while retaining a substantially greater paper value with his separate property assets, will shoulder all of the parties' debt, most of the risk, heavy carrying costs and interest payments and a considerable amount of trapped-in tax liability. Again, it must be emphasized that both will continue to do well and both will continue to do good.

30. Consistent with the above discussion and the stipulations or agreements of the parties, the document attached as an appendix sets forth the assets and liabilities of the parties, designates their character as either

community or separate, states their value and makes the distribution deemed just and equitable by the Court.

31. As a further division of the assets of the parties, Mr. Larson shall deliver to Ms. Calhoun the sum of \$12,000,000 at the time of entry of the decree, an additional \$10,000,000 on January 1, 2013 and a final payment of \$5,000,000 on January 1, 2014.

Having made the foregoing findings of fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. The parties' marriage is irretrievably broken and a decree of dissolution should enter.
3. The Larson-Calhoun marital community was in existence from July 5, 1986 through July 31, 2009.
4. The character of property is determined as of the date of its acquisition. Property owned by a spouse before marriage, together with the rents, issues and profits thereof, remains the separate property of that spouse. RCW 26.16.010. There is a presumption that any increase in the value of separate property is also separate. There is also a presumption that where separate and community estates coexist, if there are both separate and community funds available, the appropriate fund was used for expenditures

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 20

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King County Superior Court
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intended to benefit one or the other. In re: Marriage of Pearson-Maines, 70 Wn. App. 860, 867-8 (1993) (citing Pollock v. Pollock, 7 Wn. App. 394 (1972) and other cases.) On the other hand, when separate funds become "hopelessly commingled" with community funds, there is a presumption that they have become community property. To rebut a claim of such commingling, the burden is on the party asserting a separate interest in property acquired during the marriage to establish by clear and convincing evidence that the funding can be traced and identified to a separate source. In this case, the Court is satisfied that such tracing has established that the pre-marriage assets of the husband provided the funding for the post-marriage acquisitions labeled as his separate property in these findings.

5. In applying RCW 26.09.080, no. single factor such as the duration of the marriage or the extent of separate property is to be given undue weight. Rather, the statute "directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property. The character of the property is a relevant factor which must be considered, but is not controlling." In re: Marriage of Konzen, 103 Wn. 2d 470, 478 (1985).

6. The assets and liabilities of the parties are characterized and valued and shall be disposed of as outlined in the findings above and the attached appendix.

7. During the next fourteen days, the parties shall work to agree upon the form of the necessary final orders to effectuate the rulings indicated herein

FINDINGS OF FACT AND
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and submit them to the Court for entry. Certainly any additional matters that the Court has neglected to address should be incorporated into the Decree, as should any necessary corrections to the Court's arithmetic errors. If agreement is not possible, alternative proposals may be submitted along with a cover letter explaining any disagreements that remain. Based on those submissions, the Court will enter the Decree of Dissolution and, if necessary, an Order of Child Support.

Dated this 22nd day of December 2011.

Honorable William L. Downing

APPENDIX

COMMUNITY PROPERTY

VALUE & AWARDED TO:

| | <u>Mr. Larson</u> | <u>Ms. Calhoun</u> |
|------------------------------------|-------------------|--------------------|
| Norcliffe & Gatehouse | \$20,000,000 | |
| Teltoft | \$ 1,430,000 | |
| Jacobs | | \$ 1,200,000 |
| Allen | | \$ 1,500,000 |
| Hawaii | | \$13,290,000 |
| London | | \$17,055,803 |
| Lake Armstrong | | \$ 5,171,000 |
| Swauk Valley Ranch | | \$ 1,850,000 |
| The Rocks | \$ 297,380 | |
| Thistledown commercial properties | | \$10,580,000 |
| Thistledown residential properties | \$ 336,000 | \$ 1,151,000 |
| Art work | \$55,150,000 | \$55,150,000 |
| Non-appraised art | | \$ 390,198 |
| Furnishings | \$ 3,340,938 | \$ 457,609 |
| Collectibles | \$ 1,515,070 | \$ 9,759,882 |
| Golf club memberships | \$ 12,000 | |
| Vehicles | \$ 212,825 | \$ 65,400 |
| Jewelry | | \$ 596,268 |
| Loan to brother | | \$ 231,000 |
| Wine collection | \$ 150,000 | |

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 23

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King County Superior Court
516 Third Ave
Seattle, WA 98104

| | <u>Mr. Larson</u> | <u>Ms. Calhoun</u> |
|---|-------------------|--------------------|
| Goldman Sachs acct. -839-5 | (-\$113,565,847) | |
| Microsoft 401(k) | | \$ 4,002,755 |
| Fidelity IRA | | \$ 4,000,191 |
| Oppenheimer IRA | \$ 6,114,836 | |
| U.S. Bank accts. | | |
| Joint | | \$ 2,243,485 |
| Laurel accts. | \$ 49,731 | |
| Thistledown | | \$ 702,782 |
| Bank of Hawaii acct. | \$ 4,451 | |
| Barclay's Bank acct. | \$ 30,343 | |
| National Westminster acct. | | \$ 56,887 |
| MSFT shares (276,316) | | \$ 7,358,295 |
| Fidelity acct. -068 | | \$ 350,801 |
| Laurel Ink, Laurel Gifts | | \$ 283,727 |
| Laurel Foundation, Positive Transitions | | \$ 1,675,540 |
| Opportunities for Education | \$ 533,722 | |
| Charitable commitments | (-\$ 5,096,000) | |
| (Children's, Evergreen School | | |
| Solid Ground, University Prep, | | |
| Lakeside School) | | |

HUSBAND'S SEPARATE PROPERTY

| | |
|-----------------------|------------------|
| Mudville Nine | \$176,739,084 |
| Less J.P. Morgan loan | (-\$ 40,155,987) |
| Kelowna Rockets | \$ 160,013 |
| Promptu Systems | \$ 4,878,600 |

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 24

Hon. William L. Downing
King County Superior Court
516 Third Ave
Seattle, WA 98104

| | <u>Mr. Larson</u> | <u>Ms. Calhoun</u> |
|---|-------------------|--------------------|
| Video Networks | \$ 1,284,624 | |
| Bregal Fund | \$ 890,019 | |
| Sand Spring Fund | \$ 0 | |
| Silver Lake Partnerships | \$ 52,204,911 | |
| Goldman Sachs -047-8 | \$168,722,516 | |
| Wells Fargo -0204 | \$ 511,356 | |
| J.P. Morgan acct. (163,702 MSFT shares to W) | \$ 8,121,210 | \$ 4,359,384 |
| Microsoft stock (56,600 shares to H, 349,730 shares to W) | \$ 1,507,258 | \$ 9,313,310 |
| Separate artwork (3 pieces) | \$ 4,800,000 | |
| Baseball memorabilia | \$ 2,199,221 | |
| 1911 Rolls Royce Silver Ghost | \$ 1,400,000 | |
| Loan to daughter | \$ 318,429 | |

WIFE'S SEPARATE PROPERTY

| | |
|---------|------------|
| Jewelry | \$ 669,000 |
|---------|------------|

TRANSFER PAYMENTS (H to W)

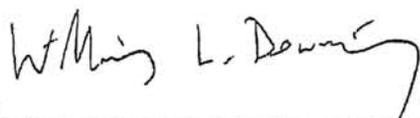
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|-----------------|------------------|---------------|
| Entry of Decree | (-\$ 12,000,000) | \$ 12,000,000 |
| January 1, 2013 | (-\$ 10,000,000) | \$ 10,000,000 |
| January 1, 2014 | (-\$ 5,000,000) | \$ 5,000,000 |

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 25

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King County Superior Court
516 Third Ave
Seattle, WA 98104

King County Superior Court
Judicial Electronic Signature Page

Case Number: 10-3-04077-7
Case Title: LARSON VS CALHOUN
Document Title: ORDER FFCL
Signed by Judge: William Downing
Date: 12/22/2011 9:19:04 AM



Judge William Downing

This document is signed in accordance with the provisions in GR 30.
Certificate Hash: 70CC4E84F95D1278D4CC8C5D912EF7C33265BC33
Certificate effective date: 12/1/2010 9:38:13 AM
Certificate expiry date: 11/30/2012 9:38:13 AM
Certificate Issued by: CN=Washington State CA B1, OU=State of Washington
CA, O=State of Washington PKI, C=US

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IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

| | | |
|------------------------|-------------|---|
| In re the Marriage of: | | No. 10-3-04077-7 SEA |
| CHRISTOPHER R. LARSON, | Petitioner, | DECREE OF DISSOLUTION |
| and | | (DCD) (Marriage) |
| JULIA CALHOUN, | Respondent. | <input checked="" type="checkbox"/> Clerk's action required |
| | | (¶1.2 and ¶3.7) |

I. JUDGMENT/ORDER SUMMARIES

1.1 RESTRAINING ORDER SUMMARY:

Does not apply.

1.2 REAL PROPERTY JUDGMENT SUMMARY:

King County real property awarded to petitioner:

| |
|---|
| King County property tax parcel numbers: 3304700405; 3304700400; and 3304700395. |
|---|

King County real property awarded to respondent:

| |
|--|
| King County property tax parcel numbers: 3304700396 and 3304700125. |
|--|

DECREE (DCD) (DCLSP) (DCINMG) – Page 1 of 20
WPF DR 04.0400 Mandatory (6/2008)
RCW 26.09.030; .040; .070 (3)
XXXX

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1 1.3 MONEY JUDGMENT SUMMARY:

2 Does not apply.

3 *END OF SUMMARIES*

4 **II. BASIS**

5 The court entered Findings of Fact and Conclusions of Law at Trial on
6 December 22, 2011 (the "Findings").

7 **III. DECREE**

8 IT IS DECREED that:

9 3.1 STATUS OF THE MARRIAGE.

10 The marriage of the parties is dissolved.

11 3.2 PROPERTY TO BE AWARDED TO THE HUSBAND.

12 The husband is awarded as his separate property the following assets:

13 a. The parcels of real property located at 97 Olympic Drive NW, 95 NW Park
14 Drive and 93 NW Park Drive, Shoreline, Washington (Norcliffe and the
15 Gatehouse are both subject to Deeds Of Trust provided for in paragraph 3.3
bb below), and the following items of personal property associated with that
real property:

- 16 1. Garden art and statues located on the grounds listed in trial exhibit
17 #1186 that are not pieces included in the community property
appraised artwork divided between the parties per paragraph 3.2 f.
18 below or pieces awarded to wife in paragraph 3.3 below.
- 19 2. Gardening equipment currently stored at the Jacob house that is used
on the Norcliffe house grounds.
- 20 3. Excess construction materials of his choice that are necessary or
21 potentially valuable for specific application at the Norcliffe house
(paving stone, roof tile, bricks, etc.). The excess construction
22 materials are currently stored at a property owned by Thistledown
LLC. The husband must take possession of excess construction
23

DECREE (DCD) (DCLSP) (DCINMG) – Page 2 of 20
WPF DR 04.0400 Mandatory (6/2008)
RCW 26.09.030; .040; .070 (3)
XXXX

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materials of his choice within 30 days of entry of the Decree. If the husband takes possession of any such excess construction materials, the wife shall be awarded the two stone dogs.

The husband's award of Norcliffe and the Gatehouse is subject to the following:

The wife may have until April 30, 2012 to vacate Norcliffe and the Gatehouse. From February 2012 through the time she vacates, the wife shall pay the household staff (housekeeping) expenses. The husband shall pay the remaining expenses for said properties, including but not limited to utilities, dues, taxes, insurance, capital/necessary repairs, landscaping and other grounds expenses. During her occupancy, the wife shall not cause or permit any damage to Norcliffe or the grounds (reasonable wear and tear excepted) and she shall reimburse the husband for any such damage that is not covered by any insurance.

- b. Two one-seventh interests in The Rocks private residence club in Scottsdale, Arizona.
- c. Real property located at 15733 Palatine Ave. N., Seattle, Washington that is currently owned by Thistledown LLC.
- d. One-third interest in Swauk Valley Ranch, LLC, subject to husband complying with Appendix A attached hereto. The Findings allocated the interest in Swauk Valley Ranch, LLC to the wife. However, the parties agreed after trial that the husband would be awarded the interest in Swauk Valley Ranch, LLC in consideration of the husband's agreement to pay all tax due on the 2011 joint income tax return. The court confirms the parties' agreement, which is attached as Appendix A.
- e. Eight parcels of real property located in Seattle, Washington owned by Thistledown LLC that are pledged to Lakeside School: 205 NE 139th; 2334 N. 140th St.; 2336 N. 140th St.; 2344 N. 140th St.; 2348 N. 140th St.; 2356 N. 140th St.; 13711 2nd Ave. NE; and 13907 2nd Ave. NE.
- f. One-half the value of the community property appraised artwork. The community property appraised artwork is defined as follows:

| | |
|--|--------------------|
| Total artwork appraised by Debra Force (the "appraised fine art" listed in the Stipulation re: Various Asset Values) | = \$115,105,500.00 |
|--|--------------------|

| | | |
|---|---|-----------------|
| 1 | Plus "Nude with a Parasol" by Louis Ritman (which the parties agree was inadvertently omitted from the Stipulation re: Various Asset Values) | +\$850,000.00 |
| 2 | | |
| 3 | <u>Less</u> Husband's separate property pieces (The Baseball Player; Chicago, Bird Catchers) which are awarded to husband | -\$4,800,000.00 |
| 4 | | |
| 5 | <u>Less</u> the community property piece Pan of Rohallion which is awarded to Husband | -\$4,500,000.00 |
| 6 | | |
| 7 | <u>Less</u> community property pieces awarded to Wife (Sunny Window; Undine; Wood Nymph, Morning Sunshine, Play Days, La Frileuse X 2, Diana) | -\$4,452,000.00 |
| 8 | | |

9 The values of the community property appraised artwork shall be determined
10 by the Stipulation re Various Asset Values, except for the value of "Nude with
a Parasol" by Ritman, which the parties agree shall be \$850,000.

11 The parties shall attempt to agree to an equal division of the value of the
12 community property appraised artwork by February 3, 2012. If they cannot
13 reach agreement, each party shall submit to the court on February 8, 2012 a
14 list of community property appraised artwork he or she would like to be
15 awarded, in order of priority, and the reason therefor. The court will then
16 issue a supplemental order dividing the value of the community property
appraised artwork equally between the parties, if possible. If an equal
division is not possible, then the court will divide the community property
appraised artwork so the totals awarded to each party are less than \$1
million apart.

17 If the court's division of community property appraised artwork results in one
18 party receiving artwork of greater value than the other, the former shall pay
19 the latter one-half of the difference within 5 (five) days; provided, however,
the wife's obligation, if any, to pay the difference shall mature within 5 (five)
days or upon receipt of the \$12 Million referred to in paragraph 3.3(bb),
whichever is last.

20 If the wife is awarded one or more pieces of artwork currently pledged to JP
21 Morgan for the \$45 million line of credit, the husband shall use his best
22 efforts to obtain a release of her artwork from the pledge agreement within
60 days of the date of the court ordered award to the wife. In any event,
23 the wife shall not be required to sign a renewal or extension of the JP

- 1 Morgan pledge agreement when the pledge agreement expires at the end
2 of July 2012.
- 3 g. The household goods, furnishings and other personal property located in the
4 real property awarded to him (Norcliffe, the Gatehouse, Telford and 15733
5 Palatine Ave. N.), except for those items specifically awarded to the wife
6 under paragraph 3.3.
- 7 h. All community property and separate property baseball memorabilia.
- 8 i. The following memberships: Seattle Golf Club; and The Golf Club Scottsdale.
- 9 j. The following vehicles: 1911 Rolls Royce; 2008 Mercedes GL550; 2005
10 Bentley Arnage-T; and 1998 Aston Martin.
- 11 k. Wine collection described in trial exhibit #1164.
- 12 l. Goldman Sachs account #8395, subject to the husband's performance
13 pursuant to Appendix A attached hereto.
- 14 m. In consideration of the agreement of the parties (attached hereto as
15 Appendix A), the husband shall be awarded the following 800,000 shares of
16 Microsoft stock that were allocated to the wife in the Findings:
- 17 1. 276,316 community property book shares and certificate shares;
 - 18 2. 349,730 of the husband's separate property book shares and
19 certificate shares;
 - 20 3. 163,702 shares from the husband's separate property JP Morgan
21 account #4001; and
 - 22 4. 10,252 shares from the community Fidelity account #068.
- 23 so long as he complies with all provisions of the agreement attached as
Appendix A.
- n. His Oppenheimer IRA #7502.
- o. Kubota R420 S/N 10686; 2000 Chevrolet truck, license #B71712C; 1996
Isuzu flatbed truck, license #A5533OW; garden equipment housed at Jacob
house.
- p. Cash in the amount of \$51,182 for balance remaining in the Laurel Group
accounts as of 10/31/2011 and the Bank of Hawaii account as of 10/31/2011

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less the stipulated value of the two trucks awarded to him that were allocated to wife in the Findings (2000 Chevrolet truck at \$2,600 and 1996 Isuzu flatbed truck at \$400).

- q. Barclay's Bank account #8610.
- r. His post-separation checking account #2675 at JP Morgan.
- s. The sole right to manage and direct contributions by the foundation known as Opportunities for Education.
- t. All interest in the Seattle Mariners, including his interests in the following: Mudville Nine, Inc.; The Baseball Club of Seattle, LLLP; and Baseball of Seattle, Inc.
- u. His interest in Kelowna Rockets Hockey Enterprises and the dividends receivable therefrom.
- v. His shares in and convertible promissory notes receivable from Promptu Systems Corporation ("Promptu"), currently valued at \$4,878,600. Notwithstanding the foregoing, any funds the husband receives from Promptu in the future will be disbursed in the following order:

1. The husband will receive the first \$9,757,200, which is two times the current value of his investment.
2. The husband will next receive two times the amount of any additional funds he puts into Promptu after January 1, 2012.
3. The remaining funds the husband receives from Promptu (if any) will be divided as follows. The husband shall pay the wife a tax-free payment *equal to* one-half of the remaining funds *minus* actual taxes paid by the husband. The husband shall receive any remaining funds not paid to the wife.

The husband shall initially pay the wife one-half of the remaining funds minus the then-current percentage income tax rate on long term capital gains. The amount subtracted by the husband from the initial payment is referred to in this paragraph as "husband's tax estimate." Within 30 days of the husband filing the income tax return that reports the remaining funds, he shall provide to the wife a calculation of "husband's actual tax" on wife's one-half of the remaining funds. The calculation of "husband's actual tax" on wife's

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one-half of the remaining funds shall be prepared by the accounting firm that prepares the husband's income tax return. "Husband's actual tax" on wife's one-half of the remaining funds shall be calculated by taking the total tax paid on husband's income tax return that reports the remaining funds, and subtracting the total tax the husband would have paid if he had not reported wife's one-half of the remaining funds. If "husband's tax estimate" is less than "husband's actual tax," the wife shall pay the difference to the husband within 10 days of wife's receipt of the accountant's calculation. If "husband's tax estimate" is more than "husband's actual tax," the husband shall pay the difference to the wife within 10 days of wife's receipt of the accountant's calculation.

The husband will provide the wife with documentation of any funds he receives from Promptu in the future within 10 days of his receipt of such funds or upon the wife's reasonable request; the husband shall provide an accounting of the funds he has put into Promptu after January 1, 2012, within 30 days of the wife's reasonable request.

w. His indirect interest in Video Networks International Ltd. (held through Digital Exploslon LLC) ("VNIL"), currently valued at \$1,284,624. Notwithstanding the foregoing, any funds the husband receives from VNIL in the future will be disbursed in the following order:

1. The husband will receive the first \$2,569,248, which is two times the current value of his investment.
2. The husband will next receive two times the amount of any additional funds he puts into VNIL after January 1, 2012.
3. The remaining funds the husband receives from VNIL (if any) will be divided as follows. The husband shall pay the wife a tax-free payment *equal to* one-half of the remaining funds *minus* actual taxes paid by the husband on said one-half of the remaining funds. The husband shall receive any remaining funds not paid to the wife.

The husband shall initially pay the wife one-half of the remaining funds minus the then-current percentage income tax rate on long term capital gains. The amount subtracted by the husband from the initial payment is referred to in this paragraph as "husband's tax estimate." Within 30 days of the husband filing the income tax return that reports the remaining funds, he shall provide to the wife a calculation of "husband's actual tax" on wife's one-half of the remaining funds. The calculation of "husband's actual tax" on wife's

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one-half of the remaining funds shall be prepared by the accounting firm that prepares the husband's income tax return. "Husband's actual tax" on wife's one-half of the remaining funds shall be calculated by taking the total tax paid on husband's income tax return that reports the remaining funds, and subtracting the total tax the husband would have paid if he had not reported wife's one-half of the remaining funds. If "husband's tax estimate" is less than "husband's actual tax," the wife shall pay the difference to the husband within 10 days of wife's receipt of the accountant's calculation. If "husband's tax estimate" is more than "husband's actual tax," the husband shall pay the difference to the wife within 10 days of wife's receipt of the accountant's calculation.

The husband will provide the wife with documentation of any funds he receives from VNIL in the future within 10 days of his receipt of such funds or upon the wife's reasonable request; the husband shall provide an accounting of the funds he has put into VNIL after January 1, 2012, within 30 days of the wife's reasonable request.

- x. His interest in Bregal Affiliates Fund L.P.
- y. His interest in Silver Lake Partners I, LP.
- z. His interest in Silver Lake Partners II, LP and related entities.
- aa. His interest in Silver Lake Partners III, LP and related entities.
- bb. 56,600 shares of Microsoft stock (stock certificate #8).
- cc. His interest in Sand Spring Fund LP.
- dd. Goldman Sachs account #0478.
- ee. Wells Fargo account #0204.
- ff. JP Morgan account #4001 (including the husband's interest in Highbridge Mezzanine Partners, LP).
- gg. His clothing, jewelry and personal effects.

1 3.3 PROPERTY TO BE AWARDED TO THE WIFE.

2 The wife is awarded as her separate property the following assets.

- 3 a. The parcels of real property located at 91 Olympic Drive NW (Jacob) and 96
4 Olympic Drive NW (Allen/Holmes), Shoreline, Washington.

5 Husband shall vacate the Allen/Holmes house by February 15, 2012. During his
6 occupancy, husband shall not cause or permit any damage to the Allen/Holmes
7 house or the grounds (reasonable wear and tear excepted) and he shall
8 reimburse wife for any such damage that is not covered by insurance.

9 The gardeners at the Norcliffe property may continue to occupy the Jacob house
10 until the wife vacates Norcliffe and the Gatehouse. During that time, the
11 gardeners shall continue to do work they would normally do at the Jacob and
12 Allen/Holmes houses.

- 13 b. The parcels of real property located at 510 N. Kalaheo Ave., 510 "A" N.
14 Kalaheo Ave., and 514 N. Kalaheo Ave., Kailua, Hawaii, and the Mid-Pacific
15 Country Club membership.

- 16 c. All interest in Larson BVI Trust and its improved real estate including a
17 house located at 10 Earls Terrace, London, United Kingdom.

- 18 d. The following parcels of real property located near Lake Armstrong,
19 Snohomish County:

20 25117 E. Lake Armstrong Rd. 32053500100200
21 25120 E. Lake Armstrong Rd. 32053500100300
22 25204 E. Lake Armstrong Rd. 32052600402100
23 25218 E. Lake Armstrong Rd. 32052600401100
25230 E. Lake Armstrong Rd. 32052600401900
25250 E. Lake Armstrong Rd. 32052600402600
25404 E. Lake Armstrong Rd. 32052600402000
25517 E. Lake Armstrong Rd. 32052600402700
25518 E. Lake Armstrong Rd. 32052600401500
25519 E. Lake Armstrong Rd. 32052600400900
25615 W. Lake Armstrong Rd. 32052600400600
25617 W. Lake Armstrong Rd. 32052600402500
25618 W. Lake Armstrong Rd. 32052600300200
25711 W. Lake Armstrong Rd. 32052600400300

DECREE (DCD) (DCLSP) (DCINMG) – Page 9 of 20
WPF DR 04.0400 Mandatory (6/2008)
RCW 26.09.030; .040; .070 (3)
XXXX

Law Offices of
THOMAS G. HAMERLINCK, P.S.
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Suite 2300
Bellevue, WA 98004
(425) 890-1075

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25803 W. Lake Armstrong Rd. 32052600400202
32052600401800 (Lake Armstrong Rd.)
32052600400200 (25803 E. Lake Armstrong Rd.)
32052600400500
32052600402200
32052600402400

e. The following parcels of real property owned by Thistledown, LLC located in Seattle, Washington:

2100 24th Ave. S. 149830-3116
2115 25th Ave. S. 149830-3165-06
911 N. 145th St. 192604-9335 (Husband to vacate by 04/30/2012)
916 N. 143rd St. 192604-9101-04
924 N. 143rd St. 192604-9378-00
934 N. 143rd St. 192604-9092-05
16715 Ashworth Ave. N. 072604-9186-06
15716 Ashworth Ave. N. 440270-0040-03
2007 N. 153rd Pl. 667297-0050-07
1817 N. 147th 021750-0155-01

f. One-half the value of the community property appraised artwork, as that term is defined in paragraph 3.2 f above and below.

| | |
|--|--------------------|
| Total artwork appraised by Debra Force (the "appraised fine art" listed in the Stipulation re: Various Asset Values) | = \$115,105,500.00 |
| <u>Plus</u> "Nude With a Parsol" by Louis Ritman (which the parties agree was inadvertently omitted from the Stipulation re: Various Asset Values) | + \$850,000.00 |
| <u>Less</u> Husband's separate property pieces (The Baseball Player; Chicago, Bird Catchers) which are awarded to husband | -\$4,800,000.00 |
| Less the community property piece Pan of Rohallion which is awarded to Husband | -\$4,500,000.00 |

DECREE (DCD) (DCLSP) (DCINMG) – Page 10 of 20
WPF DR 04.0400 Mandatory (6/2008)
RCW 26.09.030; .040; .070 (3)
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Bellevue, WA 98004
(425) 990-1075

1 Less community property pieces awarded to Wife -\$4,452,000.00
2 (Sunny Window; Undine; Wood Nymph,
3 Morning Sunshine, Play Days, La Frileuse X 2, Diana)

4 The values of the community property appraised artwork shall be determined
5 by the Stipulation re Various Asset Values, except for the value of "Nude with
6 a Parasol" by Ritman, which the parties agree shall be \$850,000.

7 The parties shall attempt to agree to an equal division of the value of the
8 community property appraised artwork by February 3, 2012. If they cannot
9 reach agreement, each party shall submit to the court on February 8, 2012 a
10 list of community property appraised artwork he or she would like to be
11 awarded, in order of priority, and the reasons therefor. The court will then
12 issue a supplemental order dividing the value of the community property
13 appraised artwork equally between the parties if possible. If an equal
14 division is not possible, then the court will divide the community property
15 appraised artwork so the totals awarded to each party are less than \$1
16 million apart.

17 If the court's division of community property appraised artwork results in one
18 party receiving artwork of greater value than the other, the former shall pay
19 the latter one-half of the difference within 5 (five) days; provided, however,
20 the wife's obligation, if any, to pay the difference shall mature within 5 (five)
21 days or upon receipt of the \$12 Million referred to in paragraph 3.3(bb),
22 whichever is last.

23 If the wife is awarded one or more pieces of artwork currently pledged to JP
 Morgan for the \$45 million line of credit, the husband shall use his best
 efforts to obtain a release of her artwork from the pledge agreement within
 60 days of the date of the award to the wife. In any event, the wife shall
 not be required to sign a renewal or extension of the JP Morgan pledge
 agreement when the pledge agreement expires at the end of July 2012.

- g. The non-appraised artwork listed in trial exhibit #129.
- h. The household goods, furnishings and other personal property located in the real property awarded to her (except for those items specifically awarded to the husband) located at 91 Olympic Drive NW (Jacob) and 96 Olympic Drive NW (Allen/Holmes), Lake Armstrong, all 3 parcels located at 510 N. Kalaheo Avenue, 510 "A" N. Kalaheo Avenue, and 510 N. Kalaheo Avenue, 10 Earls Terrace, London, and all real estate located in Thistledown LLC excluding 15733 Palatine Avenue N.

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- i. All posey holders and posey holder displays.
- j. All silver and silver displays and collectibles.
- k. All tea pots and tea sets.
- l. All antique and vintage linens used for ballroom set-up (valued at \$15,000).
- m. All other items purchased by the wife from the Antique Cupboard.
- n. The following vehicles:

- 2004 Chrysler Pacifica; license #94RXH
- 1999 Volvo V70 AWD XC; license #989UWB
- 2000 Volvo V70 AWD XC; license #379XOW
- 1981 Fiat Spider 2000 (NADA low retail value); license #416YBB
- 1999 Ford Econoline (HI) SDuty35; license #PDX365
- 1999 Chevy Suburban (HI); license #NNR927
- 2002 Chrysler Sebring (HI); license #MJP145
- 1993 Ford R10PU
- 1997 Ford Ranger; license #B95966A
- 1999 Ford Ranger; license #B02017A
- 2000 Ford Ranger Super Cab; license #B08984H
- 2003 Ford Ranger; license #B91997N
- 2007 Chrysler Town & Country Van; license #002XBW
- 2002 Honda Odyssey Van
- 1997 Volvo 960SW; license #832XKC
- 1998 Volvo V70 Wagon
- 2001 Volvo V70 XC; license #380XOW
- 2002 Volvo V70 AWD XC; license #710YNZ
- 2004 Volvo XC70; license #836SYI
- 1994 Isuzu NPR/ND2
- 1998 Ford E250 Parcel 10' Van; license #B68491G
- 1998 Volvo V70 XCAWD
- 1998 Volvo Wagon
- 1999 Volvo V70 XCAWD
- 1996 Range Rover MDL 4.0SE
- 1994 Volvo 850 4-Door (A.M.)

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o. The following scooters and dirt bikes:

- 1999 Honda CH80X Scooter (white); license #872867
- 1999 Honda CH80X Scooter (black); license #872866
- 1999 Yamaha PW50 Dirt Bike; license #102412A
- 1999 Yamaha PW80LI Dirt Bike; license #102411A
- 2000 Yamaha TTR90M Dirt Bike; license #12660A
- 2001 Yamaha TTR90N Dirt Bike; license #14155A
- 2003 Yamaha TTR90R Dirt Bike; license #211507A
- 2003 Yamaha TTR90R Dirt Bike; license #211506A
- 2002 Yamaha PW80P Dirt Bike; license #211505A
- 2001 Yamaha TTR90N Dirt Bike; license #14153A

p. The following trailers, heavy equipment and miscellaneous vehicles:

1. 1996 utility trailer
2. 2004 EZLDR trailer
3. 1993 Caterpillar forklift
4. Raymond forklift

q. All women's jewelry, appraised and unappraised.

r. Loans receivable from her brother, Joseph, and the parties' daughter, Shauna.

s. The husband's Microsoft 401(k) account, Fidelity #9872.

t. Her IRA at Fidelity #8155.

u. The Findings allocated US Bank joint account #7456 to the wife. The value of the US Bank joint account was \$2,243,485 on October 31, 2011. After that date the parties continued to disburse funds from the US Bank joint account to pay expenses per the Temporary Order. After trial, the husband transferred a total of \$1,425,000 to the US Bank joint account from an account allocated to him in the Findings (Goldman Sachs account #8395) to bring the balance of the US Bank joint account to more than \$2,243,000. The wife then advanced to herself by agreement a total of \$2,243,000 from the US Bank joint account. The wife is awarded the \$2,243,000 that she advanced to herself from the US Bank joint account after trial, and the husband is awarded the remainder of the US Bank joint account, because it

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consists of post-trial deposits from an account allocated to him in the Findings.

- v. US Bank Thistledown account #7992.
- w. Nat West account #6541.
- x. The accounts for The Laurel Group, US Bank #9430 and #9448 and the Bank of Hawaii account #5080.
- y. All interest in Laurel Ink and Laurel Gifts.
- z. The corporate entities for Thistledown LLC and Laurel Group LLC, to be transferred to the wife pursuant to paragraph 3.13 below.
- aa. The sole right to manage and direct contributions by the foundations known as Laurel Foundation and Positive Transitions.
- bb. Four tax-free cash payments from the husband totaling \$47,770,480.27, paid as follows:
 - 1. \$12,000,000 paid prior to entry of this Decree of Dissolution on February 3, 2012, ("Immediate Transfer Payment");
 - 2. \$20,770,480.27 which are the net proceeds of the December 30, 2011, sale of 800,000 shares of Microsoft stock, which shall be paid to the wife on February 3, 2012, pursuant to the agreement attached hereto as Appendix A ("Microsoft Stock Proceeds");
 - 3. Transfer payment of \$10,000,000 paid on January 2, 2013 ("Future Cash Payment"); and
 - 4. Transfer payment of \$5,000,000 paid on January 2, 2014 ("Future Cash Payment").

The Immediate Transfer Payment and the Microsoft Stock Proceeds shall not be a judgment or accrue interest if timely paid pursuant to #1 and #2 above. In the event that either one or both of the payments mentioned in the preceding sentence are not timely paid, the court shall enter an immediate judgment for the unpaid payment(s) which shall accrue interest at 12% per annum from default until principal and interest are fully paid.

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The Future Cash Payments shall not be a judgment. The Future Cash Payments shall not accrue interest if timely paid because the husband will need to sell assets to make the Future Cash Payments and will incur costs of sale in doing so. The court could have awarded additional assets to the wife in lieu of the Future Cash Payments, in which case she would have borne the costs of sale. In the event that either one or both of the Future Cash Payments is not timely paid, the past due payment(s) shall accrue interest at 12% per annum from default until the default is cured or principal and interest are fully paid.

Husband shall be in default under the terms as set forth in this Decree if he (a) fails to make any payment when and as due under the terms of this Decree; or (b) fails to perform or comply with, in full, any of the terms of the Deeds of Trust described below.

Upon default, husband shall pay all reasonable costs of collection incurred by wife hereunder (including, but not limited to, reasonable attorney's fees, accounting fees, expert fees, and deposition costs).

If the husband defaults on either of the Future Cash Payments, there shall be a 30-day "cure period" from his receipt of notice of default before the Deed of Trust foreclosure process can begin, to give the husband time to cure the default.

If the husband defaults on the first Future Cash Payment and does not cure his default within the 30-day cure period, both Future Cash Payments shall become due and payable after the end of the 30-day cure period.

Husband shall have no claim for offset or credit against the cash payments herein and he shall have no claim for forgiveness of the cash payments. The Future Cash Payments under the terms of this Decree shall be secured by Deeds of Trust upon improved real estate at 97 Olympic Drive NW, Shoreline, WA 98177 and 95 NW Park Drive, Shoreline, WA 98177, executed simultaneously with this Decree. The form of said Deeds of Trust is attached as Appendix B, including the Master Form Deed of Trust as provided for in RCW 65.08.160 (as edited in Appendix B). The husband may cancel the \$30 Million life insurance policy benefitting the wife when the Deeds of Trust are signed by the husband and recorded. Any and all costs incurred by wife in connection with recognizing upon the above security shall be included in the costs of collection hereunder for purposes of Attorneys' Fees and Collection Costs.

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- cc. The right to receive a portion of funds the husband receives in the future from Promptu Systems Corporation, as more fully described in Section 3.2.v above.
- dd. The right to receive a portion of funds the husband receives in the future from Video Networks International Ltd., as more fully described in Section 3.2.w above.
- ee. Her clothing, jewelry and personal effects.

3.4 LIABILITIES

- A. Liabilities Under Temporary Order. Husband and wife shall assume and pay any debts and obligations of the parties that are due prior to the entry of the Decree pursuant to the provisions of the Temporary Order entered on 09/30/2010.
- B. Husband's Liabilities. Husband shall assume and pay any unpaid indebtedness incurred by the husband subsequent to the entry of the Decree. Except as otherwise provided for in this Decree, husband shall assume and pay any and all indebtedness, liabilities, guarantees, and obligations incident to any asset awarded to the husband. The husband shall assume and pay any and all indebtedness due and owing to Goldman Sachs and JP Morgan. Husband shall assume and pay the charitable pledges of the parties in the amounts listed in the Stipulation re: Various Asset Values to Children's, Evergreen School, Solid Ground, University Prep, and Lakeside School. Husband shall assume and pay cash payments to the wife in the amount of \$47,770,480.27 as set forth in paragraph 3.3(bb) above. Husband's Liabilities are subject to the Duty to Defend, Hold Harmless and Indemnification provisions of subparagraph 3.4(D) below.
- C. Wife's Liabilities. Wife shall assume and pay any unpaid indebtedness incurred by the Wife subsequent to the entry of the Decree. Except as otherwise provided for in this Decree, wife shall assume and pay any and all indebtedness, liabilities, guarantees, and obligations incident to any asset awarded to the wife (including any amount due to the Antique Cupboard). Wife's Obligations are subject to the Duty to Defend, Hold Harmless and Indemnification provisions of subparagraph 3.4(D) below.

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D. Duty to Defend, Hold Harmless and Indemnify. Husband and wife shall indemnify, defend, hold harmless, protect and reimburse each other for, from, and against any and all legal proceedings, claims, losses, demands, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), fines, judgments, mediator costs, arbitrator costs, court costs, legal fees incurred on appeal of a collection action and all interest thereon related to or arising from

- (i) Either's obligations as set forth in this Decree;
- (ii) Claims pertaining to any property awarded to either;
- (iii) Claims caused by the negligence or willful act of either; and/or
- (iv) Claims related to or arising from the death or bodily injury to persons or injury or damage to any property, caused by either or agents or employees of any business property interest awarded to either under this decree (collectively, "Claims").

E. Husband's and wife's duty to defend the other shall arise immediately upon either party providing written notice of a Claim to the other, and shall survive the satisfaction and payment of either party's obligations under this decree.

F. Release of Wife. No later than March 31, 2012, the Husband shall close the joint Goldman Sachs margin loan account and transfer the margin debt to an account in his name solely. In addition, prior to March 31, 2012, the husband shall ask JP Morgan for a written statement that the wife is not liable on the husband's JP Morgan line of credit.

3.5 MAINTENANCE.

Neither party shall pay or receive maintenance.

3.6 INCOME TAXES.

The parties shall file a joint individual income tax return for 2011 (the "2011 return"). Pursuant to Appendix A attached hereto, the husband shall pay 100% of any tax due on the 2011 return and any later deficiency including tax penalty

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and interest. The husband shall receive 100% of any refund or tax overpayment on the 2011 return. In addition, the husband is awarded 100% of any credit relating to the 2011 return.

If there is later determined to be a deficiency (including tax, penalty and interest) on a joint Income tax return for a year prior to 2011, the responsibility for paying the deficiency shall be divided between the marital community and the husband's separate estate in the same proportion as the community and separate adjusted gross income for that tax year. Each party shall pay 50% of the community portion of the deficiency. The husband shall pay 100% of the separate portion of the deficiency.

The husband shall report the Video Networks loss carry forward on future income tax returns.

For any audit, assessment or other action by the IRS relating to a joint income tax return filed by the parties, the wife shall sign a power of attorney authorizing the husband to act on her behalf. The husband shall select and pay for any professional he deems necessary to assist him in responding to the audit, assessment or other action.

The liabilities of the parties under this paragraph 3.6 shall be subject to the Duty To Defend, Hold Harmless, and Indemnify provisions of subparagraph 3.4(D) above.

3.7 CONTINUING RESTRAINING ORDER / PROTECTION ORDER.

Clerk's Action/Law Enforcement Action: The clerk shall forward this Decree to the Seattle Police Department which shall forthwith remove from any computer-based criminal intelligence system available in this state used by law enforcement agencies any reference to the Restraining Order entered by the court in this matter on September 30, 2010.

3.8 JURISDICTION OVER THE CHILDREN.

The court has jurisdiction over the parties' minor child, Adeline, because Washington is Adeline's home state.

3.9 PARENTING PLAN.

The parties shall comply with the Parenting Plan for the parties' minor child, Adeline, signed by the court on November 29, 2011. The Parenting Plan signed by the court is approved and incorporated as part of this decree.

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3.10 CHILD SUPPORT AND POST-SECONDARY EDUCATIONAL EXPENSES.

Child support and post-secondary educational expenses shall be paid in accordance with the Order of Child Support signed by the court and dated January 27, 2012. This order is approved and incorporated as part of this decree.

3.11 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

Each party shall pay his or her own yet-unpaid attorney's fees and costs.

3.12 NAME CHANGES.

Does not apply.

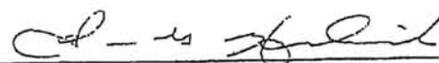
3.13 OTHER.

Each party shall promptly perform any act reasonably requested by the other party that is necessary to effectuate the terms of this Decree, including but not limited to the execution of documents to transfer assets as provided for in this Decree.

The parties' obligations in this Decree including the transfer of assets as provided for herein, shall survive the obligor's death and shall be a lien on his/her estate.

DATED: Feb. 3, 2012 
HON. WILLIAM DOWNING

Petitioner or petitioner's attorney:
A signature below is actual notice of this order.
THOMAS G. HAMERLINCK, P.S.

By:  2/3/12
Thomas G. Hamerlinck Date
WSBA No. 11841
Attorney for Petitioner

1 Respondent or respondent's attorney:
A signature below is actual notice of this order.
2 JANET A. GEORGE, INC., P.S.

3
4 By: _____

5 Janet A. George
6 WSBA No. 5990
7 Attorney for Respondent

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Date

DECREE (DCD) (DCLSP) (DCINMG) – Page 20 of 20
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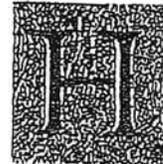
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APPENDIX A

JANET A. GEORGE, INC., P.S.

December 29, 2011

VIA EMAIL
Ms. Janet A. George
701 Fifth Ave., Suite 4550
Seattle, WA 98104



Thomas O. Hamerlinck, P.S.
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SUITE 2300
BELLEVUE, WA 98004
TELEPHONE (425) 880-1075
FACSIMILE (425) 636-7791

RE: Larson / Calhoun Dissolution - PRIVILEGED SETTLEMENT COMMUNICATION

Dear Janet:

Chris Larson has authorized me to send the following offer of compromise. If your client does not accept the following offer, neither you nor she may refer to it in any court proceeding.

We received your email response containing your interlineations and your addition of paragraph 4. Chris agrees to your interlineations and the addition of your paragraph 4, with the conditions as set forth in the new paragraph 5, below. I have instructed my paralegal, Lynn Stanley, to revise the letter I emailed to you earlier this morning to include your interlineations, your addition of paragraph 4., our addition of paragraph 5. and further instructed Lynn to sign the letter on my behalf.

Excluding MSFT shares held in Chris's 401(k) account, Julia was awarded 800,000 shares of MSFT stock, consisting of book shares, certificate shares and shares held in street name. This week, MSFT has been trading around \$26 per share, and I assume the average cost basis of the MSFT stock awarded to Julia is around \$1 per share, which means that Julia has trapped-in capital gain of \$25 per share. Multiply the \$25 per share gain figure by 800,000 shares and Julia has a total of \$20,000,000 in trapped-in capital gain in the MSFT shares awarded to her. At long-term capital gain rates (15%), the tax on \$20,000,000 of gain is \$3,000,000.

Chris is willing to sell 800,000 shares of MSFT before the end of the year and give the proceeds to Julia, so that the gain can be reported on the 2011 joint income tax return and netted against the loss carry-forward generated by Video Networks International, provided Julia agrees to the following:

1. Julia's choice of either 510 "A" N. Kalahao Ave. (stipulated value \$1,690,000) or one-third interest in Swauk Valley Ranch LLC (stipulated value \$1,850,000) shall be awarded to Chris.
2. Chris will sell 800,000 shares of MSFT in Goldman Sachs account #8395 on Friday 12/30/11. Julia will hold him harmless for any fluctuation in the price of MSFT stock between now and the time the stock is sold.

December 29, 2011
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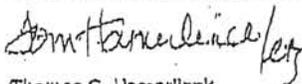
3. Chris must hold the 12/30/11 sale proceeds in account #8395 until replacement shares are transferred into the account, otherwise the withdrawal of the 12/30/11 sale proceeds would trigger a margin call in account #8395. Thus, the 800,000 shares awarded to Julia in the Findings of Fact and Conclusions of Law will be awarded to Chris, and they will be transferred into Goldman Sachs account #8395 by 1/31/12. The transfer of the replacement shares shall be completed by January 31, 2012. The net proceeds from the sale of the 800,000 shares sold on 12/30/11 will be transferred to Julia on February 3, 2012.

4. Chris shall assume all tax liability for the parties' joint 2011 tax return form 1040.

5. Any future tax credits or refunds (if any) on future tax returns associated with the taxes Chris is paying solely on the 2011 return shall be entirely credited to/received by Chris. In other words, if Chris is paying ALL of the tax on the parties' 2011 federal income tax return, then Chris should receive all future credit(s) and refund(s) (if any) associated with the payment of the 2011 taxes he pays.

The foregoing offer is revoked if it is not accepted in writing by 5:00 p.m. today. Julia's acceptance must specify her choice between Chris receiving the Hawaii property or the interest in Swauk Valley Ranch LLC. Please email your acceptance to Lynn Stanley, as I will not be in the office at 5:00 p.m. today.

Sincerely,
THOMAS G. HAMERLINCK, P.S.


Thomas G. Hamerlinck

Accepted:


Janet George, attorney for Julia Colhoun

cc: Mr. Chris Larson

Asset to transfer to husband in consideration of stock sale (initial one)

- 510 "A" N. Kalaheo Ave.
- 1/3 Interest in Swauk Valley Ranch LLC

APPENDIX B

JANET A. GEORGE, INC., P.S.

APPENDIX B

JANET A. GEORGE, INC., P.S.

AFTER RECORDING MAIL TO:

NAME: Janet A. George
ADDRESS: Janet A. George, Inc., P.S.
701 Fifth Avenue, Suite #4550
Seattle, WA 98104

SHORT FORM DEED OF TRUST

THIS DEED OF TRUST, made this ____ day of _____, 2012, between Christopher Ross Larson as GRANTOR, and _____ as TRUSTEE, and Julia Larson Calhoun as BENEFICIARY.

GRANTOR hereby irrevocably grants, bargains, sells, and conveys to TRUSTEE in trust, with power of sale, the following described property in King County, Washington:

The property whose address is 97 Olympic Drive NW, Shoreline, Washington 98177

Assessor's Property Tax Parcel/Account Number: 330470-0405-03

Legal Description: See attached EXHIBIT A

TOGETHER WITH all the tenements hereditaments and appurtenances, now or hereafter thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof and all other property or rights of any kind or nature whatsoever further set forth in the Master Form Deed Of Trust hereinafter referred to, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

THIS DEED IS FOR THE PURPOSE OF SECURING PERFORMANCE of Grantor's obligations incorporated by reference or contained herein and payment of the sum of TEN MILLION DOLLARS (\$10,000,000.00) on 01/02/2013; the payment of the sum of FIVE MILLION DOLLARS (\$5,000,000.00) on 01/02/2014; all with interest thereon in case of default according to the terms of the Decree Of Dissolution, payable to BENEFICIARY or order and made by Grantor.

~~This deed is for the purpose of securing performance of Grantor's obligations under the Decree of Dissolution entered in King County, Cause #10-3-04077-7 SEA on _____; requiring the Grantor to pay the sum FIFTEEN MILLION DOLLARS (\$15,000,000.00) with interest thereon in case of default.~~

By executing and delivering this Deed Of Trust secured hereby, the parties agree that all provisions of Paragraphs 1 through 35 inclusive of the Master Form Deed Of Trust hereinafter referred to and attached, except as stricken by interlineations, together with the attached Rider, are hereby incorporated herein by reference and made an integral part hereof for all purposes the same as if set forth herein at length, and the Grantor hereby makes said covenants and agrees to fully perform all of said provisions. The Master Form Deed Of Trust above referred to was recorded on the 25th day of July 1968 in the Official Records of the offices of the County Auditors of the following counties in Washington in the book, and at the page designated after the name of each county, to-wit: King County, Book 569 of Mtgs, Page 436—439, Auditor's #6382309.

///
///

97 Olympic Dr NW (Norcliffe)

EXHIBIT "A"

DESCRIPTION:

BEGINNING AT A STONE MONUMENT MARKED "RES." ON EAST SIDE, "S" ON WEST SIDE AND "RD" ON SOUTH SIDE, WHICH MONUMENT IS SITUATED ON THE NORTHERLY MARGINAL LINE OF A PRIVATE ROAD KNOWN AS BEACH DRIVE, NOW CONSTRUCTED OVER AND ACROSS THE NORTHEAST 1/4 OF SECTION 13, AND THE NORTHEAST 1/4 OF SECTION 14, BOTH IN TOWNSHIP 49 NORTH, RANGE 3 EAST N.H.;

THENCE ALONG SAID NORTHERLY MARGINAL LINE OF BEACH DRIVE AND IN A GENERAL SOUTHWESTERLY DIRECTION TO A POINT WHERE SAID NORTHERLY MARGINAL LINE OF BEACH DRIVE MERGES INTO THE WESTERLY MARGINAL LINE OF A PRIVATE ROAD SHOWN AS PARK DRIVE, NOW CONSTRUCTED OVER AND ACROSS THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 14;

THENCE ALONG THE NORTHERLY MARGINAL LINE OF PARK DRIVE AND IN A GENERAL SOUTHWESTERLY DIRECTION TO A POINT WHERE THE NORTHERLY MARGINAL LINE OF PARK DRIVE MEETS THE EASTERLY MARGINAL LINE OF PARK LANE, NOW CONSTRUCTED OVER AND ACROSS THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 14; THENCE ALONG THE EASTERLY MARGINAL LINE OF PARK LANE AND IN A GENERAL NORTHEASTERLY DIRECTION TO A POINT ON THE NORTHERLY MARGIN OF SAID PARK LANE; THENCE ON A COURSE SOUTH 82°29'00" WEST A DISTANCE OF 20.00 FEET, THIS BEING ALSO THE NORTHERLY BOUNDARY LINE OF PARK LANE;

THENCE CONTINUING ON A COURSE SOUTH 82°29'00" WEST, BEING ALSO THE NORTHERLY BOUNDARY OF A TRACT CONVEYED TO ST. MARK'S BLDG. AND WIFE BY DEED RECORDED UNDER RECORDING NO. 288,570; A DISTANCE OF 34.73 FEET TO A POINT; THENCE CONTINUING ON THE COURSE SOUTH 82°29'00" WEST A DISTANCE OF 139.00 FEET, MORE OR LESS, TO THE EASTERLY MARGINAL LINE OF RIGHT-OF-WAY OF THE GREAT NORTHERN RAILROAD (BORN IN 1850);

THENCE ALONG THE SAID EASTERLY MARGINAL LINE OF SAID RIGHT-OF-WAY AND IN A GENERAL NORTHWESTERLY DIRECTION A DISTANCE OF 24.4 FEET, MORE OR LESS;

THENCE CONTINUING ALONG SAID MARGINAL LINE OF RIGHT-OF-WAY AND IN A GENERAL NORTHEASTERLY DIRECTION A DISTANCE OF 74 FEET TO A POINT WHERE THE SAID MARGINAL LINE OF RIGHT-OF-WAY TURNS IN A NORTHWESTERLY DIRECTION;

THENCE ALONG IN A NORTHWESTERLY DIRECTION OF SAID MARGINAL LINE OF SAID RIGHT-OF-WAY A DISTANCE OF 344.80 FEET, MORE OR LESS, TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE, "W" ON WEST SIDE AND "S" ON EAST SIDE, WHICH MONUMENT IS SITUATED ON THE EASTERLY MARGINAL LINE OF SAID RIGHT-OF-WAY; THENCE ON A COURSE NORTH 17°18'58" EAST A DISTANCE OF 104.92 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE NORTH 75°20'00" EAST A DISTANCE OF 118.65 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE NORTH 83°28'00" EAST A DISTANCE OF 110.49 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE SOUTH 81°18'20" EAST A DISTANCE OF 89.80 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE SOUTH 85°22'00" EAST A DISTANCE OF 89.80 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE NORTH 76°28'50" EAST A DISTANCE OF 80.53 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE SOUTH 78°00'20" EAST A DISTANCE OF 110.80 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE SOUTH 78°25'00" EAST A DISTANCE OF 48.78 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE SOUTH 82°11'00" EAST A DISTANCE OF 182.70 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE NORTH 87°00'40" EAST A DISTANCE OF 118.10 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE NORTH 78°42'50" EAST A DISTANCE OF 193.95 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE AND "S" ON SOUTH SIDE;

THENCE SOUTH 87°38'00" EAST A DISTANCE OF 181.86 FEET TO A STONE MONUMENT MARKED "RES." ON NORTH SIDE, SOUTH AND EAST SIDES, AND "S" ON WEST SIDE;

THENCE SOUTH 01°32'00" WEST A DISTANCE OF 109.34 FEET TO POINT OF BEGINNING;

(COMMONLY KNOWN AS TRACT 00 OF ASSESSOR'S MAP OF THE HIGHLANDS)

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

WARRANT

MASTER FORM DEED OF TRUST

Recorded by Washington Mortgage Correspondence Association, a Washington corporation, pursuant to C. 148 L.
1967

The Grantor(s) covenants and agrees as follows:

1. The following described estate, property and rights of Grantor(s) are also included as a security for the performance of each covenant and agreement of Grantor(s) contained herein or in the Short Form Deed of Trust and the payment of all sums of money secured hereby:

(a) All the estate and rights of Grantor(s) in and to said property and in and to land lying in streets and roads adjoining said premises, and all access, rights, and easements appertaining thereto.

(b) All buildings, structures, improvements, fixtures, and articles of property now or hereafter attached to, or used or adapted for use in the operation of, the said premises, including but without being limited to, all heating and incinerating apparatus and equipment whatsoever, all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen-equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of ~~public spaces, halls and lobbies,~~ and shrubbery and plants; and including also all interest of any owner of the said premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this paragraph shall be deemed part of the realty and not severable wholly or in part without material injury to the freehold.

(c) All and singular the lands, tenements, privileges, water rights, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, rights, title, claim, interest and demand whatsoever of the Grantor(s), either in law or equity, of, in and to the bargained premises. TO HAVE AND TO HOLD said premises bargained and described, together with all and singular the lands, tenements, privileges, water rights, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all of the estate, right, title, claim, and demands whatsoever of the Grantor(s), either in law or in equity, of, in and to the above bargained premises, forever as security for the faithful performance of the promissory note secured hereby and as security for the faithful performance of each and all of the covenants, agreements, terms, and conditions of this Deed of Trust, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

(d) All of Grantor(s)'s rights further to encumber said property for debt except by such encumbrance which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Grantor(s) hereby (i) representing as a special inducement to Beneficiary to make this loan that as of the date hereof there are no encumbrances to secure debt junior to this Deed of Trust and (ii) covenanting that there are to be none as of the date when this Deed of Trust becomes of record, except in either case encumbrances having the prior written approval of Beneficiary, and all of Grantor(s)'s rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this Deed of Trust.

2. When and if Grantor(s) and Beneficiary shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting property either referred to or described herein, or in any way connected with the use and enjoyment of these premises, this Deed of Trust shall be deemed a Security Agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms, and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Beneficiary's sole election. Grantor(s) and Beneficiary agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the property that is the subject of this

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Deed of Trust and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a receipt contained in the short form Deed of Trust or in any list filed with the Beneficiary, (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time.

3. To pay all debts and monies secured hereby, when from any cause the same shall become due. To keep the property free from statutory and governmental liens of any kind. That the Grantor(s) (s/he) are seized in fee simple of the property and owns outright every part thereof, that there are no liens or encumbrances against or upon the same and none superior to this Deed of Trust, will be created or suffered to be created by the Grantor(s) during the life of this Deed of Trust, that he has good right to make this Deed of Trust and that he will forever warrant and defend said property unto the Beneficiary, his successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. The Grantor(s) upon request by mail will furnish a written statement duly acknowledged of the amount due on this Deed of Trust and whether any offsets or defenses exist against the debt secured hereby.

To pay to Beneficiary, if Beneficiary so requires, together with and in addition to the monthly payments of principal and interest payable under the terms of the said note, on the date set forth herein for the making of monthly payments each month, until said note is fully paid, a sum, as estimated by the Beneficiary, equal to the ground rents, if any, and the taxes and special assessments next due on the premises covered by this Deed of Trust, plus the premiums that will next become due and payable on insurance policies as may be required under paragraph 10 hereof, Grantor(s) agreeing to deliver promptly to Beneficiary all bills and notices thereof, less all sums already paid therefor, divided by the number of months to elapse before two months prior to the date when such ground rents, premiums, taxes, and special assessments will become delinquent, such sums to be held by the Beneficiary in trust to pay said ground rents, premiums, taxes, and special assessments. All payments mentioned in this paragraph and all payments to be made under said note shall be added together and the aggregate amount thereof shall be paid by the Grantor(s) each month in a single payment to be applied by Beneficiary to the following items in the order set forth: (1) ground rents, if any, taxes, special assessments, fire and other hazard insurance premiums; (2) interest on the note secured hereby; and, (3) amortization of the principal of said note. Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default under this Deed of Trust. The arrangement provided for in the paragraph 4 is solely for the added protection of the Beneficiary and entails no responsibility on the Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon assignment of this Deed of Trust by the Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of the assignor with respect thereto shall terminate. Each transfer of the property that is the subject of this Deed of Trust shall automatically transfer to the grantee all rights of the Grantor(s) with respect to any funds accumulated hereunder.

~~5. In the event that any payment or portion thereof is not paid within fifteen (15) days commencing with the date it is due, Beneficiary may collect, and the Grantor(s) agree(s) to pay with such payment, a "late charge" of two cents (\$.02) for each dollar overdue as liquidated damages for the additional expense of handling such delinquent payments.~~

6. If the total of the payments (herein called reserves) made under paragraph 4 hereof relating to reserves for ground rents, taxes, special assessments, and premiums on insurance policies, shall exceed the amount of payments actually made by Beneficiary for the purposes set forth in paragraph 4, plus such amounts as have been reasonably accumulated in such reserves toward payments therefrom next to become due, such excess may, provided no default then exists under the terms of this instrument nor under the terms of the promissory note hereby secured, but not otherwise, be credited by Beneficiary in payment of subsequent aggregate, but not partial, payments to be made by Grantor(s) or, at the option of the Beneficiary, refunded to the Grantor(s) or his/her successors in interest as may appear upon the records of the Beneficiary. If, however, the monthly payments accumulated in such reserves shall not be sufficient to pay the sums required when the same shall become due and payable, the Grantor(s) shall pay to Beneficiary any amount necessary to make up the deficiency within thirty (30) days after written notice to Grantor(s) stating the amount of the deficiency. If there shall be a default under any of the provisions of this Deed of Trust and therefore a sale of the property in accordance with the provisions hereof, or if the Beneficiary acquires the property otherwise after default, the Beneficiary shall apply, at the time of commencement of such proceedings or at the time the property is otherwise required, the balance then remaining in the funds accumulated under paragraph 4, less such sums as will become due and payable during the pendency of the proceedings, as a credit against the amounts secured hereby.

7. To maintain the buildings and other improvements on the property in a rentable and tenable condition and state of repair, to neither commit nor suffer any waste, to promptly comply with all requirements of the federal, state, and municipal authorities and all other laws, ordinances, regulations, covenants, conditions, and restrictions respecting said property or the use thereof, and pay all fees or charges of any kind in connection therewith. The Beneficiary may recover as damages for any breach of this covenant the amount it would cost to put the property in the condition called for herein. In the event of breach of any requirement of this paragraph, the Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable. Proof of impairment of security shall be unnecessary in any suit or proceeding under this paragraph. Grantor(s) shall permit Beneficiary or its agents the opportunity to inspect the property, including the interior of any structure at reasonable times and after reasonable notice.

8. To complete or restore promptly and in good workmanlike manner any building or improvement which may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor, and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Grantor(s) further agree(s):

(a) To commence construction promptly and in any event within thirty (30) days from the date of this instrument, and complete the same in accordance with any agreements relating to construction and plans and specifications satisfactory to Beneficiary within eight months of the date of this instrument.

(b) To allow Beneficiary to inspect said property at all times during construction.

(c) To replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) calendar days after written notice to Grantor(s) of such fact.

(d) That work shall not cease on the construction of such improvements for any reason whatsoever for a period of fifteen (15) consecutive days.

The Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Grantor(s) under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

9. No building or other improvement on the property shall be structurally altered, removed, or demolished, without the Beneficiary's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the proper use and enjoyment of the premises be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by the Grantor(s), free and clear of any lien or security interest except such as may be approved in writing by the Beneficiary.

10. To provide to the Beneficiary, at least thirty (30) days prior to expiration of existing insurance, and maintain unceasingly, insurance, with premiums prepaid, on all of the property that is the subject of this Deed of Trust, or hereafter becoming part of said property, against loss by fire and other hazards, casualties, and contingencies, including war damage, as may be acquired from time to time by the Beneficiary in such amounts and for such periods of time, with loss payable clauses (without contribution) in favor of and in form satisfactory to the Beneficiary, and to deliver all policies to Beneficiary, which policies shall constitute an assignment to Beneficiary of all return premiums. All insurances shall be carried in companies approved by Beneficiary. Beneficiary may at its option require Grantor(s) to maintain said required policies in Grantor(s)'s possession in lieu of delivering said policies to Beneficiary, in which event said policies shall be kept available by Grantor(s) at all times for return to the Beneficiary or for inspection by Beneficiary, its agents or insurers, and said requirement may be withdrawn by Beneficiary at any time. In event of foreclosure of this Deed of Trust or other transfer of title to the subject property in extinguishment of some or all of the indebtedness secured hereby, all interest of the Grantor(s) in any insurance policies in force shall pass to the purchaser or Grantee to pay to Beneficiary as Beneficiary may require a reasonable fee to cover costs of substituting policies in the event the Grantor(s) replace(s) any policy prior to its expiration. Grantor(s) will reimburse Beneficiary for any premiums paid for such insurance by the Beneficiary upon the Grantor(s)'s default in so insuring the buildings or other improvements or default in assigning and delivering of such policies to the beneficiary so endorsed.

11. To appear in and defend any suit, action, or proceeding that might affect the value of this security instrument or the security itself or the rights and powers of Beneficiary or Trustee and should Beneficiary or Trustee elect also to appear

In or defend any such action or proceeding, be made a party to such by reason of this Deed of Trust or elect to prosecute such action as appears necessary to preserve said value, the Grantor(s) will, at all times, indemnify from, and, on demand reimburse Beneficiary or Trustee for any and all loss, damage, expense, or cost, including cost of evidence of title and attorney's fees, arising out of or incurred in connection with any such suit, action, or proceeding, and the sum of such expenditures shall be secured by this Deed of Trust with interest as provided in the note secured hereby and shall be due and payable on demand. To pay costs of suit, cost of evidence of title and a reasonable attorney's fee in any proceeding or suit brought by Beneficiary to foreclose this Deed of Trust.

12. To pay in full ~~at least thirty (30) days~~ before delinquent all rents, taxes, assessments, and encumbrances, charges or liens with interest, that may now or hereafter be levied, assessed, or claimed upon the property that is the subject of this Deed of Trust or any part thereof, which at any time appear to be prior or superior hereto for which provision has not been made heretofore, and upon request will exhibit to Beneficiary official receipts therefor, and to pay all taxes imposed upon, reasonable costs, fees, and expenses of this Trust. On default under this paragraph Beneficiary may, at its option, pay, or pay out of reserves accumulated under paragraph 4, any such sums, without waiver of any other right of Beneficiary by reason of such default of Grantor(s), and Beneficiary shall not be liable to Grantor(s) for a failure to exercise any such option.

13. To repay (immediately on written notice to Grantor(s) all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the rate of ten percent (10%) per annum until paid, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of the mailing of such notice will, at Beneficiary's option, constitute an event of default hereunder, or, Beneficiary may, at its option, commence an action against Grantor(s) for the recovery of such expenditure or advance and interest thereon, and in such event Grantor(s) agree(s) to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney's fee.

14. Should Grantor(s) fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor(s) and without releasing Grantor(s) from any obligation hereof, may, Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the property for such purposes; commence, appear in and defend any action or proceeding purporting to effect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto, and in exercising any such power, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor including cost of evidence of title, employ counsel, and pay his/her/their reasonable fees.

15. (a) To fully comply with all of the terms, conditions, and provisions of all leases on said property so that the same shall not become in default and to do all that is needful to preserve all said leases in force.

(b) To permit no assignment of any lease, or any subletting thereunder unless the right to assign or sublet is expressly reserved by the lessee under such lease.

(c) That save and except for taxes and assessments provided to be paid by Grantor(s) as specified in paragraph 12 hereof, Grantor(s) will not create or suffer or permit to be created, subsequent to the date of the execution and delivery of this Deed of Trust any lien or encumbrance which may be or become superior to my lease affecting said property.

(d) That if any part of the automobile parking areas included within said property is taken by condemnation, or before said areas are otherwise reduced, Grantor(s) will provide parking facilities in kind, size, and location to comply with all leases, and before making any contract for such substitute parking facilities, Grantor(s) will furnish to Beneficiary satisfactory assurance of completion thereof free of liens and in conformity with all governmental zoning and regulations.

16. Should the property or any part or appurtenances thereof or right or interest therein be taken or damaged by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake, or other casualty, or in any other manner, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such taking or damage, and obtain all compensation, awards, or other relief therefor. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies or insurance affecting the property, are hereby assigned to Beneficiary.

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which may, after deducting therefrom all its expenses, including attorney's fees, release any monies so received by it, or apply the same on any indebtedness secured hereby or apply the same to the repair or restoration of the property, as it may elect. Grantor(s) further assigns to Beneficiary any value, premiums or other payments upon any insurance policy here provided for the benefit of the Beneficiary, refunds or rebates made of taxes or assessments on said property, and Beneficiary may at any time collect said value, premiums, repayments, refunds, rebates, etc., notwithstanding that no sum secured hereby be awarded when such right to collection be asserted. Grantor(s) also agrees to execute such further assignments of any such compensation, award, damages, rebates, value of premiums, repayments, rights of action, and proceeds as Beneficiary or Trustee may require.

17. Time is of the essence hereof in connection with all obligations of the Grantor(s) herein or in said note. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

18. At any time upon written request of Beneficiary, payment of its fees and presentation of this Deed and said note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed or the lien or charge thereon; (d) reconvey, without warranty, all or any part of the property. The Grantor(s) in any reconveyance may be described as the "Person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Grantor(s) agrees to pay a reasonable trustee's fee for full or partial reconveyance, together with a recording fee if Trustee, at its option, elects to record said reconveyance.

19. In case of a sale under this Deed of Trust, the said property, ~~real, personal and mixed~~, may be sold in one parcel.

20. The Grantor(s) shall not, without first obtaining the Beneficiary's written consent, assign any of the rents or profits of the property or collect any rent for more than one month in advance or change the general nature of the occupancy or initiate or acquiesce in any zoning reclassification, or do or suffer any act or thing which would impair the security for said debt or the Beneficiary's lien upon said property or the rents thereon. In the event of breach of any requirement of this paragraph, the Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable.

21. The holder of this Deed of Trust, in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for said debt) to the appointment of a receiver of the rents and profits of the property and such receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receiver, all the rights and powers granted to the Beneficiary by the covenants contained in paragraph 23 hereof.

22. As further security for the payment of all indebtedness herein mentioned, all Grantor(s)'s rents and profits of said property and the right, title, and interest of the Grantor(s) in and under all leases now or hereafter affecting said property, are hereby assigned and transferred to the Beneficiary. So long as no default shall exist in compliance with any requirement hereof or of any further instrument of any time executed with respect to this Deed of Trust the Grantor(s) may collect assigned rents and profits as the same fall due, but upon the occurrence of any such default, or at such later time as the Beneficiary in its sole discretion may fix by written notice, all right of the Grantor(s) to collect or receive rents or profits shall wholly terminate. All rents or profits of Grantor(s) receivable from or in respect to said property which it shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and the taxes upon, said property and the sums owing the Beneficiary as they become due and payable as provided in this Deed of Trust or in the said note or in any modification of either. The balance of such rents and profits after payment of such operating expenses, taxes, and sums due the Beneficiary, and after the setting aside of amounts to date of such expenses, taxes, and sums, including amortization, shall be Grantor(s)'s absolute property. No lease of the whole or any part of the property involving an initial term of more than three (3) years shall be modified or terminated without the written consent of the Beneficiary, nor shall the surrender of any such lease be accepted nor any rental thereunder be collected for more than two (2) months in advance without like written consent. In the event of any default hereunder and the exercise by the Beneficiary of its rights hereby granted, Grantor(s) agrees that payments made by tenants or occupants to the Beneficiary shall, as to such tenants, be considered as though made to Grantor(s) and in discharge of tenants' obligations as such to Grantor(s). Nothing herein contained shall be construed as obliging the Beneficiary to perform any of Grantor(s)'s covenants under any lease or rental arrangement. Grantor(s) shall execute and deliver to the Beneficiary upon demand any further or supplemental assignments necessary to effectuate the

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intentions of this paragraph end upon failure of the Grantor(s) to comply, Beneficiary may, in addition to any other right or remedy it has, declare the maturity of the indebtedness hereby secured.

~~23. In the event of default in compliance with any requirement of this Deed of Trust or of any further instrument at any time executed with respect to this Deed of Trust, and the continuance thereof for such period as would entitle the Beneficiary to declare said debt due and payable, or for ten (10) days if no such period be applicable, the Beneficiary may, at its option, enter upon and take possession of the said property and let the same or any part thereof, making therefor such alterations as it finds necessary, and may assign in any lawful manner any tenancy or occupancy of said property, exercising with respect thereto any right or option available to the Grantor(s). From and after the occurrence of any such default, if any owner of said property shall occupy said property or part thereof, such owner shall pay to the Beneficiary in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do the Beneficiary shall be entitled to remove such owner from the property by any appropriate action or proceeding.~~

24. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies or compensation, or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

Upon 30 days
25. All sums secured hereby shall become immediately due and payable, at the option of the Beneficiary without demand or notice, after any of the following occur, each of which shall be an event of default: (x) default by Grantor(s) in the payment of any indebtedness secured hereby or in the performance or observance of any agreement contained herein, or (y) any assignment made by Grantor(s) or the then owner of said property for the benefit of creditors, or (z) any transfer of title made by the Grantor(s) or the then owner of said property to a Grantee or successors in interest without the assumption of all of the terms and conditions herein contained, or (d) any of the following shall occur, with respect to the property, the Grantor(s) or the then owner of said property: (i) the appointment of a receiver, liquidator, or Trustee; (ii) the adjudication as a bankrupt or insolvent, (iii) the filing of any Petition for Bankruptcy or reorganization; (iv) the institution of any proceeding for dissolution or liquidation, (v) if Grantor(s) be unable, or admit in writing an inability to pay his/her/their debts when due; or (vi) a default in any provision of any other instrument which may be held by Beneficiary as security for said note, including the loan agreement and related documents, the terms and covenants of which are incorporated herein by reference as though fully set forth herein. No waiver by Beneficiary of any default on the part of Grantor(s) shall be construed as a waiver of any subsequent default hereunder. In event of such default and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington (RCW Chapter 61.24 as existing now, or hereafter amended) and the Uniform Commercial Code of the State of Washington where applicable, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (a) to the expense of sale, including a reasonable Trustee's fee and attorney's fee; (b) to the obligation secured by this Deed of Trust; and (c) the surplus, if any, shall be distributed in accordance with said Deed of Trust Act. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor(s) had or had the power to convey at the time of his/her/their execution of this Deed of Trust, and such as he may have acquired hereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The Power of Sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. At any time Beneficiary may appoint in writing a successor trustee, or discharge and appoint a new Trustee in the place of any Trustee named herein, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the Original Trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor(s), Trustee, or Beneficiary shall be a party, unless such action or proceeding is brought by the Trustee.

26. The property which is the subject of this Deed of Trust is not used principally or primarily for agricultural or farming purposes.

27. In the event of the passage after the date of this Deed of Trust of any federal, state, or local law, deducting from the value of real property for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or debts secured thereby, for federal, state or local purposes, or the manner of the

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collection of any such taxes so as to effect the interest of Beneficiary, then and in such event, Grantor(s) shall bear and pay the full amount of such taxes, provided that if for any reason payment by Grantor(s) of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the note, or the within Deed of Trust or otherwise, Beneficiary may, at its option, without demand or notice, declare the whole sum secured by this Deed of Trust with interest thereon to be immediately due and payable, or Beneficiary may, at its option, pay that amount or portion of such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event Grantor(s) shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

28. If from any circumstances whatever fulfillment of any provision of this Deed of Trust or said note at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by the usury statute or any other law, the ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any execution be possible under this Deed of Trust or under said note that is in excess of the limit of such validity; but such obligation shall be fulfilled to the limit of such validity. The provisions of this paragraph shall control every other provision of this Deed of Trust and said note.

29. In the event that this Deed of Trust is foreclosed as a mortgage and the property sold at a foreclosure sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on said property as may be reasonably necessary for the proper operation, care, preservation, protection, and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the highest lawful rate shall be added to and become a part of the amount required to be paid for redemption from such sale.

30. Grantor(s) shall deliver to the Beneficiary within 20 days after written demand therefor a detailed operating statement in form satisfactory to the beneficiary covering the subject property and certified as correct by the Grantor(s). Grantor(s) shall permit the Beneficiary or its representative to examine all books and records pertaining to the said property, upon prior written demand of not less than ten (10) days. In default thereof Beneficiary shall, in addition to all other remedies, have the option of maturing the indebtedness hereby secured. The Beneficiary shall demand not more than one statement in any calendar year.

31. Beneficiary shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the said property and the failure to make any such tenant or tenants a party defendant in any such suit or action or to foreclose his/her/their rights will not be asserted by the Grantor(s) as a defense in any action or suit instituted to collect the indebtedness secured hereby or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the said property, any statute or rule of law at any time existing to the contrary notwithstanding.

32. Upon any default by Grantor(s) and following the acceleration of maturity as herein provided, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale (including sale under power of sale) by the Grantor(s), its successors or assigns, or by anyone in behalf of the Grantor(s), its successors or assigns, shall constitute a violation of the payment terms of said note and be deemed to be a voluntary prepayment thereunder and any such payment to the extent permitted by law, will, therefore, include the additional payment required under the prepayment privilege, if any, contained in said note or if at that time there be no prepayment privilege then such payment, will to the extent permitted by law include an additional payment of five percent (5%) of the then principal balance.

33. The Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Deed of Trust.

34. Grantor(s), from time to time, within fifteen (15) days after request by Beneficiary, shall execute, acknowledge and deliver to Beneficiary, such chattel mortgages, security agreements, or other similar security instruments, in form and substance satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Grantor(s) or in which Grantor(s) has any interest which, in the sole opinion of Beneficiary, is essential to the operation of the said property covered by this Deed of Trust. Grantor(s) shall further from time to time, within fifteen (15) days after request by Beneficiary, execute, acknowledge, and deliver any financing statement, renewal, affidavit, certificate, continuation statement, or other document as Beneficiary may request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of, this Deed of Trust and the priority of such chattel mortgage or other security instrument as a first lien. Grantor(s) further agree(s) to pay to beneficiary on demand all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing, and refiling of any such instrument or document including the charges for examining title and the attorney's fee for rendering an opinion as to the priority of

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~~this Deed of Trust and of such chattel mortgage or other security instrument as a valid first and subsisting lien. However, neither a request so made by Beneficiary nor the failure of Beneficiary to make such request shall be construed as a release of such property, or any part thereof, from the conveyance of title by this Deed of Trust, it being understood and agreed that this covenant and any such chattel mortgage, security agreement, or other similar security instrument, delivered to beneficiary, are cumulative and given as additional security.~~

35. All Beneficiary's rights and remedies herein specified are intended to be cumulative and not in substitution for any right or remedy otherwise available and no requirement whatsoever may be waived at any time except by a writing signed by the Beneficiary, nor shall any waiver be operative upon other than a single occasion. This Deed of Trust cannot be changed or terminated orally. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, successors, and assigns. All obligations of Grantor(s) hereunder are joint and several. The term "Beneficiary" shall mean the holder and owner, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. Without affecting the liability of any other person for the payment of any obligation herein mentioned (including Grantor(s) should he convey said property) and without affecting the lien hereof upon any property not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release, or reconvey, or cause to be released or reconveyed at any time all or part of the said property described herein, take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or thereafter, and sell same or otherwise realize thereon, either before, concurrently with, or after sale hereunder. This Deed of Trust shall be so construed that wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of any gender shall be applicable to all genders and shall likewise be so construed as applicable to and including a corporation. The word "note" shall include all notes evidencing the indebtedness secured hereby. If any of the provisions hereof shall be determined to contravene or be invalid under the laws of the State of Washington, such contravention or invalidity shall not invalidate any other provisions of this agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and all rights and obligations of the parties shall be construed and enforced accordingly. Any notices to be given to Grantor(s) by Beneficiary hereunder shall be sufficient if mailed postage prepaid, to the address of the Grantor(s), stated in the Short Form Deed of Trust, or to such other address as Grantor(s) has/have requested in writing to the Beneficiary, that such notices be sent. Any time period provided in the giving of any notice hereunder shall commence upon the date such notice is deposited in the mail.

RIDER TO MASTER FORM DEED OF TRUST

GRANTOR shall not allow the Property to be used for any activities involving the use, generation, storage, or disposal of any hazardous material, except as such material is stored and used in accordance with normal occupancy and use of this type of project. GRANTOR shall indemnify and hold BENEFICIARY and TRUSTEE harmless from and against any and all losses, actions, damages, claims, and expenses, including, without limitation, reasonable attorneys' fees incurred by or asserted against BENEFICIARY and/or TRUSTEE by reason of the failure of GRANTOR, its agents, employees, partners, officers, directors, or other representatives, to perform any of its obligations pursuant to any federal, state, or local environmental protection laws and/or regulations. The provisions of this paragraph shall survive any transfer of the Property, including a transfer after a foreclosure of this Deed Of Trust and delivery of the Deed effecting such transfer.

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AFTER RECORDING MAIL TO:

NAME: Janet A. George
ADDRESS: Janet A. George, Inc., P.S.
701 Fifth Avenue, Suite #4550
Seattle, WA 98104

SHORT FORM DEED OF TRUST

THIS DEED OF TRUST, made this ____ day of _____, 2012, between Christopher Ross Larson as GRANTOR, and _____ as TRUSTEE, and Julia Larson Calhoun as BENEFICIARY.

GRANTOR hereby irrevocably grants, bargains, sells, and conveys to TRUSTEE in trust, with power of sale, the following described property in King County, Washington:

The property whose address is 95 NW Park Drive, Shoreline, Washington 98177

Assessor's Property Tax Parcel/Account Number: 330470-0400-08

Legal Description: See attached EXHIBIT A

TOGETHER WITH all the tenements hereditaments and appurtenances, now or hereafter thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof and all other property or rights of any kind or nature whatsoever further set forth in the Master Form Deed Of Trust hereinafter referred to, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

THIS DEED IS FOR THE PURPOSE OF SECURING PERFORMANCE of Grantor's obligations incorporated by reference or contained herein and payment of the sum of TEN MILLION DOLLARS (\$10,000,000.00) on 01/02/2013; the payment of the sum of FIVE MILLION DOLLARS (\$5,000,000.00) on 01/02/2014; all with interest thereon in case of default according to the terms of the Decree Of Dissolution, payable to BENEFICIARY or order and made by Grantor.

~~This deed is for the purpose of securing performance of Grantor's obligations under the Decree of Dissolution entered in King County, Cause #10-3-04077-7 SEA on _____; requiring the Grantor to pay the sum of FIFTEEN MILLION DOLLARS \$15,000,000.00 with interest thereon in case of default.~~

By executing and delivering this Deed Of Trust secured hereby, the parties agree that all provisions of Paragraphs 1 through 35 inclusive of the Master Form Deed Of Trust hereinafter referred to and attached, except as stricken by interlineations, together with the attached Rider, are hereby incorporated herein by reference and made an integral part hereof for all purposes the same as if set forth herein at length, and the Grantor hereby makes said covenants and agrees to fully perform all of said provisions. The Master Form Deed Of Trust above referred to was recorded on the 25th day of July 1968 in the Official Records of the offices of the County Auditors of the following counties in Washington in the book, and at the page designated after the name of each county, to-wit: King County, Book 5690 of Mtgs, Page 436—439, Auditor's #6382309.

///
///

95 NW Park Dr. (Gatehouse)

EXHIBIT A

ALL THAT PORTION OF TRACT 75, THE RICKLANDS, INC., IN SECTION 24, TOWNSHIP 25 NORTH 2 RANGE 12 WEST, SHELBY COUNTY, IN KING COUNTY, WASHINGTON, INCLUDING WITHIN THE FOLLOWING DESCRIBED BOUNDARY LINES:

BEGINNING AT A STONE MONUMENT, WHICH MONUMENT IS SITUATED ON THE WESTERN MARGINAL LINE OF A PRIVATE ROAD KNOWN AS PARK DRIVE, NOW CONVEYED OVER AND ACROSS THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, AND WHICH IS 422.80 FEET AND WEST 87/4.03 FEET FROM THE SOUTHWEST CORNER OF SECTION 24, SAID CONVEYANCE AND RANGE;
THENCE ON A COURSE/SOUTH 22°03'00" WEST A DISTANCE OF 349.14 FEET TO A STONE MONUMENT;
THENCE SOUTH 82°05'00" WEST A DISTANCE OF 115.50 FEET, MORE OR LESS, TO A POINT ON THE EASTERN MARGINAL LINE OF THE SAID PRIVATE ROAD; AND
THENCE ALONG THE EASTERN MARGINAL LINE OF SAID ROAD IN A GENERAL SOUTHWESTERLY DIRECTION A DISTANCE OF 270'00 FEET, MORE OR LESS, TO A POINT ON SAID EASTERN MARGINAL LINE OF ROAD AS DESCRIBED THE SOUTHWESTERN CORNER OF A TRACT OF LAND CONVEYED TO PAUL FLOYD BY DEEDS OF DEWITT S. BULLER, A WIDOW, BY DEED REGISTERED JANUARY 2, 1927, AND RECORDS JANUARY 24, 1927, DEED RECORDING NUMBER 207844;
THENCE FOLLOWING THE SOUTHWESTERN LINE OF SAID FLOYD TRACT;
THENCE NORTH 87°05'00" EAST A DISTANCE OF 218.00 FEET, MORE OR LESS, TO A STONE MONUMENT;
THENCE SOUTH 62°05'00" EAST A DISTANCE OF 248.73 FEET TO A STONE MONUMENT;
THENCE NORTH 87°05'00" EAST A DISTANCE OF 20.06 FEET TO A STONE MONUMENT, WHICH MONUMENT IS SITUATED ON THE EASTERN MARGINAL LINE OF A PRIVATE ROAD NOW CONVEYED;
THENCE ALONG THE EASTERN MARGINAL LINE OF SAID PRIVATE ROAD AND IN A SOUTHWESTERLY DIRECTION TO A POINT WHERE SAID PRIVATE ROAD MEETS THE WESTERN MARGINAL LINE OF PARK DRIVE;
THENCE ALONG THE WESTERN MARGINAL LINE OF PARK DRIVE IN A GENERAL SOUTHWESTERLY DIRECTION TO THE POINT OF BEGINNING.

THIS DOCUMENT IS A COPY OF THE ORIGINAL RECORD IN THE OFFICE OF THE COUNTY CLERK, KING COUNTY, WASHINGTON.

Document

MASTER FORM DEED OF TRUST

Recorded by Washington Mortgage Correspondence Association, a Washington corporation, pursuant to C. 148 L.
1967

The Grantor(s) covenants and agrees as follows:

1. The following described estate, property and rights of Grantor(s) are also included as a security for the performance of each covenant and agreement of Grantor(s) contained herein or in the Short Form Deed of Trust and the payment of all sums of money secured hereby:

(a) All the estate and rights of Grantor(s) in and to said property and in and to land lying in streets and roads adjoining said premises, and all access, rights, and easements appertaining thereto.

(b) All buildings, structures, improvements, fixtures, and articles of property now or hereafter attached to, or used or adapted for use in the operation of, the said premises, including but without being limited to, all heating and incinerating apparatus and equipment whatsoever, all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, ranges, cooling apparatus and mechanical kitchen-equipment, refrigerators, cooling, ventilating, sprindling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of ~~public spaces, halls and lobbies,~~ and shrubbery and plants; and including also all interest of any owner of the said premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this paragraph shall be deemed part of the realty and not severable wholly or in part without material injury to the freehold.

(c) All and singular the lands, tenements, privileges, water rights, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, rights, title, claim, interest and demand whatsoever of the Grantor(s), either in law or equity, of, in and to the bargained premises. TO HAVE AND TO HOLD said premises bargained and described, together with all and singular the lands, tenements, privileges, water rights, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all of the estate, right, title, claim, and demands whatsoever of the Grantor(s), either in law or in equity, of, in and to the above bargained premises, forever as security for the faithful performance of the promissory note secured hereby and as security for the faithful performance of each and all of the covenants, agreements, terms, and conditions of this Deed of Trust, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

(d) All of Grantor(s)'s rights further to encumber said property for debt except by such encumbrance which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Grantor(s) hereby (i) representing as a special inducement to Beneficiary to make this loan that as of the date hereof there are no encumbrances to secure debt junior to this Deed of Trust and (ii) covenanting that there are to be none as of the date when this Deed of Trust becomes of record, except in either case encumbrances having the prior written approval of Beneficiary, and all of Grantor(s)'s rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this Deed of Trust.

2. When and if Grantor(s) and Beneficiary shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting property either referred to or described herein, or in any way connected with the use and enjoyment of these premises, this Deed of Trust shall be deemed a Security Agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms, and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Beneficiary's sole election. Grantor(s) and Beneficiary agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the property that is the subject of this

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Deed of Trust and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a receipt contained in the short form Deed of Trust or in any list filed with the Beneficiary, (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time.

3. To pay all debts and monies secured hereby, when from any cause the same shall become due. To keep the property free from statutory and governmental liens of any kind. That the Grantor(s) is/are seized in fee simple of the property and owns outright every part thereof, that there are no liens or encumbrances against or upon the same and none superior to this Deed of Trust, will be created or suffered to be created by the Grantor(s) during the life of this Deed of Trust, that he has good right to make this Deed of Trust and that he will forever warrant and defend said property unto the Beneficiary, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. The Grantor(s) upon request by mail will furnish a written statement duly acknowledged of the amount due on this Deed of Trust and whether any offsets or defenses exist against the debt secured hereby.

4. To pay to Beneficiary, if Beneficiary so requires, together with and in addition to the monthly payments of principal and interest payable under the terms of the said note, on the date set forth therein for the making of monthly payments each month, until said note is fully paid, a sum, as estimated by the Beneficiary, equal to the ground rents, if any, and the taxes and special assessments next due on the premises covered by this Deed of Trust, plus the premiums that will next become due and payable on insurance policies as may be required under paragraph 10 hereof, Grantor(s) agreeing to deliver promptly to beneficiary all bills and notices thereof, less all sums already paid therefor, divided by the number of months to elapse before two months prior to the date when such ground rents, premiums, taxes, and special assessments will become delinquent, such sums to be held by the Beneficiary in trust to pay said ground rents, premiums, taxes, and special assessments. All payments mentioned in this paragraph and all payments to be made under said note shall be added together and the aggregate amount thereof shall be paid by the Grantor(s) each month in a single payment to be applied by Beneficiary to the following items in the order set forth: (1) ground rents, if any, taxes, special assessments, fire and other hazard insurance premiums; (2) interest on the note secured hereby; and, (3) amortization of the principal of said note. Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default under this Deed of Trust. The assignment provided for in the paragraph 4 is solely for the added protection of the Beneficiary and entails no responsibility on the Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon assignment of this Deed of Trust by the Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of the assignor with respect thereto shall terminate. Each transfer of the property that is the subject of this Deed of Trust shall automatically transfer to the grantee all rights of the Grantor(s) with respect to any funds accumulated hereunder.

5. In the event that any payment or portion thereof is not paid within fifteen (15) days commencing with the date it is due, Beneficiary may collect, and the Grantor(s) agrees to pay with such payment, a "late charge" of two cents (\$.02) for each dollar so overdue as liquidated damages for the additional expense of handling such delinquent payments.

6. If the total of the payments (herein called reserves) made under paragraph 4 hereof relating to reserves for ground rents, taxes, special assessments, and premiums on insurance policies, shall exceed the amount of payments actually made by Beneficiary for the purposes set forth in paragraph 4, plus such amounts as have been reasonably accumulated in such reserves toward payments therefrom next to become due, such excess may, provided no default then exists under the terms of this instrument nor under the terms of the promissory note hereby secured, but not otherwise, be credited by beneficiary in payment of subsequent aggregate, but not partial, payments to be made by Grantor(s) or, at the option of the Beneficiary, refunded to the Grantor(s) or his/her/his successors in interest as may appear upon the records of the Beneficiary. If, however, the monthly payments accumulating such reserves shall not be sufficient to pay the sums required when the same shall become due and payable, the Grantor(s) shall pay to Beneficiary any amount necessary to make up the deficiency within thirty (30) days after written notice to Grantor(s) stating the amount of the deficiency. If there shall be a default under any of the provisions of this Deed of Trust and thereafter a sale of the property in accordance with the provisions hereof, or if the Beneficiary acquires the property otherwise after default, the Beneficiary shall apply, at the time of commencement of such proceedings or at the time the property is otherwise acquired, the balance then remaining in the funds accumulated under paragraph 4, less such sums as will become due and payable during the pendency of the proceedings, as a credit against the amounts secured hereby.

7. To maintain the buildings and other improvements on the property in a rentable and tenable condition and state of repair, to neither commit nor suffer any waste, to promptly comply with all requirements of the federal, state, and municipal authorities and all other laws, ordinances, regulations, covenants, conditions, and restrictions respecting said property or the use thereof, and pay all fees or charges of any kind in connection therewith. The Beneficiary may recover as damages for any breach of this covenant the amount it would cost to put the property in the condition called for herein. In the event of breach of any requirement of this paragraph, the Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable. ~~Proof of impairment of security shall be unnecessary in any suit or proceeding under this paragraph. Grantor(s) shall permit Beneficiary or its agents the opportunity to inspect the property, including the interior of any structure at reasonable times and after reasonable notice.~~

8. To complete or restore promptly and in good workmanlike manner any building or improvement which may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor, and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Grantor(s) further agree(s):

(a) To commence construction promptly and in any event within thirty (30) days from the date of this instrument, and complete the same in accordance with any agreements relating to construction and plans and specifications satisfactory to Beneficiary within eight months of the date of this instrument.

(b) To allow Beneficiary to inspect said property at all times during construction.

(c) To replace any work or materials unsatisfactory to Beneficiary, within fifteen (15) calendar days after written notice to Grantor(s) of such fact.

(d) That work shall not cease on the construction of such improvements for any reason whatsoever for a period of fifteen (15) consecutive days.

The Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Grantor(s) under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

9. No building or other improvement on the property shall be structurally altered, removed, or demolished, without the Beneficiary's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the proper use and enjoyment of the premises be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by the Grantor(s), free and clear of any lien or security interest except such as may be approved in writing by the Beneficiary.

10. ~~To provide to the Beneficiary, at least thirty (30) days prior to expiration of existing insurance, and maintain unceasingly, insurance, with premiums prepaid, on all of the property that is the subject of this Deed of Trust, or hereafter becoming part of said property, against loss by fire and other hazards, casualties, and contingencies, including war damage, as may be required from time to time by the Beneficiary in such amounts and for such periods of time, with loss payable clause (without contribution) in favor of and in form satisfactory to the Beneficiary, and to deliver all policies to Beneficiary, which policies shall constitute an assignment to Beneficiary of all return premiums. All insurance shall be carried in companies approved by Beneficiary. Beneficiary may at its option require Grantor(s) to maintain said required policies in Grantor(s)'s possession in lieu of delivering said policies to Beneficiary, in which event said policies shall be kept available by Grantor(s) at all times for return to the Beneficiary or for inspection by Beneficiary, its agents or insurers, and said requirements may be withdrawn by Beneficiary at any time. In event of foreclosure of this Deed of Trust or other transfer of title to the subject property in extinguishment of some or all of the indebtedness secured hereby, all interest of the Grantor(s) in any insurance policies in force shall pass to the purchaser or Grantee to pay to Beneficiary as Beneficiary may require a reasonable fee to cover costs of substituting policies in the event the Grantor(s) replace(s) any policy prior to its expiration. Grantor(s) will reimburse Beneficiary for any premiums paid for such insurance by the Beneficiary upon the Grantor(s)'s default in so insuring the buildings or other improvements or default in assigning and delivering of such policies to the beneficiary so endorsed.~~

11. To appear in and defend any suit, action, or proceeding that might affect the value of this security instrument or the security itself or the rights and powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect also to appear

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In or defend any such action or proceeding, be made a party to such by reason of this Deed of Trust or elect to prosecute such action as appears necessary to preserve said value, the Grantor(s) will, at all times, indemnify from, and, on demand reimburse Beneficiary or Trustee for any and all loss, damage, expense, or cost, including cost of evidence of title and attorney's fees, arising out of or incurred in connection with any such suit, action, or proceeding, and the sum of such expenditures shall be secured by this Deed of Trust with interest as provided in the note secured hereby and shall be due and payable on demand. To pay costs of suit, cost of evidence of title and a reasonable attorney's fee in any proceeding or suit brought by Beneficiary to foreclose this Deed of Trust.

12. To pay in full ~~at least thirty (30) days~~ before delinquent all rents, taxes, assessments, and encumbrances, charges or liens with interest, that may now or hereafter be levied, assessed, or claimed upon the property that is the subject of this Deed of Trust or any part thereof, which at any time appear to be prior or superior hereto for which provision has not been made heretofore, and upon request will exhibit to Beneficiary official receipts therefor, and to pay all taxes imposed upon, reasonable costs, fees, and expenses of this Trust. On default under this paragraph Beneficiary may, at its option, pay, or pay out of reserves accumulated under paragraph 4, any such sums, without waiver of any other right of Beneficiary by reason of such default of Grantor(s), and Beneficiary shall not be liable to Grantor(s) for a failure to exercise any such option.

13. To repay immediately on written notice to Grantor(s) all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the rate of ten percent (10%) per annum until paid, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ~~ten (10) days~~ ^{thirty (30) days} of the mailing of such notice will, at Beneficiary's option, constitute an event of default hereunder, or, Beneficiary may, at its option, commence an action against Grantor(s) for the recovery of such expenditure or advance and interest thereon, and in such event Grantor(s) agree(s) to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney's fee.

14. Should Grantor(s) fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor(s) and without releasing Grantor(s) from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof; Beneficiary or Trustee being authorized to enter upon the property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto, and in exercising any such power, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor including cost of evidence of title, employ counsel, and pay his/her/their reasonable fees.

15. (a) To fully comply with all of the terms, conditions, and provisions of all leases on said property so that the same shall not become in default and to do all that is needful to preserve all said leases in force.

(b) To permit no assignment of any lease, or any subletting thereunder unless the right to assign or sublet is expressly reserved by the lessee under such lease.

(c) That save and except for taxes and assessments provided to be paid by Grantor(s) as specified in paragraph 12 hereof, Grantor(s) will not create or suffer or permit to be created, subsequent to the date of the execution and delivery of this Deed of Trust any lien or encumbrance which may be or become superior to any lease affecting said property.

(d) That if any part of the automobile parking areas included within said property is taken by condemnation, or before said areas are otherwise reduced, Grantor(s) will provide parking facilities in kind, size, and location to comply with all leases, and before making any contract for such substitute parking facilities, Grantor(s) will furnish to Beneficiary satisfactory assurance of completion thereof free of liens and in conformity with all governmental zoning and regulations.

16. Should the property or any part or appurtenances thereof or right or interest therein be taken or damaged by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake, or other casualty, or in any other manner, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such taking or damage, and obtain all compensation, awards, or other relief therefor. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies or insurance affecting the property, are hereby assigned to beneficiary,

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which may, after deducting therefrom all its expenses, including attorney's fees, release any monies so received by it, or apply the same on any indebtedness secured hereby or apply the same to the repair or restoration of the property, as it may elect. Grantor(s) further assigns to Beneficiary any return, premium or other compensation upon any insurance policy time provided for the benefit of the Beneficiary, and also any taxes or assessments on said property, and Beneficiary may at any time collect said return, premiums, repayments, refunds, rebates, etc., notwithstanding that no sum secured hereby be overdue when such right to collection be asserted. Grantor(s) also agrees to execute such further assignments of any such compensation, award, damages, rebates, return of premiums, repayments, rights of action, and proceeds of Beneficiary or Trustee may require.

17. Time is of the essence hereof in connection with all obligations of the Grantor(s) herein or in said note. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

18. At any time upon written request of Beneficiary, payment of its fees and presentation of this Deed and said note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The Grantee in any reconveyance may be described as the "Person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Grantor(s) agrees to pay a reasonable trustee's fee for full or partial reconveyance, together with a recording fee if Trustee, at its option, elects to record said reconveyance.

19. In case of a sale under this Deed of Trust, the said property, real, personal and mixed, may be sold in one parcel.

20. The Grantor(s) shall not, without first obtaining the Beneficiary's written consent, assign any of the rents or profits of the property or collect any rent for more than one month in advance or change the general nature of the occupancy or initiate or acquiesce in any zoning reclassification, or do or suffer any act or thing which would impair the security for said debt or the Beneficiary's lien upon said property or the rents thereof. In the event of breach of any requirement of this paragraph, the Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable.

21. The holder of this Deed of Trust, in any action to foreclose it, shall be entitled (without allowance and without regard to the adequacy of any security for said debt) to the appointment of a receiver of the rents and profits of the property and such receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receiver, all the rights and powers granted to the Beneficiary by the covenants contained in paragraph 22 hereof.

22. As further security for the payment of all indebtedness herein mentioned, all Grantor(s)'s rents and profits of said property and the right, title, and interest of the Grantor(s) in and under all leases now or hereafter affecting said property, are hereby assigned and transferred to the Beneficiary. So long as no default shall exist in compliance with any requirement hereof or of any further instrument at any time executed with respect to this Deed of Trust the Grantor(s) may collect assigned rents and profits as the same fall due, but upon the occurrence of any such default, or at such later time as the Beneficiary in its sole discretion may fix by written notice, all right of the Grantor(s) to collect or receive rents or profits shall wholly terminate. All rents or profits of Grantor(s) receivable from or in respect to said property which it shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and the taxes upon, said property and the sums owing the Beneficiary as they become due and payable as provided in this Deed of Trust or in the said note or in any modification of either. The balance of such rents and profits after payment of such operating expenses, taxes, and sums due the Beneficiary, and after the setting aside of amounts to date of such expenses, taxes, and sums, including amortization, shall be Grantor(s)'s absolute property. No lease of the whole or any part of the property involving an initial term of more than three (3) years shall be modified or terminated without the written consent of the Beneficiary, nor shall the surrender of any such lease be accepted nor any rental thereunder be collected for more than two (2) months in advance without like written consent. In the event of any default hereunder and the exercise by the Beneficiary of its right hereby granted, Grantor(s) agrees that payments made by tenants or occupants to the Beneficiary shall, as to such tenants, be considered as though made to Grantor(s) and in discharge of tenants' obligations as such to Grantor(s). Nothing herein contained shall be construed as obliging the Beneficiary to perform any of Grantor(s)'s covenants under any lease or rental arrangement. Grantor(s) shall execute and deliver to the Beneficiary upon demand any further or supplemental assignments necessary to effectuate the

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intentions of this paragraph and upon failure of the Grantor(s) so to comply, Beneficiary may, in addition to any other right or remedy it has, declare the maturity of the indebtedness hereby secured.

23. In the event of default in compliance with any requirement of this Deed of Trust or of any further instrument at any time executed with respect to this Deed of Trust, and the continuance thereof for such period as ~~waives~~ entitles the Beneficiary to declare ~~said debt due and payable, or for ten (10) days if no such period be applicable, the Beneficiary may, at its option, enter upon and take possession of the said property and let the same or any part thereof, making therefor such alterations as it finds necessary, and may lease~~ in any lawful manner any tenancy or occupancy of said property, exercising with respect thereto ~~any right of option available to the Grantor(s)~~. From and after the occurrence of any such default, if any owner of said property shall occupy said property or part thereof, such owner shall pay to the Beneficiary in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do the Beneficiary shall be entitled to remove such owner from the property by any appropriate action or proceeding.

24. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies or compensation, or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

25. All sums secured hereby shall become immediately due and payable, at the option of the Beneficiary ^{upon 30 days} without demand or notice, after any of the following occur, each of which shall be an event of default: (a) default by Grantor(s) in the payment of any indebtedness secured hereby or in the performance or observance of any agreement contained herein, or (b) any assignment made by Grantor(s) or the then owner of said property for the benefit of creditors, or (c) any transfer of title made by the Grantor(s) or the then owner of said property to a Grantee or successors in interest without the assumption of all of the terms and conditions herein contained, or (d) any of the following shall occur, with respect to the property, the Grantor(s) or the then owner of said property: (i) the appointment of a receiver, liquidator, or Trustee; (ii) the adjudication as a bankrupt or insolvent; (iii) the filing of any Petition for Bankruptcy or reorganization; (iv) the institution of any proceeding for dissolution or liquidation, (v) if Grantor(s) be unable, or admit in writing an inability to pay his/her/their debts when due; or (vi) a default in any provision of any other instrument which may be held by Beneficiary as security for said note, including the loan agreement and related documents, the terms and covenants of which are incorporated herein by reference as though fully set forth herein. No waiver by Beneficiary of any default on the part of Grantor(s) shall be construed as a waiver of any subsequent default hereunder. In event of such default and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington (RCW Chapter 61.24 as existing now, or hereafter amended) and the Uniform Commercial Code of the State of Washington where applicable, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (a) to the expense of sale, including a reasonable Trustee's fee and attorney's fee; (b) to the obligation secured by this Deed of Trust; and (c) the surplus, if any, shall be distributed in accordance with said Deed of Trust Act. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor(s) had or had the power to convey at the time of his/her/their execution of this Deed of Trust, and such as he may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The Power of Sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. At any time Beneficiary may appoint in writing a successor trustee, or discharge and appoint a new Trustee in the place of any Trustee named herein, and upon the reording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the Original Trustee. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor(s), Trustee, or Beneficiary shall be a party, unless such action or proceeding is brought by the Trustee.

26. The property which is the subject of this Deed of Trust is not used principally or primarily for agricultural or farming purposes.

27. In the event of the passage after the date of this Deed of Trust of any federal, state, or local law, deducting from the value of real property for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or debts secured thereby, for federal, state or local purposes, or the manner of the

collection of any such taxes so as to affect the interest of Beneficiary, then and in such event, Grantor(s) shall bear and pay the full amount of such taxes, provided that if for any reason payment by Grantor(s) of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the note, or the within Deed of Trust or otherwise, Beneficiary may, at its option, without demand or notice, deduct the whole sum secured by this Deed of Trust with interest thereon to be immediately due and payable, or Beneficiary may, at its option, pay that amount or portion of such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event Grantor(s) shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

28. If from any circumstances whatever fulfillment of any provision of this Deed of Trust or said note at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by the usury statute or any other law, the ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust or under said note that is in excess of the limit of such validity; but such obligation shall be fulfilled to the limit of such validity. The provisions of this paragraph shall control every other provision of this Deed of Trust and said note.

29. In the event that this Deed of Trust is foreclosed as a mortgage and the property sold at a foreclosure sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on said property as may be reasonably necessary for the proper operation, care, preservation, protection, and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the highest lawful rate shall be added to and become a part of the amount required to be paid for redemption from such sale.

30. Grantor(s) shall deliver to the Beneficiary within 20 days after written demand therefor a detailed operating statement in form satisfactory to the Beneficiary covering the subject property and certified as correct by the Grantor(s). Grantor(s) shall permit the Beneficiary or its representative to examine all books and records pertaining to the said property, upon prior written demand of not less than ten (10) days. In default thereof Beneficiary shall, in addition to all other remedies, have the option of including the indebtedness hereby secured. The Beneficiary shall demand not more than one statement in any calendar year.

31. Beneficiary shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the said property and the failure to make any such tenant or tenants a party defendant to any such suit or action or to foreclose his/her/their rights will not be asserted by the Grantor(s) as a defense in any action or suit instituted to collect the indebtedness secured hereby or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the said property, any statute or rule of law at any time existing to the contrary notwithstanding.

32. Upon any default by Grantor(s) and following the acceleration of maturity as herein provided, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale (including sale under power of sale) by the Grantor(s), its successors or assigns, or by anyone in behalf of the Grantor(s), its successors or assigns, shall constitute an exercise of the prepayment terms of said note and be deemed to be a voluntary prepayment thereunder and any such payment to the extent permitted by law, will, therefore, include the additional payment required under the prepayment privilege, if any, contained in said note or if at that time there be no prepayment privilege then such payment, will to the extent permitted by law include an additional payment of five percent (5%) of the then principal balance.

33. The Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Deed of Trust.

34. Grantor(s), from time to time, within fifteen (15) days after request by Beneficiary, shall execute, acknowledge and deliver to Beneficiary, such chattel mortgages, security agreements, or other similar security instruments, in form and substance satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Grantor(s) or in which Grantor(s) has any interest which, in the sole opinion of Beneficiary, is essential to the operation of the said property covered by this Deed of Trust. Grantor(s) shall further from time to time, within fifteen (15) days after request by Beneficiary, execute, acknowledge, and deliver any ~~improving~~ statement, renewal, affidavit, certificate, continuation statement, or other document as Beneficiary may request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of, this Deed of Trust and the priority of such chattel mortgage or other security instrument as a first lien. Grantor(s) further agree(s) to pay to beneficiary on demand all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing, and re-filing of any such instrument or document including the charges for examining title and the attorney's fee for rendering an opinion as to the priority of

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~~this Deed of Trust and of such chattel mortgage or other security instrument as a valid first and subsisting lien. However, neither a request so made by Beneficiary nor the failure of Beneficiary to make such request shall be construed as a release of such property, or any part thereof, from the conveyance of title by this Deed of Trust, it being understood and agreed that this covenant and any such chattel mortgage, security agreement, or other similar security instrument, delivered to beneficiary, are cumulative and given as additional security.~~

35. All Beneficiary's rights and remedies herein specified are intended to be cumulative and not in substitution for any right or remedy otherwise available and no requirement whatsoever may be waived at any time except by a writing signed by the Beneficiary, nor shall any waiver be operative upon other than a single occasion. This Deed of Trust cannot be changed or terminated orally. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, successors, and assigns. All obligations of Grantor(s) hereunder are joint and several. The term "Beneficiary" shall mean the holder and owner, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. Without affecting the liability of any other person for the payment of any obligation herein mentioned (including Grantor(s) should he convey said property) and without affecting the lien hereof upon any property not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release, or reconvey, or cause to be released or reconveyed at any time all or part of the said property described herein, take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or thereafter, and sell same or otherwise realize thereon, either before, concurrently with, or after sale hereunder. This Deed of Trust shall be so construed that wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of any gender shall be applicable to all genders and shall likewise be so construed as applicable to and including a corporation. The word "note" shall include all notes evidencing the indebtedness secured hereby. If any of the provisions hereof shall be determined to contravene or be invalid under the laws of the State of Washington, such contravention or invalidity shall not invalidate any other provisions of this agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and all rights and obligations of the parties shall be construed and enforced accordingly. Any notices to be given to Grantor(s) by Beneficiary hereunder shall be sufficient if mailed postage prepaid, to the address of the Grantor(s) stated in the Short Form Deed of Trust, or to such other address as Grantor(s) has/have requested in writing to the Beneficiary, that such notices be sent. Any time period provided in the giving of any notice hereunder shall commence upon the date such notice is deposited in the mail.

RIDER TO MASTER FORM DEED OF TRUST

GRANTOR shall not allow the Property to be used for any activities involving the use, generation, storage, or disposal of any hazardous material, except as such material is stored and used in accordance with normal occupancy and use of this type of project. GRANTOR shall indemnify and hold BENEFICIARY and TRUSTEE harmless from and against any and all losses, actions, damages, claims, and expenses, including, without limitation, reasonable attorneys' fees incurred by or asserted against BENEFICIARY and/or TRUSTEE by reason of the failure of GRANTOR, its agents, employees, partners, officers, directors, or other representatives, to perform any of its obligations pursuant to any federal, state, or local environmental protection laws and/or regulations. The provisions of this paragraph shall survive any transfer of the Property, including a transfer after a foreclosure of this Deed Of Trust and delivery of the Deed effecting such transfer.

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THE HONORABLE WILLIAM DOWNING

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

IN RE THE MARRIAGE OF:

CHRISTOPHER ROSS LARSON

VS.

JULIA LARSON CALHOUN

RESPONDENT.

NO. 10-3-04077-7 SEA

AMENDED FINDINGS AND
CONCLUSIONS AND ADDITIONAL
FINDINGS AND CONCLUSIONS

This matter came on before the Honorable William Downing on petitioner's motion to amend and supplement the court's Findings of Facts and Conclusions of Law at Trial dated December 22, 2011 ("12/22/11 Findings"). The court considered the submissions of the parties and the court finds good cause to enter the following order:

IT IS HEREBY ORDERED that the 12/22/11 Findings are amended as follows:

32. **Future Cash Payments Due Dates.** The future cash payments from petitioner to respondent in 2013 and 2014 are due on January 2nd of each year.

33. **Agreement on Microsoft Stock.** The parties entered into an agreement attached to the Decree as APPENDIX A with respect to the 2011 individual income tax return and the 800,000 shares of Microsoft stock awarded to Respondent as follows:

AMENDED FINDINGS AND CONCLUSIONS &
ADDITIONAL FINDINGS AND CONCLUSIONS
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- 1 a. The parties will file a joint individual income tax return for 2011.
- 2 b. The 800,000 shares of Microsoft stock awarded to Respondent will
- 3 be sold prior to December 31, 2011.
- 4 c. Petitioner will pay the tax due on the 2011 joint income tax return,
- 5 including tax on the sale of the 800,000 shares of Microsoft stock..
- 6 d. In exchange for the concessions in sub-paragraphs (b) and (c)
- 7 above, and as long as he complies with all provisions in the
- 8 agreement attached to the Decree as APPENDIX A, Petitioner will
- 9 be awarded the one-third interest in Swauk Valley Ranch LLC, and
- 10 Petitioner will receive any future tax credits or refunds associated
- 11 with the 2011 joint income tax return.

12 **34. Maintenance.** Respondent does not have a need for maintenance.

13 **35. Attorney's Fees.** Each party received awards of temporary attorney's fees

14 and costs totaling \$950,000. The temporary awards were paid in part from community

15 property (Goldman #8395) and in part from Petitioner's separate property (Goldman

16 #0478). Respondent does not have the need for attorney fees.

17 **36. Bank Accounts Attached To Assets.**

- 18 a. Bank of Hawaii account #5080 should be awarded to the
- 19 Respondent as she was awarded the Hawaii property; and
- 20
- 21 b. The 2 Laurel Group US Bank accounts #9430 and #9448 should be
- 22 awarded to the Respondent as the payroll for the employees, many
- 23 of whom will remain employed by the Respondent, are paid out of
- 24 these accounts. She created the Laurel name and the building she
- 25 was awarded is entitled The Laurel Building. She has always

1 managed these accounts and written the checks.

2 37. The Laurel Group, LLC. This entity should be awarded to Respondent at
3 no value as many of the employees will remain employed by her and the entity has no
4 value. This entity provides benefits to the employees and the family.

5 38. Thistledown, LLC. This entity should be awarded to the Respondent at
6 no value.

7 39. Respondent's Occupancy of Norcliffe and Payment of Norcliffe
8 expenses during Respondent's occupancy and Respondent's vacate date. The
9 Petitioner has been awarded Norcliffe. The parties agreed that the Respondent may stay
10 at Norcliffe through April 30, 2012. From February 2012 through the time she vacates, the
11 Respondent should pay the household staff (housekeeping) expenses. The Petitioner
12 should pay the remaining expenses for said properties, including but not limited to utilities,
13 dues, taxes, insurance, capital/necessary repairs, landscaping and other grounds
14 expenses. Said amounts shall not be considered maintenance. The gardeners at the
15 Norcliffe property may continue to occupy the Jacob house until the Respondent vacates
16 Norcliffe and the Gatehouse. During that time, the gardeners shall continue to do work
17 they would normally do at the Jacob and Allen/Holmes houses. During Respondent's
18 occupancy, she shall not cause or permit any damage to Norcliffe or the grounds
19 (reasonable wear and tear excepted) and she shall reimburse the Petitioner for any such
20 damage that is not covered by any insurance.

21
22 IT IS HEREBY ORDERED that the Conclusions of Law are amended as follows:

23
24 8. Cash Payments. The Decree shall provide that Petitioner shall pay to Respondent
25 cash payments as follows:

*AMENDED FINDINGS AND CONCLUSIONS &
ADDITIONAL FINDINGS AND CONCLUSIONS
PAGE 3 OF 16*

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1 Four tax-free cash payments from the Petitioner totaling
2 \$47,770,480.27 paid as follows:

- 3 1. \$12,000,000 paid prior to entry of this Decree of Dissolution on
4 February 3, 2012 ("Immediate Transfer Payment")
5 2. \$20,770,480.27 which are the net proceeds of the December 30, 2011
6 sale of 800,000 shares of Microsoft stock and shall be paid to the wife
7 on February 3, 2012 pursuant to the agreement attached to the Decree
8 as Appendix A ("Microsoft Stock Proceeds");
9 3. Transfer payment of \$10,000,000 paid on January 2, 2013 ("Future
10 Cash Payment"); and
11 4. Transfer payment of \$5,000,000 paid on January 2, 2014 ("Future Cash
12 Payment").

13 The Immediate Transfer Payment and the Microsoft Stock Proceeds
14 shall not be a judgment or accrue interest if timely paid pursuant to #1 and #2
15 above. In the event that either one or both of the payments mentioned in the
16 preceding sentence are not timely paid, the court shall enter an immediate
17 judgment for the unpaid payment(s) which shall accrue interest at 12% per
18 annum from default until principal and interest are fully paid.

19 The Future Cash Payments shall not be a judgment. The Future Cash
20 Payments shall not accrue interest if timely paid because the Petitioner will need
21 to sell assets to make the Future Cash Payments and will incur costs of sale in
22 doing so. The court could have awarded additional assets to the wife in lieu of
23 the Future Cash Payments, in which case she would have borne the costs of
24 sale. In the event that either one or both of the Future Cash Payments is not
25

1 timely paid, past due payment(s) shall accrue interest at 12% per annum from
2 default until the default is cured or principal and interest are fully paid.

3 Petitioner shall be in default under the terms as set forth in this Decree if
4 he (a) fails to make any payment when and as due under the terms of this
5 Decree; or (b) fails to perform or comply with, in full, any of the terms of the
6 Deeds of Trust described below.

7 Upon default, Petitioner shall pay all reasonable costs of collection incurred by
8 Respondent hereunder (including, but not limited to, reasonable attorney's fees,
9 accounting fees, expert fees, and deposition costs).

10 If the Petitioner defaults on either of the Future Cash Payments, there
11 shall be a 30-day "cure period" from his receipt of notice of default before the
12 Deed Of Trust foreclosure process can begin to give the Petitioner time to cure
13 the default.

14 If the Petitioner defaults on the first Future Cash Payment and does not
15 cure his default within the 30-day cure period, the Respondent may at her option
16 declare both Future Cash Payments due and payable under the terms of this
17 Decree by giving notice of such declaration to the Petitioner.

18 Petitioner shall have no claim for offset or credit against the cash
19 payments herein and he shall have no claim for forgiveness of the cash
20 payments. The Future Cash Payments under the terms of this Decree shall be
21 secured by Deeds Of Trust upon improved real estate at 97 Olympic Drive NW,
22 Shoreline, WA 98177 and 95 NW Park Drive, Shoreline, WA 98177, executed
23 simultaneously with this Decree. The form of said Deeds Of Trust is attached to
24 the Decree as Appendix B, including the Master Form Deed Of Trust, except as
25

1 stricken by interlineations, as provided for in RCW 65.08.160 (as edited in
2 Appendix B). The Petitioner may cancel the \$30 Million life insurance policy
3 benefitting the Respondent when the Deeds Of Trust are signed by the
4 Petitioner and recorded. Any and all costs incurred by Respondent in
5 connection with recognizing upon the above security shall be included in the
6 costs of collection hereunder for purposes of attorneys' Fees and Collection
7 Costs.

8 9. Distribution of Artwork. The Decree shall provide as follows:

9 a. The community property appraised artwork is defined as follows:

10 Total artwork appraised by Debra Force = \$115,105,500.00
11 (the "appraised fine art" listed in the Stipulation
12 re: Various Asset Values)

13 Plus "Nude with a Parasol" by Louis Ritman +\$ 850,000.00
14 (which the parties agree was inadvertently omitted
from the Stipulation re: Various Asset Values)

15 Less Petitioner's separate pieces -\$4,800,000.00
16 (The Baseball Player; Chicago, Bird Catchers
17 which were awarded to Petitioner)

18 Less Pan of Rohallion awarded to Petitioner -\$4,500,000.00

19 Less pieces awarded to Respondent -\$4,452,000.00
20 (Sunny Window; Undine; Wood Nymph,
21 Morning Sunshine, Play Days, La Frileuse X 2, Diana)

22 The values of the community property appraised artwork shall be
23 determined by the Stipulation re: Various Asset Values, except for the value of
24 "Nude with a Parasol" by Ritman, which the parties agree shall be \$850,000.00.
25

1 The parties shall attempt to agree to an equal division of the value of the
2 community property appraised artwork by February 3, 2012. If they cannot
3 reach agreement, each party shall submit to the court on February 8, 2012 a list
4 of community property appraised artwork he or she would like to be awarded in
5 order of priority and the reason therefor. The court will then issue a
6 supplemental order dividing the community property appraised artwork equally
7 between the parties, if possible. If an equal division is not possible, then the
8 court will divide the community property appraised artwork so the totals awarded
9 to each party are less than \$1 Million apart.

10 If the court's division of community property appraised artwork results in
11 one party receiving artwork of greater value than the other, the former shall pay
12 the latter one-half of the difference within 5 (five) days; provided, however, the
13 Respondent's obligation, if any, to pay the difference shall mature within 5 (five)
14 days or upon receipt of the \$12 Million referred to in Conclusion 8, whichever is
15 last.

16 If the Respondent is awarded one or more pieces of artwork currently
17 pledged to JP Morgan for the \$45 million line of credit, the Petitioner shall use
18 his best efforts to obtain a release of her artwork from the pledge agreement
19 within 60 days of the date of the court ordered award to the Respondent. In
20 any event, the wife shall not be required to sign a renewal or extension of the
21 JP Morgan pledge agreement when the pledge agreement expires at the end
22 of July 2012.

23
24 10. LIABILITIES . The Decree shall provide as follows:

25 A. Liabilities Under Temporary Order. Petitioner and Respondent

1 shall assume and pay any debts and obligations of the parties
2 that are due prior to the entry of the Decree pursuant to the
3 provisions of the Temporary Order entered herein on
4 09/30/2010.

5 B. Petitioner's Liabilities. Petitioner shall assume and pay any
6 unpaid indebtedness incurred by the Petitioner subsequent to
7 the entry of the Decree. Except as otherwise provided for in this
8 Decree, Petitioner shall assume and pay any and all
9 indebtedness, liabilities, guarantees, and obligations incident to
10 any asset awarded to the Petitioner. The Petitioner shall
11 assume and pay any and all indebtedness due and owing to
12 Goldman Sachs and JP Morgan. Petitioner shall assume and
13 pay the charitable pledges of the parties in the amounts listed in
14 the Stipulation re: Various Asset Values to Children's, Evergreen
15 School, Solid Ground, University Prep, and Lakeside School.
16 Petitioner shall assume and pay cash payments to the
17 Respondent in the amount of \$47,770,480.27 as set forth in
18 Conclusion 8 above. Petitioner's Liabilities are subject to the
19 Duty to Defend, Hold Harmless and Indemnification provisions of
20 Sub-paragraph 10(D) below.

21 C. Respondent's Liabilities. Respondent shall assume and pay
22 any unpaid indebtedness incurred by the Respondent
23 subsequent to the entry of the decree. Except as otherwise
24 provided for in this Decree, Respondent shall assume and pay
25

1 any and all indebtedness, liabilities, guarantees, and obligations
2 incident to any asset awarded to the Respondent (including any
3 amount due to the Antique Cupboard). Respondent's
4 Obligations are subject to the Duty to Defend, Hold Harmless
5 and Indemnification provisions of Conclusion 10(D) below.

6 D. Duty to Defend, Hold Harmless and Indemnify. Petitioner and
7 Respondent shall indemnify, defend, hold harmless, protect and
8 reimburse each other for, from, and against any and all legal
9 proceedings, claims, losses, demands, damages, liabilities,
10 costs and expenses (including, without limitation, reasonable
11 attorneys' fees and costs), fines, judgments, mediator costs,
12 arbitrator costs, court costs, legal fees incurred on appeal of a
13 collection action and all interest thereon related to or arising from

14 i. Either's obligations as set forth in this
15 Decree;

16 ii. Claims pertaining to any property
17 awarded to either;

18 iii. Claims caused by the negligence or willful
19 act of either; and/or

20 iv. Claims related to or arising from the death
21 or bodily injury to persons or injury or
22 damage to any property, caused by either
23 or agents or employees of any business
24 property interest awarded to either under
25

1 this decree (collectively, "Claims").

2 E. Petitioner's and Respondent's duty to defend the other shall arise
3 immediately upon either party providing written notice of a Claim
4 to the other, and applies whether or not the issue of either's
5 liability or other obligation or fault has been determined. The
6 duty to indemnify, defend and hold harmless shall survive the
7 satisfaction and payment of either party's obligations under this
8 decree.

9 F. Release of Respondent. No later than March 31, 2012,
10 Petitioner shall close the joint Goldman Sachs margin loan
11 account and transfer the margin debt to an account in his name
12 solely. In addition, prior to March 31, 2012, the Petitioner shall
13 ask JP Morgan for a written statement that the Respondent is not
14 liable on the husband's JP Morgan line of credit.

15 11. **Income Tax Liabilities.** The Decree shall provide as follows:

16 The parties shall file a joint individual income tax return for 2011 (the "2011
17 return"). Pursuant to Appendix A attached to the Decree, the Petitioner shall pay
18 100% of any tax due on the 2011 return and any later deficiency including tax
19 penalty and interest. The Petitioner shall receive 100% of any refund or tax
20 overpayment on the 2011 return. In addition, the Petitioner is awarded 100% of
21 any credit relating to the 2011 return.

22 If there is later determined to be a deficiency (including tax, penalty and
23 interest) on a joint income tax return for a year prior to 2011, the responsibility for
24 paying the deficiency shall be divided between the marital community and the
25

1 Petitioner's separate estate in the same proportion as the community and separate
2 adjusted gross income for that tax year. Each party shall pay 50% of the
3 community portion of the deficiency. The Petitioner shall pay 100% of the separate
4 portion of the deficiency.

5 The Petitioner shall report the Video Networks loss carry forward on future
6 income tax returns.

7 For any audit, assessment or other action by the IRS relating to a joint
8 income tax return filed by the parties, the Respondent shall sign a power of
9 attorney authorizing the Petitioner to act on her behalf. The Petitioner shall select
10 and pay for any professional he deems necessary to assist him in responding to
11 the audit, assessment or other action.

12 The liabilities of the parties under this subparagraph shall be subject to the
13 Duty To Defend, Hold Harmless, and Indemnify provisions of Conclusion 10(D)
14 above.

15 12. Laurel Group, LLC. The Decree shall provide as follows: Laurel Group, LLC,
16 shall be awarded to the Respondent at no value.

17 13. Thistledown, LLC. The Decree shall provide the following: Thistledown, LLC shall
18 be awarded to the Respondent at no value.

19 14. Petitioner's vacate date. The Decree shall provide the following: The Petitioner
20 shall vacate the "911 Building" by 04/30/2012 and the Holmes house by 02/15/2012:

21 15. Payment of Norcliffe Expenses During Respondent's Occupancy and
22 Respondent's Vacate Date. The Decree shall provide the following: The Respondent
23 may have until April 30, 2012 to vacate Norcliffe and the Gate house. From February
24 2012 through the time she vacates, the Respondent shall pay the household staff
25

1 (housekeeping) expenses. The Petitioner shall pay the remaining expenses for said
2 properties, including but not limited to utilities, dues, taxes, insurance, capital/necessary
3 repairs, landscaping and other grounds expenses. Said amounts shall not be considered
4 maintenance.

5 16. The Decree shall provide the following: The Petitioner shall be awarded the
6 Kubota R420 S/N 10686; 2000 Chevrolet truck, license #B71712C; Isuzu flatbed truck,
7 license #A5533OW; the garden equipment located at Jacob House that is used on the
8 Norcliffe house grounds; cash in the amount of \$51,182 for the balance remaining in
9 Laurel Group accounts as of 10/31/2011 and Bank of Hawaii account as of 10/31/2011
10 less the stipulated value of the two trucks awarded to him that were allocated to the
11 Respondent in the Findings (2000 Chevrolet truck at \$2,600 and 1996 Isuzu flatbed truck
12 at \$400).

13 The Petitioner may have excess construction materials of his choice that are
14 necessary or potentially valuable for specific application at the Norcliffe house (paving
15 stone, roof tile, bricks, etc.). The excess construction materials are currently stored at a
16 property owned by Thistledown LLC. The Petitioner must take possession of the excess
17 construction materials of his choice within 30 days of entry of the Decree. If the Petitioner
18 takes possession of the excess construction materials, the Respondent shall be awarded
19 the two stone dogs.

20 17. The Decree shall provide the following: The Respondent shall receive the Mid-
21 Pacific Country Club membership; and the loan receivable from the parties' daughter,
22 Shauna.

23 18. Confirmation of Agreement Re: Sale of Microsoft Stock. The Decree shall
24 include the agreement between the parties dated 12/29/2011 attached as APPENDIX A to
25

1 the Decree and award the one-third interest in Swauk Valley Ranch, LLC, to the
2 Petitioner, on the condition that he transfers the proceeds of \$20,770,480.27 from the
3 sale of the Microsoft stocks to the Respondent on or before 02/03/2012.

4 19. **Transfer of Assets and Execution of Necessary Documents.** The Decree shall
5 provide the following: Each party shall promptly perform any act reasonably requested by
6 the other party that is necessary to effectuate the terms of this Decree, including but not
7 limited to the execution of documents to transfer assets as provided for in this Decree.

8 20. **The Decree shall provide the following:** The parties' obligations under the Decree
9 including the transfer of assets as provided for therein, shall survive the obligor's death
10 and shall be a lien on his/her estate.

11 21. **The Decree shall provide the following:** The Respondent shall be awarded the
12 household goods, furnishings and other personal property located at the real property
13 awarded to her (except for those items specifically awarded to the Petitioner) located at 91
14 Olympic Drive NW (Jacob) and 96 Olympic Drive NW (Allen/Holmes), Lake Armstrong, all
15 3 parcels located at 510 N. Kalaheo Avenue, 510 "A" N. Kalaheo Avenue, and 510 N.
16 Kalaheo Avenue, 10 Earls Terrace, London, and all real estate located in Thistledown LLC
17 excluding 15733 Palatine Avenue N.

18
19
20 22. **The Decree shall provide the following:** The Petitioner shall be awarded the
21 household goods, furnishings, and other personal property located in the real property
22 awarded to him (Norcliffe, the Gatehouse, Teltoft, and 15733 Palatine Avenue N.), except
23 for those items specifically awarded to the Respondent.

24 23. **Promptu Systems Corporation (Promptu).** The Decree shall provide the
25 following: Any funds the Petitioner receives from Promptu in the future will be disbursed

1 in the following order:

2 A. The Petitioner shall receive the first \$9,757,200, which is two times the
3 current value of his investment.

4 B. The Petitioner shall next receive two times the amount of any additional
5 funds he puts into Promptu after January 1, 2012.

6 C. The remaining funds the Petitioner receives from Promptu (if any) shall be
7 divided as follows: The Petitioner shall pay the Respondent a tax-free payment *equal* to
8 one-half of the remaining funds *minus* actual taxes paid by the Petitioner. The Petitioner
9 shall receive any remaining funds not paid to the Respondent.

10 The Petitioner shall initially pay the wife one-half of the remaining funds minus the
11 then-current percentage income tax rate on long term capital gains. The amount
12 subtracted by the Petitioner from the initial payment is referred to in this paragraph as
13 "Petitioner's tax estimate". Within 30 days of the Petitioner filing the income tax return that
14 reports the remaining funds, he shall provide to the Respondent a calculation of
15 "petitioner's actual tax" on Respondent's one-half of the remaining funds. The calculation
16 of "Respondent's actual tax" on wife's one-half of the remaining funds shall be prepared
17 by the accounting firm that prepares the Petitioner's income tax return. "Petitioner's
18 actual tax" on Respondent's one-half of the remaining funds shall be calculated by taking
19 the total tax paid on husband's income tax return that reports the remaining funds, and
20 subtracting the total tax the Petitioner would have paid if he had not reported
21 Respondent's one-half of the remaining funds. If "Petitioner's tax estimate" is less than
22 "Petitioner's actual tax", the Respondent shall pay the difference to Petitioner within 10 days
23 of Respondent's receipt of the accountant's calculation. If "Petitioner's tax estimate" is
24 more than "Petitioner's actual tax", the Petitioner shall pay the difference to the wife within
25

1 10 days of Respondent's receipt of the accountant's calculation.

2 The Petitioner shall provide the Respondent with documentation of any funds he
3 receives from Promptu in the future within 10 days of his receipt of such funds or upon the
4 Respondent's reasonable request; the Petitioner shall provide an accounting of the funds
5 he has paid into Promptu after January 1, 2012 within 30 days of the Respondent's
6 reasonable request.

7 24. Video Networks International Ltd (VNIL). The Decree shall provide the
8 following: Any funds the Petitioner receives from VNIL in the future shall be disbursed in
9 the following order:

10 A. The Petitioner shall receive the first \$2,569,248, which is two times the
11 current value of his investment.

12 B. The Petitioner shall next receive two times the amount of any additional
13 funds he puts into VNIL after January 1, 2012.

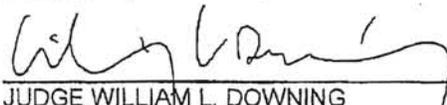
14 C. The remaining funds the Petitioner receives from VNIL (if any) will be
15 divided as follows: The Petitioner shall pay the Respondent a tax-free payment equal to
16 one-half of the remaining funds minus actual taxes paid by the husband on said one-half
17 of the remaining funds. The Petitioner shall receive any remaining funds not paid to the
18 Respondent.

19 The Petitioner shall initially pay the Respondent one-half of the remaining funds
20 minus the then-current percentage income tax rate on long term capital gains. The
21 amount subtracted by the Petitioner from initial payment is referred to in his paragraph as
22 "Petitioner's tax estimate". Within 30 days of the Petitioner filing the income tax return that
23 reports the remaining funds, he shall provide to the Respondent a calculation of
24 "Petitioner's actual tax" on Respondent's one-half of the remaining funds. The calculation
25

1 of "Petitioner's actual tax" on Respondent's one-half of the remaining funds shall be
2 prepared by the accounting firm that prepares the Petitioner's income tax return.
3 "Petitioner's actual tax" on Respondent's one-half of the remaining funds shall be
4 calculated by taking the total tax paid on Petitioner's income tax return that reports the
5 remaining funds, and subtracting the total tax the Petitioner would have paid if he had not
6 reported Respondent's one-half of the remaining funds. If "Petitioner's tax estimate" is
7 less than "Petitioner's actual tax", the Respondent shall pay the difference to the Petitioner
8 within 10 days of Respondent's receipt of the accountant's calculation. If "Petitioner's tax
9 estimate" is more than "Petitioner's actual tax", the Petitioner shall pay the different to the
10 Respondent within 10 days of Respondent's receipt of the accountant's calculation.

11 The Petitioner shall provide the Respondent with documentation of any funds he
12 receives from VNIL in the future within 10 days of his receipt of such funds or upon the
13 Respondent's reasonable request; the Petitioner shall provide an accounting of the funds
14 he has put into VNIL after January 1, 2012, within 30 days of the wife's reasonable
15 request.

16
17 DONE IN OPEN COURT this 3rd day of February, 2012.

18 
19 JUDGE WILLIAM L. DOWNING

20 Presented by:

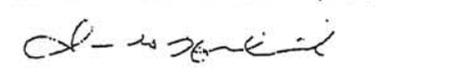
21 JANET A. GEORGE, INC., P.S.

22 
23 Janet A. George, WSBA No. 5990
24 Attorney for Respondent

~~XXXXXXXXXXXX~~

Copy received:

THOMAS G. HAMERLINCK, P.S.

25 
Thomas G. Hamerlinck, WSBA #11841
Attorney for Petitioner

DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Brief of Respondent in Supreme Court Cause No. 87085-3 to the following parties:

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Smith Goodfriend, P.S.
500 Watermark Tower
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Seattle, WA 98101

Thomas G. Hamerlinck
Lynn Stanley
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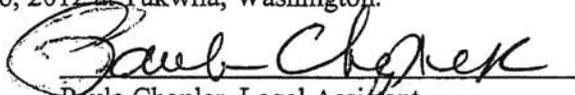
Janet A. George
Janet A. George, Inc. P.S.
701 5th Avenue, Suite 4550
Seattle, WA 98104

Original efiled with:

Washington Supreme Court
Clerk's Office
415 12th Street West
Olympia, WA 98504

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

Dated: October 16, 2012 at Tukwila, Washington.


Paula Chapler, Legal Assistant
Talmadge/Fitzpatrick

OFFICE RECEPTIONIST, CLERK

To: Paula Chapler
Subject: RE: Larson v. Calhoun, Cause No. 87085-3

Rec'd 10/16

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Paula Chapler [<mailto:paula@tal-fitzlaw.com>]
Sent: Tuesday, October 16, 2012 11:42 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: Larson v. Calhoun, Cause No. 87085-3

Per Mr. Talmadge's request, attached is the Brief of Respondent for filing in the following case:

Case Name: Christopher R. Larson v. Julia Calhoun
Cause No. 87085-3
Attorney: Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Sincerely,

Paula Chapler
Legal Assistant
Talmadge/Fitzpatrick
(206) 574-6661