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No. 71158-0-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

LARASCO, INC.,

Respondent.

v.

ELLIOTT SEVERSON AND SR DEVELOPMENT LLC,

Appellants.

BRIEF OF APPELLANTS

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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
NOV 19 10 AM '07

ORIGINAL

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I. INTRODUCTION

This lawsuit arose from the breakdown of long standing business relationships that crumbled under the stress of the financial crisis that struck in the fall of 2008. A major subject of the litigation was a one million dollar loan made by Respondent/Plaintiff Larasco, Inc. (“Larasco”) to Appellant/Defendant SR Development, LLC (“SR Development”), in March 28, 2008, the associated note issued by SR Development and the Guarantee Addendum and Security Addendum provided for the note by the principals of SR Development.¹

Defendant Elliott Severson (“Severson”) and brothers Mark and Edward Roberts (“Roberts”) were the principals of SR Development, a real estate development firm. Plaintiff Larasco is a private investment company owned by brothers Richard and Louis Secord. Larasco and the Secords had invested in and lent money on several SR Development projects over many years and had a web of financial relationships with the principals of SR Development and its affiliated entities.

This appeal is limited to three subjects: (1) the trial court’s erroneous decision holding Severson personally liable for Larasco’s attorney fees under his guarantee of the March 28, 2008 Promissory Note (the note is hereinafter referred to as the “Original Note”); (2) the trial

¹ The trial court held defendants liable on that note. That decision is not appealed.

court's erroneous decision to order Severson to execute and file a deed of trust against the Lakemont Building as specific performance of the Addendum To Promissory Note (Additional Security) (hereinafter "Security Addendum"); and (3) the trial court's erroneous denial of attorney fees to Severson for contesting the improper *lis pendens* filed by Larasco against the Lakemont Building. Severson maintains that, as a matter of law, his personal guarantee of the Original Note did not guaranty Larasco's attorney fees and that the Security Addendum is void and unenforceable. He also maintains that there was no substantial basis for the *lis pendens* filed by plaintiff against the Lakemont Building owned by I-90 Lakemont LLC ("I-90 Lakemont").

II. ASSIGNMENTS OF ERROR AND ISSUES

A. Error 1: Finding of Fact No. 20.² The trial court erred in finding that persons with the ability to bind the real property known as the Lakemont Building agreed to the Security Addendum.

B. Error 2: Finding of Fact No. 21: The trial court erred in finding that all material terms of a deed of trust were agreed upon by the parties to the Security Addendum.

C. Error 3: Finding of Fact No. 22: The trial court erred in finding

² Pursuant to RAP 10.4(c), the full text of the Findings of Fact and Conclusion of Law from CP 1523-1542 including those Severson is assigning error to is contained in Appendix A.

that Severson could be compelled to take any action to encumber the property of I-90 Lakemont.

D. Error 4: Finding of Fact No. 26: The trial court erred in finding that Severson was the controlling owner of I-90 Lakemont.

E. Error 5: Finding of Fact No. 27: The trial court erred in finding that the *lis pendens* was substantially justified.

F. Error 6: Finding of Fact No. 29: The trial court erred in referring to an attached deed of trust that was in fact not attached.

G. Error 7: Finding of Fact No. 30: The trial court erred in finding that Larasco had no adequate remedy at law for the breach of the Security Addendum.

H. Error 8: Finding of Fact No. 31: The trial court erred in failing to release the *lis pendens* on I-90 Lakemont's property.

I. Error 9: Finding of Fact No. 36: The trial court erred in finding that Severson had not proven facts sufficient to support the defense of equitable estoppel.

J. Error 10: Finding of Fact No. 37: The trial court erred in finding that Severson had failed to provide sufficient facts to prove the defense of lack of privity.

K. Error 11: Finding of Fact No. 38: The trial court erred in finding that Severson had failed to provide sufficient facts to prove his defense of

failure to comply with the statute of frauds.

L. Error 12: Finding of Fact No. 46: The trial court erred in finding that Severson had failed to prove sufficient facts to prove his claim for attorneys' fees under RCW 4.28.328.

M. Error 13: Conclusion of Law No. 4: The trial court erred in concluding that the Guarantors of the Original Note were liable for "all amounts due" under the Original Note.

N. Error 14: Conclusion of Law No. 5: The trial court erred in concluding the Security Addendum was valid and enforceable.

O. Error 15: Conclusion of Law No. 6: The trial court erred in concluding that Larasco was entitled to a decree of specific performance compelling Severson to record a deed of trust on property owned by I-90 Lakemont.

P. Error 16: Conclusion of Law No. 7: The trial court erred in concluding that the *lis pendens* was a valid lien against real property owned by I-90 Lakemont.

Q. Error 17: Conclusion of Law No. 8: The trial court erred in concluding that Severson had no valid defenses against the Security Addendum and Guarantee Addendum to the Original Note.

R. Error 18: Conclusion of Law No. 9: The trial court erred in concluding that Severson had no valid counterclaims.

S. Error 19: Order Granting Plaintiff's Motion For Award of Attorneys' Fees And Costs³ No. 2 (CP 1816): The trial court erred in ordering that a judgment should be entered against Severson for Larasco's attorneys' fees in the amount of \$177,050.93.

T. Error 20: Order Granting Plaintiff's Motion For Award of Attorneys' Fees And Costs No. 3 (CP 1816): The trial court erred in ordering that a judgment should be entered against Severson for Larasco's attorneys' fees in the amount of \$124,492.09.

U. Error 21: Order Granting Plaintiff's Motion For Award of Attorneys' Fees And Costs No. 4 (CP 1816): The trial court erred in ordering that Larasco is entitled to collect post-judgment attorneys' fees from Severson.

III. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

A. Is a guarantor – who guarantees only the *principal and interest* on a note – impliedly liable for the note holder's attorney fees, as well? (Errors 19 through 21)

B. Must an agreement to execute a deed of trust to encumber real property satisfy the requirements of the statute of frauds to be enforceable? (Errors 1 through 8, 10 through 12, and 14 through 18)

³ Pursuant to RAP 10.4(c), the full text of the Order Granting Plaintiff's Motion For Award of Attorneys' Fees And Costs from CP 1811-1817 including those Severson is assigning error to is contained in Appendix B.

C. Can a party who is not title owner and has no authority to act as title owner to real property be ordered to execute a deed of trust conveying a security interest or encumbering title to real property? (Errors 1 through 8, 10 through 12, 14 through 18)

D. Does equity bar a party from asserting a previously disclaimed interest in real property against an adverse party who has detrimentally changed position in reliance on the party's prior disclaimer of interest? (Errors 3, 6, 8, 12, 14, 15, and 17)

E. Is a party substantially justified in filing a *lis pendens* where the claim upon which it is based is patently invalid? (Errors 1, 3 through 5, 8, 10 through 12, 14 through 18)

IV. STATEMENT OF THE CASE

A. The Original Note.

On March 28, 2008, SR Development executed Promissory Note No. 08-0002 ("Original Note") in favor of Larasco in the principal amount of \$1,000,000 reflecting a loan of that amount from Larasco. FOF⁴ 6, Ex. 58 (Original Note attached as Appendix C). Severson and Roberts, the principals of SR Development, signed the Original Note as representatives

⁴ The Court's Findings of Fact contained at CP 1525-1539 will be cited as FOF followed by the paragraph number. The Court's Conclusions of Law will be cited as CL followed by the paragraph number.

of SR Development. *Id.*, RP Vol.3⁵, p.151. They did not sign the Original Note in their individual capacities, and they assumed no direct or personal liability under the Original Note itself. *Id.*

B. The Guarantee Addendum and Security Addendum.

To secure the Original Note, Severson and Roberts executed, in their individual capacities, two addenda to the Original Note. Ex. 59-60. First, they executed an unconditional guarantee (hereinafter “Guarantee Addendum”) in which they jointly and severally guaranteed “the prompt payment of principal and interest” on the Original Note. Ex. 59; (Guarantee Addendum attached as Appendix D).⁶ Second, they executed an “Additional Security” addendum (hereinafter “Security Addendum”) which purports to grant a real estate security interest described as “an unexecuted and unrecorded Deed of Trust on the I-90 Lakemont Building located at 5150 Village Park Dr. S. E., Bellevue, WA, 98006.” Ex. 60; (Security Addendum attached as Appendix E). The Security Addendum authorizes the Original Note holder to require the signatories to “execute and properly record a Deed of Trust to the above noted real estate” if the

⁵ The Report of Proceedings in the matter is separated into five parts. Vol.1 refers to the Report of Proceedings from October 7, 2013; Vol.2 refers to the Report of Proceedings from October 8, 2013; Vol.3 refers to the Report of Proceedings from October 9, 2013; Vol.4 refers to the Report of Proceedings from October 10, 2013; and Vol.5 refers to the Report of Proceedings from October 14, 2013.

⁶ This guarantee contains no attorneys’ fees provision and no language incorporating the attorney’s fee provision in the Original Note.

Original Note is not timely paid. *Id.* No deed of trust was attached to the Security Addendum, Appendix E, and no evidence was produced that the parties ever discussed or agreed on terms for such a deed. *See* RP Vol.1, p.123 Vol.2, 141-143, 145.

The Lakemont Building referenced in the Security Addendum was owned by I-90 Lakemont. FOF 20; RP Vol.1, p.39, 97; Vol.4, p.7. At the time the Security Addendum was executed, I-90 Lakemont was owned in equal shares by Sevro LLC (owned 50% by Camtiney, LLC and 25% each by Mark and Edward Roberts) and Larasco. RP Vol.1, p.38-39.⁷ Neither I-90 Lakemont, nor its member/manager, Sevro, LLC, was a signatory, to the Security Addendum or a party to this lawsuit. Ex. 60, 65; FOF 1-5.

C. Second Note Dated October 1, 2008.

In September 2008, SR Development paid Larasco \$500,000, and executed a second promissory note dated October 1, 2008 (the “Second Note”) that established new terms for payment of the remaining balance of the loan. FOF 9, Ex. 61. The principal amount of the Second Note was \$481,358.55, and the new maturity date was September 31, 2013. *Id.* The Second Note included a different payment amount, RP Vol.1, p.45, different amortization schedule, RP Vol.1, p.56-57, and a higher default interest rate. RP Vol.1, p.138. Severson and the Roberts did not execute a

⁷ Camtiney, LLC, is a Severson family LLC managed by Severson. RP Vol.1, p.145.

guaranty or security agreement for the Second Note. RP Vol.3, 153-54.

Severson's understanding was that the \$481,358.55 in proceeds from the loan evidenced by the Second Note, combined with the \$500,000 cash payment, paid off the Original Note. RP Vol.2, p.163; Vol.3, p.61; Vol.4, p.65. By October 1, 2008, the financial crisis was well underway. Cash had become an exceedingly scarce and valuable commodity.⁸ Severson's understanding was that Larasco needed cash, and the consideration to SR Development for the advance payment of \$500,000 in much needed cash to Larasco was discharge of the Original Note and its Security and Guaranty Addenda. RP Vol.3, p.62-66. Up until the time the Amended Complaint was filed in this action, all parties, including Larasco and its principals, acted consistently with Mr. Severson's understanding. See RP Vol.4, p.27-30; Ex. 26, 120.

D. Larasco's Representations Regarding the Notes and the Security on the Original Note.

Larasco's financial position became increasingly precarious as the financial crisis worsened in 2009. Ex. 120; RP Vol.1, p.82-83. It was sued by First Sound Bank ("FSB") which sought to attach the assets of

⁸ As vividly described by the National Commission of the Causes of the Financial and Economic Crisis in the United States: "[A]s massive losses spread throughout the financial system in the fall of 2008, many institutions failed, or would have failed but for government bailouts. As panic gripped the market, credit markets seized up, trading ground to a halt, and the stock market plunged." Financial Crisis Inquiry Report at 386, <http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

Larasco and its principals. RP Vol.1, p.98. The Court ordered discovery of all of Larasco's and the Secords' assets. RP Vol.1, p.98-99. In Larasco's sworn responses to that discovery, it did not produce either the Guarantee Addendum or the Security Addendum. RP Vol.1, p.101-03. Either Larasco was illicitly hiding those assets, or, like Severson, it understood that those security documents had been discharged. *See* RP Vol.4, p.27-30. When the Bank's attorney questioned Louis Secord on deposition regarding security on the Original Note and the Second Note, he testified that there was no security, no side agreements, and that the terms of the loans could be discerned from the four corners of the Notes alone. RP Vol.4, p.27-30.

After more than a year of litigation with FSB, Larasco filed for Chap. 11 bankruptcy protection on May 27, 2010. Ex. 120. In its bankruptcy filings, Larasco again disclaimed any continuing right or interest in either the Original Note, the Guarantee Addendum or the Security Addendum. *Id.*; RP Vol.1, p.106-110. On Schedule A of its Bankruptcy filing – which requires the debtor to “list all real property in which the debtor has any legal, equitable, or future interest . . . [i]ncluding any property in which the debtor holds right and powers exercisable for the debtor's own benefit.” Larasco answered “**none.**” *Id.*; RP Vol.1,

p.107-08.⁹

Larasco continued to behave as though the Original Note and its security had been discharged when it filed its initial Complaint in this action. CP 1865-74. SR Development had been unable to make the March 1, 2012 payment on the Second Note. CP 1874. On May 10, 2012, Larasco filed suit on the Second Note against SR Development, demanding immediate payment of the unpaid loan balance of \$464,977.28 under the Second Note, plus attorney fees. CP 1867. Had Larasco then believed that the Guarantee Addendum and the Security Addendum under the Original Note were still in effect, it is perplexing that those claims were not then joined.

E. The I-90 Lakemont Settlement.

Tensions and disputes among the parties and the various business entities in which they had interests mounted as difficult economic conditions persisted. Disputes broke out regarding management of the Lakemont Building. *See* Ex. 65. In April 2012, Severson, on behalf of part-owner Camtiney LLC, filed suit against Mark Roberts and entities through which Roberts purported to act, Sevro, LLC and Sevro II, LLC, alleging that Roberts had mismanaged the assets of I-90 Lakemont and

⁹ Severson was aware of Larasco's representations in these other cases through the relationships that the parties had in various business dealings, because of those relationships Larasco's financial condition was important to Severson. RP Vol.3, p.72-74.

wrongly diverted its income to Larasco.¹⁰ Ex. 65, RP Vol.1, p.146. At the same time, the financial condition of the Lakemont Building's main tenant, FSB, became an increasing concern. RP Vol.4, p.67-68. FSB had vacated its space, but was still paying rent to avoid defaulting that could thereby trigger insolvency. RP Vol.4, p.67-68; 102. FSB could not mitigate that burden by subleasing the vacant space, because it would only be able to sublease at lower rental rates, which would require the bank to write down the value of its lease which, again, would threaten FSB's solvency. RP Vol.4, p.67-68. Severson proposed to his partners a deal that would ease FSB's strained circumstances by making it possible for FSB to sublet the space. *Id.* Severson had negotiated an agreement with FSB that granted a substantial rent reduction for the bank's remaining lease term in exchange for a portfolio of FSB notes and leases.¹¹ *Id.*

Roberts, however, did not agree with helping FSB, and it became apparent that ending common ownership of the building was the best solution to the impasse. RP Vol.4, p.69-70. Therefore, Severson offered the Roberts brothers a choice: either take the 99% ownership interest in I-90 Lakemont (with Larasco's remaining 1%), or take the portfolio of FSB notes and leases that I-90 Lakemont would receive from the FSB lease

¹⁰ King County Cause No. 12-2-14867-8 SEA. Ex. 65.

¹¹ With lower rents under its lease with I-90 Lakemont, FSB could sublease its space without having to write down the I-90 Lakemont lease.

restructure. *Id.* Severson, on behalf of Camtiney, was willing to take either side of this arrangement, but that was premised on Severson's understanding that I-90 Lakemont's primary asset, the Lakemont Building, was not subject to contingent liability under the Security Addendum. RP Vol.4, p.119. He never would have done the deal had he been aware that Larasco was about to reverse its position and file a *lis pendens* on the building. *Id.*

The rent reduction eliminated substantial cash flow from the building and in fact turned the monthly cash flow slightly negative. RP Vol.4, p.74-75. At the time, the building had significant deferred maintenance. *Id.*; Vol.1, p.135. In addition, the building was essentially 100% vacant and significant leasing commissions and tenant improvements would be required to obtain new tenants. RP Vol.4, p.101-02. The building had the prospect of having good value if new tenants could be secured and installed in the building, but it would cost several hundred thousand dollars, which I-90 Lakemont did not have, to accomplish this task. RP Vol.4, p.74-76.

On June 28, 2012, the Roberts brothers accepted Severson's settlement offer, taking the FSB portfolio and transferring their interest in Sevro, LLC and Sevro II, LLC (the entities that owned 99% of I-90 Lakemont) to Camtiney, LLC. Ex. 65. The notes and leases were

distributed to Gilman Holdings, LLC, an LLC controlled by the Roberts brothers. Ex. 100; RP Vol.3., p.110-111. The lawsuit against Mark Roberts was dismissed. RP Vol.1, p.154-155. The settlement agreement was signed by Larasco, and Richard and Louis Secord personally to reflect their consent to the removal of significant assets from I-90 Lakemont.¹² Ex. 65.

F. Larasco Files the Amended Complaint Asserting that the Original Note, Security Addendum and Guaranty Addendum Remain in Effect.

Two months after the I-90 Lakemont settlement was reached, Larasco amended its Complaint to assert, for the first time, that the Second Note was not a replacement for the Original Note but, instead, a renewal of the obligation under the note. CP 1895-96; RP Vol.3, p.138-40. For the first time, Larasco asserted that the Security Addendum and Guaranty Addendum were still valid and in effect. *Id.* With the filing of the Amended Complaint, Larasco also recorded a *lis pendens* against the Lakemont Building. *See* CP 1893-1917.

G. Proceedings Below.

The trial court ruled in favor of Larasco. CP 1523-42. It held that: the Second Note was a renewal, not a replacement of the Original Note, FOF 12; and that the Guarantee Addendum to the Original Note obliged

¹² Larasco retained a one percent ownership share of I-90 Lakemont.

the guarantors to pay Larasco's attorney fees. CP 1816. The trial court also held that the Security Addendum was valid and ordered specific performance, requiring Severson to execute and file a deed of trust on behalf of I-90 Lakemont against the Lakemont Building. FOF 22; CL 5-6. The trial court denied all of Severson's claims for relief. CL 8-9.

V. ARGUMENT

A. Standard of Review.

An appellate court reviews a trial court's findings of fact under the substantial evidence test. *Guarino v. Interactive Objects, Inc.*, 122 Wn. App. 95, 108, 86 P.3d 1175 (2004). If the factual findings are supported by substantial evidence, those findings are used to determine whether they support the trial court's conclusions of law. *Id.* The trial court's determinations on questions of law are reviewed *de novo*. *Rasmussen v. Bendotti*, 107 Wn. App. 947, 954, 29 P.3d 56 (2001). The legal conclusion to be drawn from the facts is a mixed question of law and fact that is reviewed *de novo*. *Clayton v. Wilson*, 168 Wn.2d 57, 62, 227 P.3d 278, (2010).

B. Severson Is Not Liable For Larasco's Attorneys' Fees Under the Guarantee Addendum.

The trial court held that Severson was liable under the Guarantee Addendum for Larasco's attorney fees in enforcing the Original Note. CP

1816; Appendix D. There is no basis in fact or law for that decision. The Guarantee Addendum reads in the relevant part:

The undersigned as a direct and primary obligation, hereby, jointly and severally, unconditionally guarantee(s) the prompt payment of **principal and interest** on Promissory Note No. 08-0002, executed on even date herewith, when and as due in accordance with its terms.

Appendix D (emphasis added). The Guarantee Addendum does not contain an attorneys' fees provision. *Id.*; RP Vol.3, p.154-57. The Guarantee Addendum does not guarantee all obligations under the Original Note; it only guarantees payment of "principal and interest." Appendix D. The trial court's determination that this language also guarantees payment of attorney fees is directly contrary to the plain language of the Guarantee Addendum.

A personal guaranty is a separate and independent contract from the principal obligation. *Robey v. Walton Lumber Co.*, 17 Wn.2d 242, 255, 135 P.2d 95 (1943). In construing a guarantee, "[i]t is a fundamental rule that guarantors can be held only upon the strict terms of their contract, as a contract to answer for the debt of another must be explicit and is strictly construed." *Seattle-First Nat. Bank v. Hawk*, 17 Wn. App. 251, 256, 562 P.2d 260 (1977). "The liability of the guarantor cannot be enlarged beyond the strict intent of his contract." *Hansen Serv. v. Lunn*, 155 Wash. 182, 191, 283 P. 695 (1930). Like all written instruments, any

ambiguity in the terms of the agreement is construed against the drafter. *Old Nat. Bank of Washington v. Seattle Smashers Corp.*, 36 Wn. App. 688, 691, 676 P.2d 1034 (1984). Here, the Original Note and security documents were all drafted by Larasco. RP Vol.3, p.151. While there is nothing ambiguous about the terms of the Guarantee Addendum, even if it were ambiguous, it must be construed against Larasco and in favor of the Guarantors.

The trial court disregarded the plain language of the Guarantee Addendum and enlarged the guarantors' obligation far beyond that stated in the agreement. Neither the trial court nor Larasco cited any authority for that decision. It is plainly erroneous and should be reversed.

C. The Trial Court's Order Specifically Enforcing the Security Addendum Is Invalid Because That Addendum Is Unenforceable Under the Statute of Frauds.

Under RCW 64.04.010, "every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate" must satisfy the statute of frauds. The agreement must be in writing, and contain an adequate legal description of the property. *Martin v. Seigel*, 35 Wn.2d 223, 228, 212 P.2d 107 (1949). In addition, the agreement must "specify all its material and essential terms, and leave none to be agreed upon as the result of future negotiations." *Hubbell v. Ward*, 40 Wn.2d 779, 785, 246 P.2d 468 (1952).

Without a written agreement on such terms, specific performance is not available, because it would require the court to supply terms not agreed to by the parties. *Id.* at 787 (court will not specifically enforce a real estate contract that required court to supply terms for lease that were not agreed to by the parties).

Here, there was no deed of trust document associated with the Security Addendum. There is no evidence that the parties ever considered, let alone agreed upon the terms or form of a deed of trust. Ex. 60; RP Vol.1, p.123 Vol.2, p.141-143, 145. The material terms of a deed of trust include provisions for “forfeiture, default, risk of loss, liens by third parties, insurance, taxes, acceleration or due-on-sale clauses.” *Ecolite Mfg. Co., Inc. v. R.A. Hanson Co., Inc.*, 43 Wn. App. 267, 272, 716 P.2d 937 (1986). An agreement that does not address these terms cannot be specifically enforced. *Id.* The Security Addendum is unenforceable, because it does not specify any terms for the deed of trust.

The requirements of the statute of frauds are not satisfied by an attempt to incorporate by reference the terms of a writing that is not included in the contract documents. *Setterlund v. Firestone*, 104 Wn.2d 24, 26, 700 P.2d 745 (1985). In *Setterlund*, a buyer attempted to specifically enforce an earnest money agreement which incorporated an attached promissory note and deed of trust that would be used for the

transaction. *Id.* at 25. The referenced form documents, however, were not in fact attached to the earnest money agreement. *Id.* That was fatal to the enforceability of the contract, even though the form note and deed of trust were provided to the seller just three days after the contract was signed. *Id.* Here, the deed of trust referenced in the Security Addendum was never more than a name.

The Security Addendum contained no terms for the deed of trust. The trial court's order compelling specific performance did not specifically enforce an agreement between the parties. Rather, the trial court imposed court-defined terms that were never agreed to by Severson. That was erroneous as a matter of law.

The Security Addendum is also unenforceable because it does not contain an adequate description of the real property to be conveyed/encumbered by the deed of trust. *See Martin*, 35 Wn.2d at 228. The Addendum only describes the property as “**an unexecuted and unrecorded Deed of Trust on the I-90 Lakemont Building located at 5150 Village Park Dr. S.E., Bellevue, WA 98006.**” Appendix E. It has long been the rule that a street address is an inadequate description to convey an interest in real property under Washington's statute of frauds. *Martin*, 35 Wn.2d at 228; *see also, Key Design, Inc. v. Moser*, 138 Wn.2d 875, 881-882, 983 P.2d 653 (1999). The statute of frauds applies to: “(1)

actual conveyances of title or interests in real property; and (2) agreements that create or evidence an encumbrance of real property.” *Firth v. Lu*, 146 Wn.2d 608, 614, 49 P.3d 117 (2002). Thus, whether the Security Addendum is viewed as an agreement to convey an interest in real property to the trustee or as an agreement to encumber real property, it must have an adequate legal description to be specifically enforceable. The Security Addendum does not, and therefore it cannot be specifically enforced.

D. Severson Could Not Be Ordered to Execute a Deed of Trust on the Lakemont Building Because He Owned No Property Interest in the Building.

The trial court’s order requiring Severson to execute a deed of trust on the Lakemont Building was also invalid, because only the owner of real property may convey or encumber the property. Severson was not the owner of the Lakemont Building. The Lakemont Building was owned by I-90 Lakemont. FOF 20. The individual signatories to the Security Addendum could not legally convey or encumber the Lakemont Building, because they were not the owners.

“A grantor of property can convey no greater title or interest than the grantor has in the property.” *Firth*, 146 Wn.2d at 615 *citing Sofie v. Kane*, 32 Wn. App. 889, 895, 650 P.2d 1124 (1982). To create a specifically enforceable agreement to encumber the Lakemont Building,

the Security Addendum needed to be signed by the owner of the property.

Id. It was not.

Specific performance is a contract remedy. *Firth*, 146 Wn.2d at 614. The party seeking specific performance must prove (1) a valid binding contract with the party required to perform, and (2) a breach of that contract. *Id.* A limited liability company properly formed is “a separate legal entity.” RCW 25.15.070(2)(c). The separate legal entity has “the power to prosecute and defend suits.” *Chadwick Farms Owners Ass'n v. FHC LLC*, 166 Wn.2d 178, 189, 207 P.3d 1251 (2009). “Stock in a corporation whose only asset is real property is not an interest in real property Stock evidences ownership in a corporation, not its realty The real estate is owned by the corporation alone.” *Firth*, 146 Wn.2d at 616 *citing Bell v. Hegewald*, 95 Wn.2d 686, 692, 628 P.2d 1305 (1981).

I-90 Lakemont was the only entity with the power to convey a security interest in the Lakemont Building, but it was not a party to the Security Addendum or this lawsuit. To prove its cause of action for specific performance, Larasco must prove an enforceable contract with the party who can perform the contract. The only party who could execute a valid deed of trust on the Lakemont Building was I-90 Lakemont. There is no evidence of a contract between I-90 Lakemont and Larasco.

At trial, Larasco argued that the parties to the Security Addendum

had the power, through their entities, to record a deed of trust on the Lakemont Building. However, as in *Firth*, the parties to the Security Addendum held only an ownership interest in a company whose sole asset was real property. 146 Wn.2d at 610-11. There is no evidence that the parties to the Security Addendum had individual authority to convey or encumber I-90 Lakemont's real property.

Larasco drafted the Security Addendum. RP Vol.3, p.151. It could have done so in a way that created a valid, specifically enforceable contract, but it did not. It was not the trial court's function to correct Larasco's drafting errors. The Security Addendum could not be specifically enforced, because Severson could not convey or encumber the real property of I-90 Lakemont. *King v. N. P. R. Co.*, 27 Wn.2d 250, 262, 177 P.2d 714 (1947) (the formalities required by the statute of frauds apply to a conveyance of partnership real estate just as if the property was held by individuals). The trial court's order requiring Severson to execute and file a deed of trust against the Lakemont Building was invalid and should be reversed.

- E. It Was Inequitable to Enforce the Security Addendum Against Severson After He Detrimentally Relied on Larasco's Previous Inconsistent Statements in Acquiring the Controlling Interest in the Lakemont Building.

Even if the Court finds that the Security Addendum contains

sufficient terms to be enforced by specific performance and that Severson could be compelled to record a deed of trust against the Lakemont Building, Larasco should be equitably estopped from doing so.

Before filing the Amended Complaint in August 2012, Larasco, Louis Secord and Richard Secord made numerous representations in and out of court that led Severson to believe that they agreed with his understanding that issuance of the Second Note had discharged the Original Note and its security. Based on the assumption that the Security Addendum to the Original Note no longer encumbered the Lakemont Building, Severson proposed settling the I-90 Lakemont dispute with the Roberts brothers by dividing the of assets of I-90 Lakemont. The Roberts accepted that offer. In the division, Camtiney LLC, Severson's family LLC, obtained a 99% ownership interest in the Lakemont Building, and I-90 Lakemont transferred the FSB portfolio of notes and leases to an LLC controlled by the Roberts. Severson never would have agreed to the settlement had he known that Larasco would change its position after ownership of the Lakemont Building was transferred to Camtiney, LLC, and assert a claim against the building under the Security Addendum.

The elements of equitable estoppel are: "(1) a party's admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement or admission; and (3)

injury resulting to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission.” *Kramarevsky v. Department of Social and Health Services*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993) (citing *Robinson v. Seattle*, 119 Wn.2d 34, 82, 830 P.2d 318, cert. denied, 506 U.S. 1028, 113 S.Ct. 676, 121 L.Ed.2d 598 (1992)).

Severson met his burden of producing clear and convincing evidence of (1) Larasco’s prior inconsistent acts and representations, (2) Severson’s detrimental reliance, and (3) the injury he suffered as a result. The trial court’s contrary findings are not supported by substantial evidence, and should be reversed.

1. Larasco’s Claim That the Original Note and Its Security Remained in Force Is Inconsistent with Its Prior Representations.

There is clear and substantial evidence that, prior to the filing of the Amended Complaint, Larasco and its principals represented that the Second Note had discharged the Original Note and its security.

Richard Secord initially represented the Second Note as consideration for a “loan” of \$481,358.55 made in October 2008, not as a renewal of obligations under the Original Note. CP 1865-74; 1875-1878; 1881-92. When Larasco was ordered by the Federal Court to disclose all of its assets in the litigation with FSB, it did not disclose either the

Guarantee Addendum to the Original Note or the Security Addendum. RP Vol.1, p.101-103. Louis Secord testified in that case that there was no security, no "side agreements," and that the terms of the loan to SR Development could be discerned from the four corners of the Notes alone. RP Vol. 4, p.27-30. When Larasco filed for Chapter Eleven bankruptcy and was required to disclose any rights or interests in real property exercisable for its benefit, Larasco answered "none." Ex. 120; RP Vol.1, p.106-10. Even when this lawsuit was originally filed in May 2012, Larasco sought to recover only under the Second Note, with no mention or claim that it held a right to recover under the Original Note and the Security Addendum. CP 1865-74. The trial court simply disregarded this evidence.

2. Severson Acted in Reliance on Larasco's Representations That There Was No Security for the Obligation.

In settling his dispute with the Roberts brothers, Severson relied on Larasco's repeated statements that it had no interest in or claim to the Lakemont Building. Severson testified that he would not have agreed to the settlement terms if he thought that the Lakemont Building was encumbered by the large contingent liability represented in the Security Addendum. RP Vol. 4, p.119. I-90 Lakemont had agreed to grant FSB, the building's primary tenant, substantial rent reduction. RP Vol. 4, p.74-

75. The building was operating at a negative cash flow. *Id.* There was significant deferred maintenance and a substantial mortgage payment. *Id.* Cash was needed to operate the building and the *lis pendens* preventing using the building as collateral for a loan or additional equity investment, taking the 99% interest in the building and distributing cash producing assets made no sense under those circumstances. The large contingent liability against the building represented by the Security Addendum frustrated the value of the building as collateral. Indeed, the *lis pendens* scuttled an equity investment that Mr. Severson had arranged to finance its operations. RP Vol. 4, p.75-77; 101-04.

3. Severson Was Injured by His Reliance On Larasco's Inconsistent Representations.

Severson was injured in two substantial ways when Larasco changed its position on the continuing validity of the Original Note and its security. First, because Cantiney took 99% ownership of 1-90 Lakemont in the settlement with the Roberts, Cantiney became subject to the full amount of any liability imposed against the Lakemont Building under the Security Addendum, not just the one-half share it would have borne prior to the settlement. Second, reviving the Security Addendum's contingent liability against the Lakemont Building frustrated Severson's ability to attract equity investors to provide working capital to fund the operating

shortfall and address the deferred maintenance issues. See RP Vol. 4, p.101-04. Severson was forced, instead, to take out and personally guarantee a loan at 25% interest to operate and attempt to salvage the building. Vol. 4, p.76-77. These injuries were the direct result of Severson's reliance on the prior inconsistent representations of Larasco and Louis and Richard Secord regarding the continuing effect the Security Addendum. Larasco, therefore, should be equitably estopped from asserting a security interest in the Lakemont Building.

F. The Court Should Release The *Lis Pendens* Against The Lakemont Building, And Award Severson His Attorneys' Fees And Costs Under RCW 4.28.328(3).

Larasco recorded a *lis pendens* against the Lakemont Building when it filed its Amended Complaint. CP 1911-17. The only basis for the *lis pendens* was the void and ineffective Security Addendum. Larasco held no enforceable interest in the real property and had, or should have had, actual knowledge of that fact. As such, the *lis pendens* was not substantially justified, and under RCW 4.28.328(3) Severson was entitled to his attorneys' fees and costs at trial and on appeal.

Under RCW 4.28.328(3), a *lis pendens* will be released if it is not substantially justified, and the Court in its discretion, may award reasonable attorneys' fees and costs for contesting an unjustified *lis pendens*. A *lis pendens* is substantially justified if the party has a good

faith position that an enforceable contract existed. *Keystone Land & Development Co. v. Xerox Corp.*, 353 F.3d 1070, 1075-76 (9th Cir. 2003).

Here, for all the reasons described above, Larasco could have no good faith basis to believe that the Security Addendum created a specifically enforceable right to encumber the Lakemont Building. The *lis pendens* was not substantially justified, and this Court should award Severson his attorneys' fees on appeal. Further, this Court should remand to the trial court for an award of attorneys' fees incurred at trial pursuant to RCW 4.28.328(3).

VI. CONCLUSION

Absent some indication of contrary intent, words in a contract are to be given their ordinary and usual meaning.¹³ A guarantee contract is to be construed against the drafter and in favor of the guarantor. Severson's guarantee to pay "principal and interest" on the Original Note was not a guarantee to pay Larasco's attorney fees for enforcing the Original Note. The ordinary meaning of "principal and interest" is not "all liabilities arising under the note." There was no basis for the trial court to conclude otherwise.

Nor was there any basis for the trial court to order specific performance of the Security Addendum — it was plainly void and

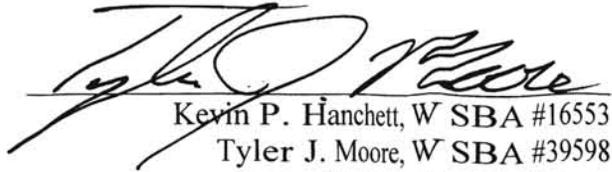
¹³ *Washington State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co.*, 176 Wn.2d 502, 509-510, 296 P.3d 821 (2013).

unenforceable under the statute of frauds. Moreover, Larasco had no substantial justification for filing a *lis pendens* against the Lakemont Building because it knew, or should have known, that the Security Addendum was not specifically enforceable. The trial court's decision on these issues was also erroneous.

Therefore, appellant Elliott Severson respectfully requests that the Court:

1. Reverse the trial court's award of attorney fees against Severson under the Guarantee Addendum to the Original Note;
2. Reverse the trial court's specific performance order requiring Elliott Severson to execute and file a deed of trust against the Lakemont Building, and remand for issuance of an order to clear the deed of trust that was filed under the trial court's specific performance order;
3. Determine that Larasco had no substantial justification for the *lis pendens* it filed against the Lakemont Building, and remand for a determination of an award of attorneys' fees under RCW 4.28.328(3); and
4. Determine that Larasco had no substantial justification for the *lis pendens* it filed against the Lakemont Building, and award Elliott Severson his attorneys' fees on appeal under RCW 4.28.328(3).

Respectfully submitted this 19th day of May, 2014.

A handwritten signature in black ink, appearing to read "Tyler J. Moore". The signature is written in a cursive style with a horizontal line underneath it.

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CERTIFICATE OF SERVICE

I certify that on May 19, 2014, I caused a copy of ~~the~~ foregoing document to be served via legal messenger to the following counsel of record:

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington corporation,

Plaintiff,

v.

DEL NORTE, LLC, a Washington limited liability company; and SR DEVELOPMENT, LLC, a Washington limited liability company,

Defendants.

CONSOLIDATED CASE
NO. 12-2-16817-2 SEA

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

LARASCO, INC., a Washington corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a Washington limited liability company; MARK ROBERTS; EDWARD ROBERTS; and ELLIOTT J. SEVERSON,

Defendants.

ORIGINAL

APPENDIX A-1

1 This consolidated action¹ was tried to the Court without a jury from
2 October 7 to October 14, 2013. Plaintiff Larasco, Inc. appeared through its
3 attorneys, Spencer Hall and Janet D. McEachern, of Hall Zanzig Clafin
4 McEachern PLLC. Defendants SR Development, LLC and Elliott J. Severson
5 appeared through their attorneys, Quentin Wildsmith and Tyler J. Moore, of
6 Lasher Holzapfel Sperry & Ebberson, PLLC. Defendants Mark Roberts and
7 Edward Roberts are represented by Paul A. Spencer of Oseran Hahn Spring
8 Straight & Watts, P.S. The Roberts and their counsel were excused from
9 attendance at trial pursuant to the Court's Stipulated Order Regarding Entry of
10 Judgment Against Certain Defendants.
11
12

13 The following witnesses were called and testified at the trial:

14 1. Plaintiff's Witnesses:

15 Richard Secord

16 Mark Roberts

17 Elliott Severson

18 Edward Roberts

19 Louis Secord

20 2. Defendants SR Development and Elliott Severson's Witnesses:

21 Louis Secord

22
23
24
25 ¹ The claims in this consolidated action were previously the subject of two lawsuits titled: *Larasco, Inc. v. Del Norte, LLC and SR Development, LLC*, King County Superior Court Cause No. 12-2-16817-2 SEA, and *Larasco, Inc. v. SR Development, LLC, Mark Roberts; Edward Roberts; and Elliott J. Severson*, King County Superior Court Cause No. 12-2-16818-1 SEA.
26

1 Elliott Severson

2 Michael Bashaw

3 **FINDINGS OF FACT**

4 Based on the evidence presented at trial, the Court makes the
5 following Findings of Fact:
6

7 **Parties**

8 1. Plaintiff, Larasco, Inc. ("Larasco"), is a Washington
9 corporation based in King County, Washington. Larasco is owned by Louis
10 Secord and Richard Secord (the "Secords"). The Secords are brothers.
11

12 2. Defendants Mark Roberts and Edward Roberts (the
13 "Roberts") are brothers who reside in King County, Washington. The Roberts are
14 real estate developers based in Issaquah, Washington.
15

16 3. Defendant Elliott J. Severson ("Severson") is an individual
17 residing in King County, Washington.

18 4. Defendant SR Development, LLC ("SR Development") is a
19 Washington limited liability company based in King County, Washington. SR
20 Development is owned by Severson and the Roberts. Severson owns 50% of
21 SR Development, and the Roberts each own 25%. (Trial Exhibit 31)
22

23 5. Defendant Del Norte LLC ("Del Norte") is a Washington
24 limited liability company based in King County. (Trial Exhibit 8)
25
26

1 **Larasco's \$1 Million Loan To SR Development LLC**

2 6. In March 2008, Larasco loaned \$1 million to SR Development.

3 In connection with the loan, Severson and the Roberts each signed the following
4 loan documents: (1) Promissory Note, dated March 28, 2008, in the principal
5 amount of \$1 million (the "\$1 Million Note"); (2) Addendum to Promissory Note
6 (Unconditional Guarantee), dated March 28, 2008 ("Guarantee Addendum"); and
7 (3) Addendum to Promissory Note (Additional Security), dated March 28, 2008
8 ("Security Addendum"). (Trial Exhibits 58-60)

9
10
11 7. The \$1 Million Note provided an interest rate of 10%,
12 payments of \$12,000 per month beginning May 1, 2008, and a final payment of
13 \$961,875.64 on May 1, 2009. The default interest rate was 12%. (Trial Exhibit 58)

14
15 8. The Guarantee Addendum provided that it would not be
16 adversely impacted by any extension or renewal of the \$1 Million Note. (Trial
17 Exhibit 59)

18 9. By check dated September 4, 2008, SR Development made a
19 \$500,000 payment to Larasco on the \$1 Million Note. (Trial Exhibit 67) SR
20 Development then executed a promissory note, dated October 1, 2008, setting
21 forth the reduced principal balance of \$481,358.55 owed on the \$1 Million Note
22 ("Second Note"). (Trial Exhibit 61) The Second Note extended the maturity date,
23 but did not change the interest rate of 10% from the \$1 Million Note. (Trial Exhibit
24 61)

1 10. The evidence does not support Severson's contention that
2 Larasco agreed to discharge the \$1 Million Note and related loan documents as
3 consideration for the \$500,000 paydown. The paydown was initiated by Ed
4 Roberts, one of the owners of SR Development. Roberts wanted to earn the spread
5 between the lower interest rate on his personal line of credit and the higher
6 Larasco rate. Roberts borrowed \$500,000 on his line of credit and loaned it to
7 SR Development. (Trial Exhibit 66) SR Development, in turn, paid down the
8 Larasco loan by \$500,000. (Trial Exhibit 67)
9
10

11 11. At the time of the execution of the Second Note, the \$1 Million
12 Note was not marked "paid," was not altered or destroyed, and was not
13 surrendered by Larasco. No member of SR Development requested that the
14 \$1 Million Note and related loan documents be altered, destroyed or marked
15 "paid". No member of SR Development requested that Larasco surrender the
16 original loan documents. The \$1 Million Note and related loan documents have
17 remained unaltered and in the possession of Larasco from the time the Second
18 Note was executed until the present. The original documents were produced at
19 trial for the Court's inspection.
20
21

22 12. The evidence does not establish that the parties intended to
23 discharge the \$1 Million Note and related loan documents by executing the
24 Second Note.
25
26

1 13. On May 1, 2009, Larasco and SR Development amended the
2 Second Note to provide for a lower interest rate and lower monthly payments.
3 (Trial Exhibit 62) Larasco agreed to this adjustment because SR Development was
4 having trouble making the monthly payments due to the economic downturn.
5 This amendment was not intended to discharge the \$1 Million Note and related
6 loan documents.
7

8 14. SR Development made payments on the Larasco debt through
9 January 2011. (Trial Exhibits 51, 10, 70 and 125 at p. 11) After that date, I-90
10 Lakemont LLC began making the payments with Severson's knowledge and
11 approval. (Trial Exhibits 68, 69, 94 and 95)
12

13 15. The \$1 Million Note went into default on March 1, 2012.
14 (Trial Exhibit 7) No payments have been made on the note since the date of
15 default.
16

17 16. The Security Addendum provides in part:

18 The undersigned agrees that until such time as the principal
19 and interest owed under Promissory Note No. 08-0002 of
20 even date herewith are paid in full, this note will be secured
21 by all interest held in the real estate commonly known as:
22 The Lakemont Building, which is located at 5150 Village
23 Park Dr. S.E., The undersigned further agrees that in
24 the event a payment or payments are not paid to the holder
25 of Promissory Note No. 08-0002 by the date payment is due
26 under the terms of that note, Holder may, at Holder's sole
discretion, require that the undersigned execute and
properly record a Deed of Trust to the above noted real
estate.

1 (Trial Exhibit 60) (original underlining; bold emphasis added).

2 17. The Lakemont Building that is the subject of the Security
3 Addendum is located at 5150 Village Park Drive S.E., Bellevue, Washington 98006
4 (the "Lakemont Building"), and is more particularly described as:

5
6 Parcel A of Amended Lakemont Div. 3-A, according to the
7 plat recorded in Volume 171 of Plats at Page(s) 1 through 16,
8 inclusive, in King County, Washington, being an
9 amendment to plat recorded in Volume 157 of Plats,
Pages 19 through 33, in King County, Washington.
Tax Parcel Number(s): 413942-0750.

10 (Trial Exhibits 60, 76 and 79)

11 18. Following the default on the \$1 Million Note, Larasco notified
12 Severson and the Roberts that Larasco was exercising its right to require them to
13 execute and record a deed of trust on the Lakemont Building pursuant to the
14 Security Addendum. (Trial Exhibit 72)

15
16 19. Severson and the Roberts have not provided a deed of trust
17 on the Lakemont Building to Larasco.

18
19 20. The Security Addendum was signed by persons with the
20 authority to make the commitments contained in the Security Addendum. At the
21 time the Security Addendum was executed, the Lakemont Building was owned by
22 I-90 Lakemont LLC. The controlling owners of I-90 Lakemont LLC approved the
23 agreement. (Trial Exhibits 60 and 64)

1 21. The Security Addendum contains or incorporates the essential
2 terms needed to be enforceable. The \$1 Million Note provides the terms of
3 payment of the note, the events of default, and the remedies upon default,
4 including default interest, attorneys' fees and venue. (Trial Exhibit 58) The
5 Security Addendum states the amount of the debt, identifies the \$1 Million Note,
6 specifically describes the real property involved, and the basis and procedure for
7 demanding a deed of trust. (Trial Exhibit 60)
8

9 22. Under the terms of the Security Addendum, Severson is
10 obligated to convey a deed of trust from I-90 Lakemont LLC to Larasco on the
11 Lakemont Building securing all amounts due on the \$1 Million Note. (Trial
12 Exhibit 60)
13

14 23. On July 18, 2012, a Settlement Agreement was entered into
15 between I-90 Lakemont LLC, Sevro LLC, Sevro II LLC, Cantiney LLC, SR
16 Development LLC, Mark Roberts, Ed Roberts and Elliot Severson ("I-90 Lakemont
17 Agreement"). (Trial Exhibit 65) Under the terms of the I-90 Lakemont Agreement,
18 the Roberts sold their interest in I-90 Lakemont LLC. As a result of this transfer,
19 Severson controlled 99% of I-90 Lakemont LLC. The Secords and Larasco
20 continued to hold a 1% interest in I-90 Lakemont LLC. The Secords and Larasco
21 signed the I-90 Lakemont Agreement as 1% owners but were not named as parties.
22 The Secords and Larasco were not represented by legal counsel in connection with
23 the I-90 Lakemont Agreement.
24
25
26

1 24. Severson's contention that the I-90 Lakemont Agreement
2 resolved or was intended to resolve all contingent claims relating to the Lakemont
3 Building is contradicted by the evidence. For instance, just prior to execution of
4 the I-90 Lakemont Agreement, Severson prepared an information package to
5 market half of his expected 99% interest in the Lakemont Building to Mike
6 Bashaw. In the information package, Severson contemplated filing a major
7 contingent lawsuit against Larasco relating to the Lakemont Building after the I-90
8 Lakemont Agreement was executed. (Trial Exhibit 141 at p. 4)

9
10
11 25. On August 28, 2012, Larasco recorded a lis pendens on the
12 Lakemont Building. (Trial Exhibit 126)

13 26. When Larasco filed its lis pendens, Severson had authority to
14 convey a deed of trust on the Lakemont Building to Larasco. (Trial Exhibits 65
15 and 79) At that time, Severson was the controlling owner of I-90 Lakemont LLC,
16 which was still the owner of the Lakemont Building. (Trial Exhibits 65 and 79)

17 27. Larasco had substantial justification for filing the lis pendens.

18 28. On December 20, 2012, Severson caused I-90 Lakemont LLC
19 to borrow \$750,000 from Michael Bashaw, Matthew Murphy and Craig Mullarky.
20 (Trial Exhibit 77) Severson executed a Deed of Trust on behalf of I-90 Lakemont
21 LLC in favor of Michael Bashaw, Matthew Murphy and Craig Mullarky securing
22 the \$750,000 promissory note ("Bashaw Deed of Trust"). (Trial Exhibit 79)

1 29. Exhibit A to these Findings of Fact and Conclusions of Law is
2 an unexecuted deed of trust that, if properly executed by Severson and recorded,
3 would comply with the terms of the Security Addendum. (Trial Exhibit 76)

4 30. Larasco has no remedy at law that is an adequate substitute
5 for a deed of trust on the Lakemont Building. SR Development professes to be
6 unable to pay the debt. To date, none of the guarantors have paid anything on the
7 outstanding balance of the debt. There is evidence that Severson has transferred
8 assets from his own name and from SR Development into other entities under his
9 control. Severson has listed the Lakemont Building for sale. He has encumbered
10 the Lakemont Building with a second deed of trust since Larasco filed its lis
11 pendens. (Trial Exhibit 79) Severson claims to have no other substantial assets.

12 31. On April 29, 2013, Severson filed a motion to release the lis
13 pendens. Severson's motion was denied by order of this Court dated June 7, 2013.

14 32. On July 19, 2013, the Court entered a Stipulated Order
15 Regarding Entry of Judgment Against Certain Defendants ("Stipulated Order").
16 The Stipulated Order provides for entry of judgment in favor of Larasco against
17 defendants Mark and Ed Roberts with respect to all the claims against them
18 relating to the \$1 Million Note.

19 33. Defendants SR Development and Severson have failed to
20 prove facts adequate to support their defense of failure to mitigate damages.
21
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1 34. Defendants SR Development and Severson **have** failed to
2 prove facts **adequate** to support their defense of assumption of **risk**.

3 35. Defendants SR Development and Severson **have** failed to
4 prove facts **adequate** to support their defense of waiver.

5 36. Defendants SR Development and Severson **have** failed to
6 prove facts **adequate** to support their defense of estoppel.

7 37. Defendants SR Development and Severson **have** failed to
8 prove facts **adequate** to support their defense of lack of privity.

9 38. Defendants SR Development and Severson **have** failed to
10 prove facts **adequate** to support their defense of statute of frauds.

11 39. Defendants SR Development and Severson **have** failed to
12 prove facts **adequate** to support their defense of judicial estoppel.

13 40. Defendants SR Development and Severson **have** failed to
14 prove facts **adequate** to support their defense of lack of enforceability.

15 41. Defendants SR Development and Severson **have** failed to
16 prove facts **adequate** to support their defense of lack of standing.

17 42. Defendants SR Development and Severson **have** failed to
18 prove facts **adequate** to support their defense of bad faith.

19 43. Defendants SR Development and Severson **have** failed to
20 prove facts **adequate** to support their defense of unclean hands.
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1 44. Defendants SR Development and Severson have failed to
2 prove facts adequate to support their defense of payment.

3 45. Defendants SR Development and Severson have failed to
4 prove facts adequate to support their claim for assertion of a frivolous action.
5

6 46. Defendants SR Development and Severson have failed to
7 prove facts adequate to support their claim for damages and attorneys' fees under
8 RCW 4.28.328.

9 47. Defendants SR Development and Severson have failed to
10 prove facts adequate to support their claim for slander of title.
11

12 48. The principal and interest due and owing on the \$1 Million
13 Note through October 7, 2013 is \$554,716.49. (Trial Exhibit 97) The \$1 Million
14 Note continues to accrue interest from October 8, 2013 in the amount of \$154.99
15 per diem (calculated at the default note rate of 12 percent per annum). (Trial
16 Exhibits 58 and 97)
17

18 **Larasco's Claims Relating To \$705,476 Del Norte Note**

19 49. Del Norte LLC was formed in 2005 by Severson, the Roberts,
20 and a fourth individual named John Richards ("Richards"). (Trial Exhibit 8) The
21 ownership remained the same from 2005 until 2009.
22

23 50. On January 5, 2007, Puget Sound Leasing Co., Inc. loaned
24 \$900,000 to Del Norte LLC. (Trial Exhibit 38) Puget Sound Leasing Co., Inc.
25
26

1 changed its name to Larasco, Inc. in March 2008 when the assets of the company
2 were sold to First Sound Bank.

3 51. In April 2008, Larasco loaned \$750,000 to Del Norte LLC. In
4 connection with the loan, Severson and the Roberts each signed the following loan
5 documents: (1) Promissory Note, dated April 30, 2008 (the "\$750,000 Note"),
6 Addendum to Promissory Note (Unconditional Guarantee), dated April 30, 2008,
7 and Addendum to Promissory Note (Additional Security), dated April 30, 2008.
8 (Trial Exhibits 3-5) Richards did not sign the \$750,000 Note or related loan
9 documents. (Trial Exhibit 3-5) Although described in the loan documents as a
10 loan to Del Norte, the loan documents were signed by the members of SR
11 Development, the loan proceeds were used by SR Development, and all payments
12 on the loan were made by SR Development. (Trial Exhibits 3-5, 51, 125 at pp. 5
13 and 11, and 127)

14 52. On February 1, 2009, Del Norte executed a Promissory Note to
15 Larasco in the amount of \$705,476, reflecting the current principal balance of the
16 \$900,000 loan (the "\$705,476 Note"). (Trial Exhibit 1)

17 53. On May 1, 2009, Larasco amended the \$705,476 Note to lower
18 the interest rate from 10.59% to 5%, and to lower the monthly payment from
19 \$10,109.50 to \$5,889.11. (Trial Exhibit 2)

1 54. On May 1, 2009, Larasco amended the \$750,000 Note to lower
2 the interest rate from 10% to 5%, and to lower the monthly payment from \$6,250 to
3 \$3,125. (Trial Exhibit 6)
4

5 55. In 2009, the Roberts and Severson decided to sell their
6 interests in Del Norte to Richards. (Trial Exhibit 27) At the time of the proposed
7 sale, Del Norte was obligated to Larasco on the \$705,476 Note, and the \$750,000
8 Note. (Trial Exhibits 1 and 3) The \$750,000 Note was personally guaranteed by
9 the members of SR Development (Severson and the Roberts). (Trial Exhibit 4)
10

11 56. Also at the time of the proposed sale, Del Norte purportedly
12 owed \$600,000 to SR Development. (Trial Exhibit 29 at p. 3)
13

14 57. The sale transaction between the owners of Del Norte
15 required that Del Norte qualify for an SBA loan. (Trial Exhibit 27) One or more of
16 the members of Del Norte and SR Development told Larasco that Del Norte could
17 not qualify for the needed SBA loan unless SR Development assumed
18 responsibility for the \$705,476 Note.
19

20 58. Mark Roberts had actual or apparent authority to agree that
21 SR Development would assume responsibility for paying amounts due on the
22 \$705,476 Note. (Trial Exhibit 31)
23

24 59. SR Development entered into a binding agreement with
25 Larasco and Del Norte to assume responsibility for paying amounts due on the
26

1 \$705,476 Note. As part of this agreement, Larasco agreed to loan Del Norte
2 another \$150,000. (Trial Exhibit 26)

3 60. SR Development received a substantial direct benefit from the
4 SBA loan transaction. (Trial Exhibits 3-5, 26-27, and 125 at p. 5)

5 61. Del Norte obtained an SBA loan in the amount of \$1,250,000.
6 The SBA loan closed on November 6, 2009. (Trial Exhibit 125 at p. 5) Pursuant to
7 the parties' agreement, \$490,000 of the SBA loan was paid to SR Development, and
8 \$750,000 was paid to Larasco. (Trial Exhibits 27 and 125 at p. 5) The owners of SR
9 Development were relieved of their personal guarantee of the \$750,000 debt to
10 Larasco. (Trial Exhibit 4) Larasco loaned Del Norte \$150,000. (Trial Exhibit 26)

11 62. SR Development's financial statements for 2010 confirm that
12 SR Development assumed the \$705,476 Note. (Trial Exhibit 9)

13 63. SR Development filed federal income tax returns that
14 reflected SR Development's assumption of the \$705,476 Note.
15

16 64. SR Development began making the payments on the \$705,476
17 Note beginning with the December 2009 payment. (Trial Exhibits 51 and 125 at p.
18 11) SR Development made each payment on the \$705,476 Note from December
19 2009 through January 2011. (Trial Exhibits 51, 125 at p. 11, 10 and 70) From
20 February 2011 through December 2011, another entity owned by the Roberts and
21 Severson continued making the payments on the \$705,476 Note. (Trial Exhibits
22 68-69 and 94-95)

1 65. On June 1, 2011, Severson purchased Del Norte from John
2 Richards. (Trial Exhibit 49) Severson is the sole owner of Del Norte.

3 66. The \$705,476 Note went into default as of January 1, 2012.
4 (Trial Exhibit 7)

5 67. Defendant SR Development has failed to prove facts adequate
6 to support its defense of statute of frauds.

7 68. Defendant SR Development has failed to prove facts adequate
8 to support its defense of lack of privity.

9 69. Defendant SR Development has failed to prove facts adequate
10 to support its defense of failure to mitigate damages.

11 70. Defendant SR Development has failed to prove facts adequate
12 to support its defense of lack of consent.

13 71. Defendant SR Development has failed to prove facts adequate
14 to support its defense of lack of standing.

15 72. Defendant SR Development has failed to prove facts adequate
16 to support its defense of lack of enforceability.

17 73. Defendant SR Development has failed to prove facts adequate
18 to support its claim for costs and attorneys' fees.

19 74. The principal and interest due and owing on the \$705,476
20 Note through October 7, 2013 is \$745,404.10. (Trial Exhibit 57) The \$705,476 Note
21 continues to accrue interest from October 8, 2013 in the amount of \$242.54 per
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1 diem (calculated at the default note rate of 15 percent per annum) - (Trial Exhibits
2 1 and 57)

3 75. All of the parties involved in the transactions at issue testified
4 at trial, including the Roberts, the Secords, and Severson. Mr. Severson's
5 testimony on the key points differed from that of all the other witnesses involved
6 in the transactions. The Court finds that the witness testimony supporting
7 plaintiff's claims was more credible than the testimony of Mr. Severson.
8

9 CONCLUSIONS OF LAW

10 Based on the above Findings of Fact, the Court makes the following
11 Conclusions of Law:

12 1. The Court has jurisdiction over the parties and claims in this
13 case. Venue is proper in this Court.
14

15 2. The \$1 Million Note is valid and enforceable.
16 SR Development is liable for all amounts due under the terms of the \$1 Million
17 Note.
18

19 3. The principal and interest due and owing on the \$1 Million
20 Note through October 7, 2013 is \$554,716.49. The \$1 Million Note shall continue to
21 accrue interest from October 8, 2013 until the entry of final judgment in the
22 amount of \$154.99 per diem (calculated at the default note rate of 12 percent per
23 annum). Interest shall accrue on the total amount of the judgment at the rate of 12
24 percent per annum until paid.
25
26

1 4. The Guarantee Addendum is valid and enforceable. Under
2 the terms of the Guarantee Addendum, Severson and the Roberts are jointly and
3 severally liable for all amounts due under the terms of the \$1 Million Note.

4 5. The Security Addendum is valid and enforceable.

5 6. Larasco is entitled to a decree of specific performance
6 requiring Severson to convey a deed of trust from I-90 Lakemont LLC to Larasco
7 on the Lakemont Building securing all amounts due on the \$1 Million Note.
8

9 7. The lis pendens filed by Larasco constitutes a valid lien
10 against the Lakemont Building.
11

12 8. Severson and SR Development have no valid defense to
13 Larasco's claims relating to the \$1 Million Note, the Guarantee Addendum, and
14 the Security Addendum. All defenses asserted by Severson and SR Development
15 should be dismissed including, without limitation, failure to state a claim upon
16 which relief can be granted, failure to mitigate damages, assumption of risk,
17 waiver, estoppel, lack of privity, statute of frauds, judicial estoppel, lack of
18 enforceability, lack of standing, bad faith, unclean hands and payment.
19

20 9. Severson and SR Development have no valid counterclaims.
21 All counterclaims asserted by Severson and SR Development should be dismissed
22 with prejudice including, without limitation, their claims for assertion of a
23 frivolous action, damages and attorneys' fees under RCW 4.28.328, sanctions and
24 expenses under CR 11, and slander of title.
25
26

1 10. The \$705,476 Note is valid and enforceable.

2 11. The principal and interest due and owing on the \$705,476
3 Note through October 7, 2013 is \$745,404.10. The \$705,476 Note shall continue to
4 accrue interest from October 8, 2013 until the entry of final judgment in the
5 amount of \$242.54 per diem (calculated at the default note rate of 15 percent per
6 annum). Interest shall accrue on the total amount of the judgment at the rate of
7 15 percent per annum until paid.
8

9 12. SR Development's agreement to assume responsibility for
10 paying all amounts due under the terms of the \$705,476 Note is valid and
11 enforceable. SR Development is liable for all amounts due under the terms of the
12 \$705,476 Note.
13

14 13. SR Development has no valid defense to Larasco's claims
15 relating to the \$705,476 Note. All defenses asserted by SR Development should be
16 dismissed including, without limitation, failure to state a claim upon which relief
17 can be granted, statute of frauds, lack of privity, failure to mitigate damages, lack
18 of consent, lack of standing, and lack of enforceability.
19

20 14. Defendants' claims for costs and attorneys' fees should be
21 dismissed with prejudice.
22

23 15. Larasco's claims for costs and attorneys' fees will be
24 determined at a separate hearing following entry of judgment.
25
26

DATED this 25 day of October, 2013.



Honorable Julie Spector

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APPENDIX A-20

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FILED
KING COUNTY, WASHINGTON

Honorable Julie Spector

DEC 03 2013

SUPERIOR COURT CLERK
BY JUAN C. BUENAFE
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington
corporation,

Plaintiff,

v.

DEL NORTE, LLC, a Washington
limited liability company; and
SR DEVELOPMENT, LLC, a
Washington limited liability company,

Defendants.

CONSOLIDATED CASE
NO. 12-2-16817-2 SEA

ORDER GRANTING PLAINTIFF'S
MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS

~~(PROPOSED)~~

LARASCO, INC., a Washington
corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a
Washington limited liability company;
MARK ROBERTS; EDWARD ROBERTS;
and ELLIOTT J. SEVERSON,

Defendants.

APPENDIX B-1

1 This matter having come on for hearing on November 27, 2013 on
2 Plaintiff's Motion for Award of Attorneys' Fees and Costs, and the Court having
3 reviewed the motion and the records and files in this matter, and having found as
4 follows:
5

6 1. Plaintiff, Larasco, Inc. ("Larasco"), is the prevailing party on
7 all claims in this consolidated action.

8 2. Plaintiff's claims in *Larasco, Inc. v. Del Norte, LLC and*
9 *SR Development, LLC*, King County Superior Court Cause No. 12-2-16817-2 SEA,
10 were based on a Promissory Note in the amount of \$705,476 from Del Norte LLC
11 to Larasco, Inc., dated February 1, 2009 (the "\$705,476 Note").
12

13 3. The \$705,476 Note provides for recovery of attorneys' fees and
14 costs.
15

16 4. Defendant SR Development LLC assumed responsibility for
17 paying all amounts due under the terms of the \$705,476 Note. SR Development is
18 liable for all amounts due under the terms of the \$705,476 Note, including
19 attorneys' fees and costs.
20

21 5. Plaintiff's claims based on the \$705,476 Note were tried to the
22 Court from October 7 to October 14, 2013.

23 6. On November 4, 2013, Judgment was entered in favor of
24 plaintiff against defendants Del Norte LLC and SR Development LLC in the
25 amount of \$752,195.22 based on the \$705,476 Note. The Judgment provided that
26

1 plaintiff's claim for costs and attorneys' fees "will be determined at a separate
2 hearing following entry of judgment."

3 7. Plaintiff incurred attorneys' fees in the amount of \$107,191.25,
4 and costs in the amount of \$10,187.09, to obtain Judgment against defendants Del
5 Norte LLC and SR Development LLC based on the \$705,476 Note.

7 8. The attorneys' fees and costs incurred by plaintiff to obtain
8 Judgment against Del Norte LLC and SR Development LLC are reasonable in light
9 of the results achieved and the amount at issue. Plaintiff's attorneys' fees and
10 costs are approximately 16% of the amount of the judgment awarded to plaintiff
11 on the \$705,476 Note.

13 9. Plaintiff's claims in *Larasco, Inc. v. SR Development, LLC, Mark*
14 *Roberts, Edward Roberts, and Elliott J. Severson*, King County Superior Court Cause
15 No. 12-2-16818-1 SEA, were based on a Promissory Note in the amount of
16 \$1,000,000 from SR Development LLC to Larasco, Inc., dated March 28, 2008 (the
17 "\$1 Million Note").

19 10. Defendants Mark Roberts, Edward Roberts and Elliott J.
20 Severson executed the \$1 Million Note, as well as an Addendum to Promissory
21 Note (Unconditional Guarantee), dated March 28, 2008, and an Addendum to
22 Promissory Note (Additional Security), dated March 28, 2008.

24 11. The \$1 Million Note provides for recovery of attorneys' fees
25 and costs.
26

1 12. Defendants Mark Roberts and Edward Roberts stipulated to
2 entry of judgment against them based on the \$1 Million Note. The Court entered a
3 Stipulated Order Regarding Entry of Judgment Against Certain Defendants, dated
4 July 19, 2013 ("Stipulated Order"), which provides in paragraph 2:
5

6 Judgment shall be entered in favor of plaintiff
7 Larasco, Inc. against defendants Mark Roberts and Edward
8 Roberts, jointly and severally, for reasonable attorneys' fees
9 incurred by plaintiff Larasco, Inc. with respect to its claims
10 against SR Development LLC, Mark Roberts, Edward
11 Roberts, and Elliott Severson through the date of this order.

12 13. Plaintiff's claims based on the \$1 Million Note were tried to
13 the Court from October 7 to October 14, 2013.

14 14. On November 4, 2013, Judgment was entered in favor of
15 plaintiff against defendants SR Development LLC, Elliott J. Severson, Mark
16 Roberts and Edward Roberts in the amount of \$559,056.21. Substantial non-
17 monetary relief also was awarded to plaintiff including a decree of specific
18 performance. The Judgment provided that plaintiff's claim for costs and
19 attorneys' fees "will be determined at a separate hearing following entry of
20 judgment."
21

22 15. Plaintiff incurred attorneys' fees in the amount of \$163,937.10,
23 and costs in the amount of \$13,113.83 relating to the \$1 Million Note from May 4,
24 2012 through July 19, 2013 (the date of the Stipulated Order).

25 16. Plaintiff incurred attorneys' fees in the amount of \$117,966.50,
26

1 and costs in the amount of \$6,525.59, relating to the \$1 Million Note from July 20,
2 2013 through November 4, 2013 (the date of judgment).

3 17. The total amount of attorneys' fees and costs incurred by
4 plaintiff to obtain Judgment against SR Development LLC, Elliott J. Severson,
5 Mark Roberts and Edward Roberts based on the \$1 Million Note is \$301,543.02.

7 18. The attorneys' fees and costs incurred by plaintiff to obtain
8 Judgment against SR Development LLC, Elliott J. Severson, Mark Roberts and
9 Edward Roberts are reasonable in light of the amount in dispute, the numerous
10 defenses asserted by Severson, the intensity with which the case was litigated, the
11 quality of the work performed, and the results achieved. Plaintiff's attorneys' fees
12 and costs are approximately 54% of the monetary judgment obtained on the
13 \$1 Million Note.

14 19. The hourly rates charged by the attorneys for plaintiff are
15 within the range charged by attorneys with similar experience and comparable
16 legal practices in Seattle.

17 NOW, THEREFORE, it is hereby:

18 ORDERED that Plaintiff's Motion for Award of Attorneys' Fees and
19 Costs is granted as follows:

20 1. Judgment shall be entered in favor of plaintiff Larasco, Inc.
21 against defendants SR Development LLC and Del Norte LLC, jointly and
22 severally, for \$117,378.34 in attorneys' fees and costs incurred by plaintiff to obtain
23
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1 judgment on its claims relating to the \$705,476 Note.

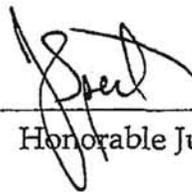
2 2. Judgment shall be entered in favor of plaintiff Larasco, Inc.
3 against defendants SR Development LLC, Elliott J. Severson, Mark Roberts and
4 Edward Roberts, jointly and severally, for \$177,050.93 in attorneys' fees and costs
5 incurred by plaintiff relating to the \$1 Million Note from May 4, 2012 through
6 July 19, 2013.
7

8 3. Judgment shall be entered in favor of plaintiff Larasco, Inc.
9 against defendants SR Development LLC and Elliott J. Severson, jointly and
10 severally, for \$124,492.09 in attorneys' fees and costs incurred by plaintiff relating
11 to the \$1 Million Note from July 20, 2013 through entry of judgment on
12 November 4, 2013.
13

14 4. Plaintiff shall be entitled to recover additional attorneys' fees
15 and costs incurred to collect the amounts due on the Judgments, including
16 amounts due on any judgment entered pursuant to this Order, and to enforce the
17 non-monetary provisions of the Judgment Against SR Development LLC, Elliott J.
18 Severson, Mark Roberts and Edward Roberts.
19

20 5. A supplemental judgment shall be entered in accordance with
21 this order.
22
23
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1 DATED this 3rd day of December, 2013.

2
3
4 

5
6 _____
7 Honorable Julie Spector

8 Presented by:

9 HALL ZANZIG CLAFLIN
10 McEACHERN PLLC

11 By /s/ Spencer Hall
12 Spencer Hall, WSB No. 6162
13 Janet D. McEachern, WSB No. 14450
14 Attorneys for Plaintiff Larasco, Inc.
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Plaintiff Exhibit 58

PROMISSORY NOTE

\$ 1,000,000.00
Principle Amount

No. 08-0002

Due: May 01, 2009
Date of Final Payment

Bellevue, Washington, March 28, 2008

Twelve months after date, without grace, I / we promise to pay to the order of LARASCO, INC. the sum of ONE MILLION AND NO /100 DOLLARS (\$1,000,000.00) for value received, with interest at the rate of ten (10.00) percent per annum from date until maturity, payable monthly at \$12,000.00 per month commencing on May 01, 2008 and due monthly thereafter on the 1st of each month, with a final payment of NINE HUNDRED SIXTY-ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE AND 64/100 DOLLARS (\$ 961,875.64) due on May 01, 2009. In the case of default of the prompt and full payments on this promissory note, the whole of this note, both principle and interest, shall immediately become due and payable without demand at the option of the holder. In the alternative, and at the sole discretion of the holder, a late fee of five (5) percent of the payment due shall be added to any and all payments not made within five (5) days of payment due date. The failure of holder hereof to exercise any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance. After maturity, or on default, this note bears interest at the rate of twelve (12) percent per annum until paid. Principal and interest are payable in lawful money of the United States. In case suit or action is commenced to collect this note or any portion thereof I/We, SR DEVELOPMENT, LLC promise to pay, in addition to the costs provided by statute, such sum as the court may adjudge reasonable as attorney's fees therein, (including any action to enforce the judgment and this provision as to attorney's fees and costs shall survive the judgment.) Any judgment entered hereon shall bear interest at the rate of twelve (12) percent per annum. I/We agree and consent to jurisdiction and venue in the District or Superior Courts of the State of Washington, County of King, for any legal action or suit related to this note.

For: SR DEVELOPMENT, LLC

MARK ROBERTS, MEMBER
Printed Name / Title
[Signature]
Signature

ED ROBERTS, MEMBER
Printed Name / Title
[Signature]
Signature

ELLIOTT SEVERSON, MEMBER
Printed Name / Title
[Signature]
Signature

[Signature]
Printed Name / Title
[Signature]
Signature

JMENDIOTT
Printed Name (Witness)
[Signature]
Witness (Signature)

JMENDIOTT
Printed Name (Witness)
[Signature]
Witness (Signature)

JMENDIOTT
Printed Name (Witness)
[Signature]
Witness (Signature)

[Signature]
Printed Name (Witness)
[Signature]
Witness (Signature)

DEPOSITION EXHIBIT
3
Severson
7-11-13
PENGAD 800-681-6888

APPENDIX C-1

Plaintiff Exhibit 59

ADDENDUM TO PROMISSORY NOTE
(UNCONDITIONAL GUARANTEE)

\$ 1,000,000.00
Principle Amount

No. 08-0002

Due: May 01, 2009
Date of Final Payment

Bellevue, Washington, March 28, 2008

UNCONDITIONAL GUARANTEE

For value received, at the request of the undersigned and in reliance on this guaranty, the undersigned as a direct and primary obligation, hereby, jointly and severally, unconditionally guarantee(s) the prompt payment of principal and interest on Promissory Note No. 08-0002, executed on even date herewith, when and as due in accordance with its terms, and hereby waive(s) diligence, presentment, demand, protest, or notice of any kind whatsoever, as well as any requirement that the holder exhaust any right or take any action against the maker of the foregoing promissory note and hereby consent(s) to any extension of time or renewal thereof.

This guaranty agreement shall be governed by the laws of the State of Washington. Any married person who signs this guaranty agrees that recourse may be had against his or her separate property for all his or her obligations hereunder and against community property as allowed by the community property laws of the State of Washington.

This guaranty shall bind the respective heirs, administrators, representatives, successors and assigns of the undersigned. Guarantor(s) hereby consent and submit to jurisdiction of the respective courts of Issaquah, and/or King County, State of Washington for purposes of enforcement of the guaranty agreement.

MARK ROBERTS
Printed Name
[Signature]
Signature, Individually

ED ROBERTS
Printed Name
[Signature]
Signature, Individually

ELLIOTT SEVERSON
Printed Name
[Signature]
Signature, Individually

Printed Name

Signature, Individually

JM ENDICOTT
Printed Name of Witness
[Signature]
Witness Signature

JM ENDICOTT
Printed Name of Witness
[Signature]
Witness Signature

JM ENDICOTT
Printed Name of Witness
[Signature]
Witness Signature

Printed Name of Witness

Witness Signature

DEPOSITION EXHIBIT
4
Severson
7-11-13
PENGAD 800-851-6986

APPENDIX - D-1

Plaintiff Exhibit 60

ADDENDUM TO PROMISSORY NOTE
(ADDITIONAL SECURITY)

\$ 1,000,000.00
Principle Amount

No. 08-0002

Due: May 01, 2009
Date of Final Payment

Bellevue, Washington, March 28, 2008

ADDITIONAL SECURITY

The undersigned agrees that until such time as the principal and interest owed under Promissory Note No. 08-0002 of even date herewith are paid in full, this note will be secured by all interest held in the real estate commonly known as: The Lakemont Building, which is located at 5150 Village Park Dr. S.E., and more fully described as: an unexecuted and unrecorded Deed of Trust on the I-90 Lakemont Building located at 5150 Village Park Dr. S.E., Bellevue, WA 98006. The undersigned further agrees that in the event a payment or payments are not paid to the holder of Promissory Note No. 08-0002 by the date payment is due under the terms of that note, Holder may, at Holder's sole discretion, require that the undersigned execute and properly record a Deed of Trust to the above noted real estate.

MARK ROBERTS
Printed Name

[Signature]
Signature

ED ROBERTS
Printed Name

[Signature]
Signature

ELLIOTT SEVERSON
Printed Name

[Signature]
Signature

Printed Name

JM ENDICOTT
Printed Name of Witness

[Signature]
Witness Signature

JM ENDICOTT
Printed Name of Witness

[Signature]
Witness Signature

JM ENDICOTT
Printed Name of Witness

[Signature]
Witness Signature

Printed Name of Witness

DEPOSITION
EXHIBIT
5
Severson
7.11.13
PENGAD 800-831-6989

APPENDIX - E-1