

No. 47222-8-II
COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION II
2015 MAR -2 PM 1:19
STATE OF WASHINGTON
BY ~~DEBRA~~

SANDY FAMILY FIVE, LLC, a Washington corporation,

APPELLANT,

v.

CRAIG and DEBRA BROWN, husband and wife, and their marital
community,

RESPONDENTS.

APPELLANT SANDY FAMILY FIVE, LLC'S OPENING BRIEF

OWENS DAVIES, P.S.
Matthew B. Edwards
1115 West Bay Drive, Ste 302
Olympia, Washington 98502
(360) 943-8320
WSBA No. 18332

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III. INTRODUCTION AND RELIEF REQUESTED

Sandy Family Five, LLC (hereinafter, “Sandy”) appeals from the trial court’s Final Judgment, in which the trial court held the Browns had easement rights over Sandy’s property. The Court of Appeals should reverse the trial court, and remand with instructions that it enter a judgment quieting Sandy’s title to its property free and clear of any easement right claimed by the Browns.

IV. SUMMARY AND ISSUE PRESENTED

A common grantor records a document purporting to create an “easement” burdening one property the common grantor owns for the benefit of a second property the common grantor owns. The common grantor then borrows money, securing the lender’s claim for repayment of the debt by executing a Deed of Trust pledging the property “burdened” by the “easement.”

In the Deed of Trust, the common grantor conveys all interest in the property in trust to the Trustee, without reserving or excepting the “easement.” As authorized by RCW 61.24.050(1), the Deed of Trust specifically states that in the event of foreclosure, the Trustee shall have the power to convey to the purchaser at any foreclosure sale all of the interest the grantor had or had the power to convey in the property at the time the grantor originally executed the Deed of Trust.

The common grantor does not repay the debt. The lender records a Notice of Intent to Foreclose. A few days before the foreclosure sale, the common grantor, without referencing the “easement,” conveys the property purportedly “benefitted” by the “easement” to a third party. The Trustee forecloses, and conveys title to the lender, the high bidder at the foreclosure sale, by Trustee’s Deed.

Issue: Does the lender take title free and clear of the “easement”?

Answer: Because the common grantor cannot grant itself an easement over its own property, the “easement” was invalid.

Even if the “easement” had some validity, because, when it executed its Deed of Trust the common grantor continued to hold all the interest in all of the properties affected by the “easement,” the grantor had the power to, and did, convey in trust to the Trustee the grantor’s entire interest in the property. Upon foreclosure, the lender took the grantor’s entire interest, and therefore took title free and clear of the claimed “easement.”

For either or both of these two separate reasons, the lender takes title free and clear of the “easement.”

V. FACTS

This case involves two pieces of property: the “Sandy property” and the “Brown property.” Paul and Diane Cokeley (hereinafter, “the Cokeleys”) originally owned the fee simple interest in both properties.

The Sandy property is located at 2240, 2244, and 2314 Schirm Loop Road NW in Thurston County, Washington. It consists of three tax parcels. The Sandy property is shown on the map included in the Appendix as Exhibit 1. The Brown property is located at 2313 Schirm Loop Road NW, across Schirm Loop Road to the east.

On December 30, 2005, at a time when the Cokeleys owned the entire fee interest in both the Sandy property and the Brown property, the Cokeleys recorded two “Drainfield Easement Agreements.” CP 44-45, 47-48; App. Exs. G-H. The two “Drainfield Easement Agreements” purport to create drainfield easements over the northerly two tax parcels of the Sandy property for the benefit of the Brown property. *Id.*

The first “Drainfield Easement Agreement” does not have the names of the Grantor and Grantee filled in. It purports to burden only the most northerly tax parcel of the Sandy property for the benefit of the Brown property. CP 44-45; App. Ex. G. The second “Drainfield Easement Agreement” identifies the Cokeleys as both grantors and grantees. It purports to burden only the middle tax parcel of the Sandy property for the benefit of the Brown property. CP 47-48; App. Ex. H.

In 2006, the Cokeleys approached Sandy asking for a loan. Sandy lent the Cokeleys’ money. In order to secure repayment of that debt, the Cokeleys executed a Deed of Trust in favor of Sandy encumbering the Sandy property. CP 50-53; App. Ex. B. The Cokeleys did not tell Sandy

about the “Drainfield Easement Agreements,” and Sandy never agreed that the Sandy property would be subject to any such easement. CP 144-145; App. Ex. C.

By the Deed of Trust the Cokeleys conveyed **all** of their interest in the Sandy property to Sandy’s trustee in trust. CP 50-53; App. Ex. B. Nothing in the Deed of Trust reserves or excepts an easement over the Sandy property for the benefit of the Brown property, or otherwise refers to any “Drainfield Easement Agreement.” *Id.*

Instead, the Deed of Trust specifically provides that in the event of a default, the Trustee will be entitled to sell and convey in foreclosure **all** of the interest that the Cokeleys had or had the power to convey in the Sandy property at the time that the Cokeleys executed the Deed of Trust:

IT IS MUTALLY AGREED THAT:

...

5. Trustee shall deliver to the purchaser at the [foreclosure] sale its deed, without warranty, which shall convey to the purchaser **all** the interest in the property which Grantor had or had the power to convey at the time of his/her/their execution of this Deed of Trust, and such as he/she/they may have acquired thereafter.

CP 50-53; App. Ex. B (emphasis added).

In 2011, five years after recording the Deed of Trust, the Cokeleys installed portions of a septic system on the Sandy property. CP 170-171; App. Ex. I. However, the Cokeleys never paid Sandy any of the debt, the payment of which was secured by the Cokeleys’ Deed of Trust.

On July 17th, 2012, the Cokeleys, again acting both as Grantor and Grantee, purported to record two additional “Drainfield Easement Agreements.” CP 56-58, 148-150; App. Exs. J-K. These “Drainfield Easement Agreements” are on the same form as the original “Drainfield Easement Agreements.” *Id.* Diagrams attached to the Agreements purport to indicate the specific areas of the Sandy property purportedly subject to each “drainfield easement.” *Id.*

On October 3rd, 2012, the Trustee under the Sandy Deed of Trust recorded a Notice of Intent to Foreclose. CP 60-63; App. Ex. D.

On December 28th, 2012, the Cokeleys sold the Brown property to the Browns. CP 65-66; App. Ex. L. Nothing in the Statutory Warranty Deed which the Cokeleys executed references any of the “Drainfield Easement Agreements,” or provides that the Cokeleys were conveying to the Browns any rights arising under any of the “Drainfield Easement Agreements.” *Id.*

On January 4th, 2013, the successor Trustee under the Sandy Deed of Trust conducted a Trustee’s sale of the Sandy property. Sandy was the highest bidder for the property. The Trustee conveyed the Sandy property to Sandy by Trustee’s Deed recorded on January 13, 2013. CP 68-71; App. Ex. E.

The following chronological table summarizes the relevant events:

Pre-2005	Cokeleys hold fee simple interest in both “Sandy” and “Brown properties
2005	Cokeleys, acting as grantor and grantee, record first set of documents entitled “Drainfield Easement Agreement”
2006	Sandy lends Cokeleys money, and Cokeleys execute Deed of Trust to Sandy property. The Deed of Trust does not reserve, except, or mention any “Drainfield Easement” or “Drainfield Easement Agreement”
2011	With their debt to Sandy still entirely unpaid, Cokeleys install some septic improvements on Sandy property
July 2012	Cokeleys record second set of documents entitled “Drainfield Easement Agreement”
Oct 2012	Trustee records Notice of Intent to Foreclose
Dec 2012	Cokeleys convey Brown property to Brown. Deed does not purport to convey or mention “Drainfield Easement Agreements”
Jan 2013	Trustee conducts foreclosure sale; executes Trustee’s Deed conveying Sandy property to Sandy

Litigation History

Sandy filed a Complaint seeking to quiet its title to the Sandy property, free and clear of any claims asserted by the Browns. CP 3-36. The Browns filed an Answer. CP 37-40. The Browns’ Answer did not plead any counter-claim, and the Browns did not pay the fee required when a defendant requests affirmative relief. *Id.*

Sandy and the Browns filed cross-motions for summary judgment. CP 41-163. The trial court heard oral argument on January 9, 2015. CP 164; Transcript of 1/09/15 hearing, App. Ex. M. Without explaining the reasoning underlying its decision, the trial court stated that it intended to

grant summary judgment to the Browns. Transcript of 1/09/15 hearing at 23, App. Ex. M.

Sandy asked the trial court to reconsider its oral ruling. CP 165-75. Sandy also asked the trial court to explain the legal reasoning behind its ruling. CP 176; Transcript of 1/30/15 hearing at 4, App. Ex. N. The trial court refused to do either. *Id.* at 8-9.

On February 13, 2015, the trial court entered a Final Judgment. CP 177-182; App. Ex. 15. Sandy timely filed a Notice of Appeal. CP 183-190; App. Ex. 16.

VI. STANDARD OF REVIEW

The trial court granted summary judgment in this matter based solely on a written record. This Court reviews the trial court's summary judgment de novo. *Woo v. Fireman's Fund Ins. Co.*, 161 Wn.2d 43, 52, 164 P.3d 454 (2007). All facts, and all inferences to be drawn from the facts, must be construed in favor of Sandy, as the party against whom summary judgment was entered. *Money Savers Pharmacy, Inc. v. Koffler Stores (Western) Ltd.*, 37 Wn.App. 602, 682 P.2d 960 (1984).

VII. ANALYSIS

This Court should reverse the trial court's judgment for either of two separate reasons. First, because the Cokeleys could not effectively grant themselves an easement over their own property, the "Drainfield Easement Agreements" they recorded did not create any easement rights.

Second, at the time they executed the Deed of Trust in favor of Sandy, the Cokeleys held the fee simple interest in both properties, and thus had the power to—and did—pledge the Sandy property free and clear of any right purportedly created by the “Drainfield Easement Agreements.” Therefore, upon foreclosure, Sandy took the Sandy property free and clear of any such easement right.

A. The “Drainfield Easement Agreements” executed between the Cokeleys as Grantors and the Cokeleys as Grantees did not effectively create any easement rights.

The “Drainfield Easement Agreements” executed between the Cokeleys as Grantors and the Cokeleys as Grantees did not effectively create any easement rights.

“An easement is a right, distinct from ownership, to use in some way **the land of another...**” *City of Olympia v. Palzer*, 107 Wn.2d 225, 229, 728 P.2d 135 (1986) (emphasis added). **“One cannot have an easement in one’s own property.”** *Coastal Storage Co. v. Schwartz*, 55 Wn.2d 848, 853, 351 P. 2d 520 (1960); *Radovich v. Nuzhat*, 104 Wn.App. 800, 805, 16 P.3d 687 (2001).

Here, in 2005 at a time when they held the entire interest in both the Brown and Sandy properties, the Cokeleys purported to record a document creating an “easement” benefitting one property they owned and burdening another property they owned. However, because “one cannot have an easement in one’s own property,” the Cokeley’s recordation of the

“Drainfield Easement Agreements” did not effectively create any easement rights.

Because the Cokeleys’ recordation of the “Drainfield Easement Agreements” did not effectively create any easement rights, and because the Deed of Trust which the Cokeleys executed in favor of Sandy did not mention the “Drainfield Easement Agreements,” much less purport to create, reserve, or except any easement rights, the Deed of Trust pledged the Cokeleys’ entire interest in the Sandy property to Sandy. Upon foreclosure, Sandy therefore took the Cokeleys’ entire interest in the Sandy property, without that interest being subject to any right arising under any “Drainfield Easement Agreement.”

Sandy was and is entitled to the entry of judgment based on the strength of this simple argument. This Court should reverse the trial court’s grant of judgment to the Browns, and remand to the trial court with instructions that it grant Sandy judgment.

B. At a minimum, as long as the Cokeleys continued to own the fee interest in both properties, the Cokeleys retained the power to sell or pledge the Sandy property free and clear of any rights purportedly created by the “Drainfield Easement Agreements.”

At a minimum, as long as the Cokeleys continued to own the fee interest in both properties, the Cokeleys retained the power to sell or pledge the Sandy property free and clear of any rights purportedly created by the “Drainfield Easement Agreements.” The Cokeleys did exactly that

in 2006 when they pledged the Sandy property to Sandy to secure performance of their indebtedness to Sandy.

The Deed of Trust which the Cokeleys executed in 2006 in favor of Sandy purports to pledge their entire interest in the Sandy property to Sandy to secure payment of the Cokeleys' debt to Sandy. CP 50-53; App. Ex. B. The Deed of Trust does not purport to reserve to the Cokeleys, in the event of default, any rights arising under any "Drainfield Easement Agreement." *Id.*

As authorized by RCW 61.24.050(1), the Deed of Trust explicitly recited that the Cokeleys were authorizing the Trustee, in the event of foreclosure, to convey **all** the interest which the Cokeleys had or had the power to convey at the time the Cokeleys executed the Deed of Trust:

IT IS MUTALLY AGREED THAT:

...

5. Trustee shall deliver to the purchaser at the [foreclosure] sale its deed, without warranty, which shall convey to the purchaser **all** the interest in the property which Grantor had or had the power to convey at the time of his/her/their execution of this Deed of Trust, and such as he/she/they may have acquired thereafter.

CP 51; App. Ex. B. (Emphasis added).

Here, in 2006, at the time they executed the Deed of Trust, the Cokeleys held the fee simple interest in both the Sandy property and the Brown property. Therefore, the Cokeleys had the power to convey title to the Sandy property free and clear of any interest purportedly arising under

the “Drainfield Easement Agreements” executed for the benefit of the other property then still owned by the Cokeleys. The Deed of Trust, on its face, shows that this is exactly what the Cokeleys did.

For this second separate, independent reason, the Trustee’s Deed effectively conveyed to Sandy all of the Cokeleys’ interest in the Sandy property, free and clear of any claim arising under the “Drainfield Easement Agreements.” This Court should accordingly reverse the trial court’s grant of summary judgment to the Browns, and remand to the trial court with instructions that it grant summary judgment to Sandy.

VIII. CONCLUSION

One cannot grant oneself an easement over one’s own property. Therefore, the “Drainfield Easement Agreements” recorded by the Cokeleys did not create any easement rights. Sandy accordingly took title to the Sandy property free of these purported “easements.”

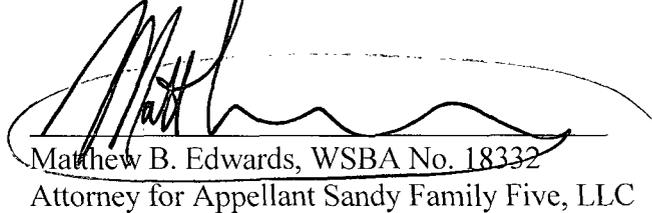
At a minimum, because in 2006 the Cokeleys continued to own the fee simple interest in both properties, and because the Deed of Trust which the Cokeleys executed to the Sandy property does not purport to mention, reserve or except any easement rights, the Cokeleys’ Deed of Trust effectively pledged **all** the Cokeleys’ interest in the Sandy property to secure repayment of Sandy’s debt. As explicitly provided in the Deed of Trust, upon foreclosure, the Trustee was empowered to convey **all** the Cokeleys’ interest in the Sandy property, free and clear of any claim

arising under any “Drainfield Easement Agreement,” to the highest bidder at the foreclosure sale.

This Court should reverse the trial court’s grant of summary judgment to the Browns. This Court should remand with instructions that the trial court grant a summary judgment to Sandy declaring that Sandy holds title to the Sandy property free and clear of the purported “Drainfield Easement Agreement,” and free and clear of any other easement right asserted by the Browns.

DATED this 27th day of February, 2015.

OWENS DAVIES, P.S.



Matthew B. Edwards, WSBA No. 18332
Attorney for Appellant Sandy Family Five, LLC

IX. APPENDIX

<u>Ex. No.</u>	<u>Date</u>	<u>Document</u>	<u>CP No.</u>
Sandy Family Five, LLC documents:			
A	08/31/05	Boundary Line Adjustment Map 3763393	54
B	10/10/06	Deed of Trust	50-53
C	01/02/15	Declaration of Larry Weaver	144-45
D	10/02/12	Notice of Trustee's Sale	60-63
E	01/11/13	Trustee's Deed	68-71
F	01/07/13	Letter from Larry Weaver to the Browns	97
Brown documents:			
G	12/30/05	Drainfield Easement Agreement	44-45
H	12/30/05	Drainfield Easement Agreement	47-48
I	01/15/11	Declaration of Matthew B. Edwards	170-171
J	07/17/12	Drainfield Easement Agreement	56-58
K	07/17/12	Drainfield Easement Agreement	148-150
L	12/28/12	Statutory Warranty Deed from the Cokeleys to the Browns	65-66
Decision documents:			
M	01/09/15	Transcript of Summary Judgment hearing	-
N	01/30/15	Transcript of follow-up hearing	-
O	02/13/15	Final Judgment	177-182
P	02/13/15	Notice of Appeal	183

EXHIBIT A

Boundary Line Adjustment Map 3763393

EXHIBIT B
Deed of Trust

When recording mail to:

SANDY FAMILY FIVE LLC
P.O. BOX 4094
TUMWATER, WA 98501

DEED OF TRUST
(For use in the state of Washington only)

Escrow No.:00139878

THURSTON COUNTY TITLE CO.

(13) 131878E

THIS DEED OF TRUST, made this 10th day of October, 2006, between PAUL COKELEY and DIANNE COKELEY, husband and wife, who acquired title as PAUL COKELEY AND DIANE COKELEY, as GRANTOR(S), whose address is 2221 SCHIRM LOOP NW, OLYMPIA, WA 98502 and THURSTON COUNTY TITLE COMPANY as TRUSTEE, whose address is 105 EAST 8TH AVE, OLYMPIA, WA 98501 and SANDY FAMILY FIVE LLC, a Washington Limited Liability Company as BENEFICIARY whose address is P.O. BOX 4094, TUMWATER, WA 98501.

WITNESSETH: Grantor(s) hereby bargain(s), sell(s) and convey(s) to Trustee in Trust, with power of sale, the following described real property in THURSTON County, Washington:

See Exhibit A attached hereto and made a part hereof.

Abbreviated Legal: Pcl A BLA-980379TC & Pcls A & B BLA-04-105392TC

Tax Parcel Number(s): 4580-04-00600, 4580-04-00400, 4580-04-00500

which real property is not used principally for agricultural or farming purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

This deed is for the purpose of securing performance of each agreement of Grantor(s) contained, and payment of the sum of One Hundred Fifty-Seven Thousand Five Hundred and no/100 Dollars (\$ 157,500.00) with interest, in accordance with the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor, and all renewals, modifications and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor(s), or any of his/her/their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

DUE DATE: The entire balance of the promissory note secured by this Deed of Trust, together with any and all interest accrued thereon, shall be due and payable in full on October 19, 2007.

To protect the security of this Deed of Trust, Grantor covenants and agrees:

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.
2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.



3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary as its interest may appear and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

6. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

7. DUE ON SALE: (OPTIONAL - Not applicable unless initialed by Grantor and Beneficiary) The property described in this security instrument may not be sold or transferred without the Beneficiary's consent. Upon breach of this provision, Beneficiary may declare all sums due under the note and Deed of Trust immediately due and payable, unless prohibited by applicable law.

Grantor (Initials)

Beneficiary (Initials)

IT IS MUTUALLY AGREED THAT:

1. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion thereof as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

3. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

4. Upon default by Grantor(s) in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event 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, 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: (1) to the expense of sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; and (3) the surplus, if any, shall be distributed to the persons entitled thereto.

5. 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 had or had the power to convey at the time of his/her/their execution of this Deed of Trust, and such as he/she/they 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 encumbrances for value.

6. 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; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

7. In the event of the death, incapacity or disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, 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, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

8. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors, successors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

9. ADDITIONAL TERMS AND CONDITIONS: (Check One)

a. NONE

b. Beneficiary is to receive a minimum of \$10,237.50 in interest from the grantor.

(NOTE: If neither a nor b is checked, then option "a" applies)

PAUL COKELEY

DIANNE COKELEY



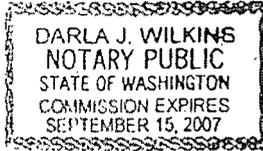
STATE OF WASHINGTON
COUNTY OF Thurston

} SS

I certify that I know or have satisfactory evidence that **PAUL COKELEY** and **DIANNE COKELEY** are the person(s) who appeared before me, and said person(s) acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: 10-17-2006

DARLA J. WILKINS
Notary Public in and for the State of Washington
Residing at Olympia
My appointment expires: 09-15-2007



REQUEST FOR FULL RECONVEYANCE

Do not record. To be used only when note has been paid.

TO: TRUSTEE

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

Dated



Exhibit A

PARCEL 1:

Parcel A of Boundary Line Adjustment No. BLA-980379TC, as recorded June 15, 1998 under Auditor's File No. 3160132.

PARCEL 2:

Parcel A of Boundary Line Adjustment No. BLA-04-105392TC, as recorded August 31, 2005 under Auditor's File No. 3763393.

PARCEL 3:

Parcel B of Boundary Line Adjustment No. BLA-04-105392TC, as recorded August 31, 2005 under Auditor's File No. 3763393.

In Thurston County, Washington.



EXHIBIT C

Declaration of Larry Weaver

1
2 EXPEDITE

3 Hearing is set: 1/9/15
4 Date:
5 Time: 9:00 a.m.
6 Judge/Calendar: Hon. Carol Murphy

7 No Hearing is set

8 SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

9 SANDY FAMILY FIVE, LLC, a Washington
10 Limited Liability Company,

11 Plaintiffs,

12 v.

13 CRAIG and DEBRA BROWN, husband and
wife, and other marital community

14 Defendants.

NO. 14-2-01934-1

DECLARATION OF LARRY WEAVER

15 1. My name is Larry Weaver. I am over 18 years of age and competent to testify as
to all matters set forth herein.

16 2. I am the person in charge of real estate matters for Sandy Family Five, LLC. In
17 that capacity, I participated in and have personal knowledge of the October 2006 transaction
18 whereby Sandy Family Five, LLC lent the Cokeleys money in exchange for a Promissory Note,
19 secured by a Deed of Trust in the Sandy property.

20 3. The Cokeleys sought the loan and working through loan booker Dane DeForest,
21 proposed to Sandy, through me, to use the Sandy property as collateral. The Cokeleys and/or
22 Mr. DeForest told me that the three lots comprising the Sandy property were unencumbered,
23 fully developable, and worth about \$80,000 each. The Cokeleys and/or Mr. DeForest never told
24 me about any alleged "drainfield easement" or "drainfield easement agreement" purportedly
25 encumbering the Sandy property.
26

1 4. Sandy did not accept the Cokeleys' Deed of Trust to secure repayment of Sandy's
2 loan to Cokeley with the knowledge, understanding or agreement that the Sandy property was
3 subject to any "drainfield easement" or "drainfield easement agreement."

4 5. Between 2006, when Sandy made the loan, and early 2013, when Sandy
5 foreclosed its Deed of Trust, the Cokeleys, not Sandy were in possession of the Sandy property.
6 Therefore, Sandy and I neither knew, nor had reason to know, of any activity that the Cokeleys
7 might have engaged in on the Sandy property.

8 6. In late 2012/early 2013, it appeared increasingly likely that Sandy would take title
9 to the property as the result of a foreclosure. I began investigating the condition of the property
10 with a view towards Sandy's assuming ownership.

11 7. At that time, I first discovered that the Cokeleys had apparently constructed a
12 "drainfield" on the Sandy property. I also discovered a "drainfield easement agreement" that the
13 Cokeleys recorded in 2012.

14 8. It was promptly after my first discovery of these facts that I wrote the Browns the
15 letter dated January 7th, 2013 (a copy of which is attached to the Declaration of Scott Kee as
16 Exhibit H) pointing out that Sandy's interest in the Sandy property obtained pursuant to its
17 foreclosed Deed of Trust was superior to any claim the Browns might have to some kind of
18 easement in the Sandy property.

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

21 DATED this 2nd day of Jan 2015, ~~2014~~, at Olympia, Washington.

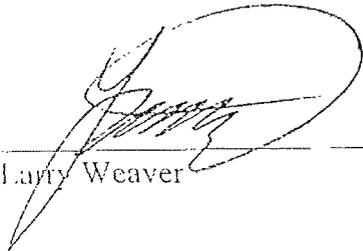
22
23
24
25
26

Larry Weaver

EXHIBIT D

Notice of Trustee's Sale

Return Address:

Kirk M. Veis
Owens Davies Fristoe
Taylor & Schultz, P.S.
P.O. Box 187
Olympia, WA 98507-0187

NOTICE OF TRUSTEE'S SALE

Grantors	1. Paul L. Cokeley 2. Dianne L. Cokeley
Grantees	1. Owens Davies Fristoe Taylor & Schultz, P.S. 2. Sandy Family Five, LLC, a Washington limited liability company
Legal Description (abbreviated)	1. Parcel A of Boundary Line Adjustment No. BLA-980379TC 2. Parcel A of Boundary Line Adjustment No. BLA-04-105392TC 3. Parcel B of Boundary Line Adjustment No. BLA-04-105392TC
Assessor's Tax Parcel ID No.	45800400400; 45800400500; and 45800400600
Reference Nos. of Related Documents	3874430

I.

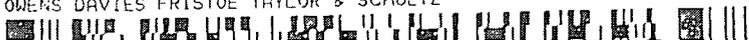
NOTICE IS HEREBY GIVEN that the undersigned Trustee will, on the 4th day of January, 2013, at the hour of 10:00 a.m., at the main entrance of the Thurston County Courthouse, located at 2000 Lakeridge Drive SW, Olympia, WA 98502, located in the Thurston County, Washington, sell at public auction to the highest bidder, payable at the time of sale, the following described real property, situated in the County of Thurston, State of Washington, to-wit:

Parcel 1: Parcel A of Boundary Line Adjustment No. BLA-980379TC, a recorded June 15, 1998 under Auditor's File No. 3160132. TPN 45800400400.

Parcel 2: Parcel A of Boundary Line Adjustment No. BLA-04-105392TC, as recorded August 31, 2005 under Auditor's File No. 3763393. TPN 45800400500.

Parcel 3: Parcel B of Boundary Line Adjustment No. BLA-04-105392TC, as recorded August 31, 2005 under Auditor's File No. 3763393. TPN 45800400600.

Situate in Thurston County, State of Washington.



which are subject to that certain Deed of Trust dated October 10, 2006, recorded October 20, 2006, under Auditor's File No. 3874430, records of Thurston County, Washington, from Paul L. Cokeley and Dianne L. Cokeley, husband and wife, as Grantors, to Thurston County Title Company, as Trustee, to secure an obligation in favor of Sandy Family Five, LLC, a Washington limited liability company, as Beneficiary. Owens Davies Frisoe Taylor & Schultz, P.S., a professional services corporation, has been appointed Successor Trustee under said deed of trust.

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

III.

The default(s) for which this foreclosure is made is/are as follows: failure to pay the principal balance of the note and interest payments which were due and payable on October 19, 2007, with a total principal balance of \$157,500.00, accrued interest from December 31, 2009 through August 31, 2012 of \$61,218.63, and additional accrued interest from September 1, 2012 through October 6, 2012 at thirteen (13) percent per annum

Principal:	\$157,500.00
Interest balance through August 31, 2012:	\$61,218.63
Additional accrued interest:	<u>\$2,019.45</u>
TOTAL AMOUNT DUE AS OF OCTOBER 6, 2012:	\$220,738.08

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$157,500.00, together with interest as provided in the note or other instrument secured from the 31st day of December, 2009, and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession or encumbrances on the 4th day of January, 2013. According to Chapter 61.24, if this were a foreclosure of a Deed of Trust securing an installment note that was simply in arrears, the Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance would have the right to reinstate the note and cause a discontinuance of the sale by paying all installments in arrears and paying the trustee's fees and costs before the eleventh day before the sale. However, the Deed of Trust being foreclosed in this case secured a note that has matured and under which the total amount of principal is now due.

Therefore, there is no right to reinstate the note and Deed of Trust as described above. In this case, the Grantor's defaults can be cured and the sale discontinued and terminated before the scheduled date of sale only by the Borrower, Grantor, any Guarantor or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es):

Paul L. Cokeley
1408 West Simpson Avenue
Montesano, WA 98563

Dianne L. Cokeley
1408 West Simpson Avenue
Montesano, WA 98563

by both first class and certified mail on August 31, 2012, proof of which is in the possession of the Successor Trustee; and the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Successor Trustee has possession of proof of such service or posting.

VII.

The Successor Trustee whose name and address are set forth below will provide in writing to anyone requesting it a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through, or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

EXHIBIT E
Trustee's Deed

11 JAN '13 719051

Return Address:

Owens Davies Fristoe
Taylor & Schultz, P.S.
P.O. Box 187
Olympia, WA 98507

Thurston County Treasurer

Real Estate Excise Tax Paid ADWL

By [Signature] Deputy

TRUSTEE'S DEED

Grantor	Owens Davies Fristoe Taylor & Schultz, PS
Grantee	Sandy Family Five, LLC, a Washington limited liability company
Legal Description (abbreviated)	1. Parcel A of Boundary Line Adjustment No. BLA-980379TC 2. Parcel A of Boundary Line Adjustment No. BLA-04-105392TC 3. Parcel B of Boundary Line Adjustment No. BLA-04-105392TC
Assessor's Tax Parcel ID No.	45800400400; 45800400500; and 45800400600
Reference Nos. of Related Documents	

The Grantor, Owens Davies Fristoe Taylor & Schultz, PS, a Washington professional services corporation, as present Trustee under that Deed of Trust (defined below), in consideration of the premises and payment recited below, hereby grants and conveys, without representation or warranty, expressed or implied, to Sandy Family Five, LLC, a Washington limited liability company, as Grantee, the real property (the "Property"), situated in the County of Thurston, State of Washington, described as follows:

Parcel 1: Parcel A of Boundary Line Adjustment No. BLA-980379TC, as recorded June 15, 1998 under Auditor's File No. 3160132. TPN 45800400400.

Parcel 2: Parcel A of Boundary Line Adjustment No. BLA-04-105392TC, as recorded August 31, 2005 under Auditor's File No. 3763393. TPN 45800400500.

Parcel 3: Parcel B of Boundary Line Adjustment No. BLA-04-105392TC, as recorded August 31, 2005 under Auditor's File No. 3763393. TPN 45800400600.

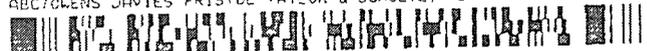
Situate in Thurston County, State of Washington.

Commonly known as 2314, 2244 and 2240 Schirm Loop Road NW, Olympia, Washington 98502.

4312155

Pages: 4

01/14/2013 08:13 AM Deed
Thurston County Washington
ABC/OWENS DAVIES FRISTOE TAYLOR & SCHULTZ, PS



RECITALS

1. This conveyance is made pursuant to the powers, including the power of sale, conferred upon the Trustee by that certain Deed of Trust from Paul L. Cokeley and Dianne L. Cokeley, husband and wife, as Grantors, to Thurston County Title Company, as Trustee, to secure an obligation in favor of Sandy Family Five, LLC, a Washington limited liability company, as Beneficiary, dated October 10, 2006, recorded October 20, 2006, under Auditor's File No. 3874430, records of Thurston County, Washington. Owens Davies Fristoe Taylor & Schultz, PS was appointed successor trustee (the "Trustee") pursuant to an Appointment of Successor Trustee recorded August 31, 2012 under Auditor's File No. 4236626.

2. The Deed of Trust was executed to secure, together with other undertakings, the payment of one or more promissory note(s) (the "Note") in the sum of One Hundred Fifty-Seven Thousand Five Hundred Dollars (\$157,500.00) with interest thereon, according to the terms thereof, in favor of Sandy Family Five, LLC and to secure any other sums of money which might become due and payable under the terms of said Deed of Trust.

3. The Deed of Trust provided that the Property is not used principally for agricultural or farming purposes and the Trustee has no actual knowledge that the Property is used principally for agricultural or farming purposes.

4. Default having occurred in the obligations secured and/or covenants of the Deed of Trust grantor, as set forth in Notice of Trustee's Sale described below, which by the terms of the Deed of Trust make operative the power to sell, the thirty-day advance Notice of Default was transmitted to the Deed of Trust grantor, or his successor in interest, and a copy of said Notice of Default was posted or served in accordance with law.

5. Sandy Family Five, LLC, being then the holder or the nominee of the indebtedness secured by the Deed of Trust, delivered to the Trustee a written request directing the Trustee to sell the Property in accordance with law and the terms of the Deed of Trust.

6. The defaults specified in the Notice of Default not having been cured, the Trustee, in compliance with the terms of the Deed of Trust, executed, on October 2, 2012 and on October 3, 2012, recorded in the office of the Auditor of Thurston County, Washington, a Notice of Trustee's Sale of the Property under Thurston County Auditor's File No. 4291942.

7. The Trustee, in the Notice of Trustee's Sale, fixed the place of sale as near the directory in front of the Thurston County Courthouse, 2000 Lakeridge Drive SW, City of Olympia, State of Washington, a public place, on January 4, 2013 at 10:00 a.m., and in accordance with the law caused copies of the statutory Notice of Trustee's Sale to be transmitted by mail to all persons entitled thereto and either posted or served prior to ninety (90) days before the sale; further, the Trustee caused a copy of said Notice of Trustee's Sale to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-fifth and twenty-eighth day before the date of sale, and once between the fourteenth and seventh day before the date of sale; and further, included with the Notice of Trustee's Sale, which was transmitted to or served

upon the Deed of Trust grantor or his/her successor in interest, a Notice of Foreclosure in substantially the statutory form, to which copies of the Note and Deed of Trust were attached.

8. The sale was held on January 4, 2012 at 10:00 A.M.

9. During foreclosure, no action by the Beneficiary, its successors or assigns was pending on an obligation secured by the Deed of Trust.

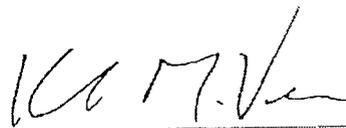
10. All legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in Chapter 61.24 RCW.

11. The defaults specified in the Notice of Trustee's Sale not having been cured ten (10) days prior to the date of Trustee's Sale and said obligation secured by said Deed of Trust remaining unpaid, on January 4, 2013, the date of sale, which was not less than one hundred ninety (190) days from the date of default in the obligation secured, the Grantor then and there sold the Property at public auction to said Grantee, the highest bidder therefor, for the sum of Two Hundred Thirty Thousand Ninety-Eight Dollars Fourteen Cents (\$230,098.14).

This conveyance is made without representations or warranties of any kind, expressed or implied. By recording this Trustee's Deed, Grantee understands, acknowledges and agrees that the Property was purchased in the context of a foreclosure, that the trustee made no representations to Grantee concerning the Property and that the trustee owed no duty to make disclosures to Grantee concerning the Property. Grantee relied solely upon its own due diligence investigation before electing to bid for the Property.

DATED this 9th day of January, 2013.

OWENS DAVIES FRISTOE
TAYLOR & SCHULTZ, PS
A professional services corporation



By: Kirk M. Veis
Agent for the Successor Trustee

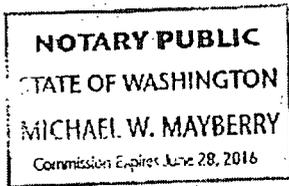
STATE OF WASHINGTON)

: ss.

County of Thurston)

THIS IS TO CERTIFY that on this 9th day of January, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kirk M. Veis, to me known to be the authorized agent of Owens Davies Fristoe Taylor & Schultz, PS, a professional services corporation, the corporation and successor trustee that executed the within and foregoing instrument, and acknowledged that he signed the same as the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

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



Michael W. Mayberry
Print Name: Michael W. Mayberry
NOTARY PUBLIC in and for the State of Washington,
residing at Olympia
Commission expires: June 28, 2016

EXHIBIT F

Letter from Larry Weaver to the Browns

January 7, 2013

Craig & Debra Brown
2230 SE Bloomfield Rd
Shelton, WA. 98584-7250

Re: Schirm Loop

Dear Mr. & Mrs. Brown

I understand you have recently purchased the property located at 2313 Schirm Loop NW.

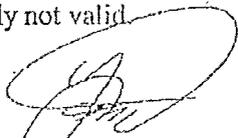
I work with Sandy Family 5, LLC who, as a result of a foreclosure, has become the fee owner of the 3 vacant lots across the street from your property.

It has come to our attention that there had been a drainfield easement granted in favor of your property and filed with Thurston County on July 17th, 2012 encumbering tax parcel #45800400500. This was filed at a time when this parcel was secured by the Sandy Family 5, LLC 1st position Deed of Trust. As the manager of the Sandy Family 5, LLC property I must make you aware of the following facts:

1. A 1st position Deed of Trust lien was granted to Sandy Family 5, LLC and filed in Thurston County on Oct. 10, 2006.
2. The document encumbering the secured property held by Sandy Family 5, LLC (the drainfield easement) was filed in Thurston County on July 17, 2012.
3. Sandy Family 5, LLC foreclosed on their 1st lien position on January 4, 2013 receiving title to the property in the condition that it was in when the original lien was filed.
4. The Deed of Trust is superior to the encumbering easement therefore, once the foreclosure took place any junior encumbrances are no longer valid.

If it is your understanding that the drainfield on the Sandy Family 5, LLC property is available to service your property then it is with regret that I must inform you that the easement is specifically not valid.

Sincerely,



Larry Weaver
For: Sandy Family 5, LLC
P.O. Box 4094
Tumwater, WA. 98501
360-943-9844 office
360-790-9101 cell

EXHIBIT G
Drainfield Easement Agreement

(RETURN ADDRESS.)

Paul Cokeley
2221 Schirra Lane W
Olympia, WA 98508

Thurston County Treasurer

Real Estate Excise Tax paid

By 12/30/05 M. G. [Signature] Deputy

DRAINFIELD EASEMENT AGREEMENT

This Agreement is made this 30th day of December, 2005, between [blank], herein referred to as "GRANTOR" and [blank], herein referred to as "GRANTEE".

The easement described herein is for the sole use of the GRANTEE, its heirs and assigns, for the residence now or hereafter located upon the following described real estate situated in Thurston County, State of Washington, to wit:

(Tax Parcel #) 45800101100 (Legal Description) L11 Edgewater Beach BLS1

in consideration of one and no/100th Dollars (\$1.00), and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, GRANTOR hereby conveys and warrants to GRANTEE the following easements:

A non-exclusive perpetual easement across, along, in, upon, and under GRANTOR'S real estate situated in Thurston County, State of Washington, to wit:

(Tax Parcel #) 45800400500 (Legal Description) TRA 24 BLA04105392TC Edgewater Beach

And by this reference made apart hereof for the purpose of installing, constructing, operating, maintaining, inspecting, removing, repairing, replacing, and using a residential septic tank and soil absorption system (hereafter residential septic system); TOGETHER WITH the non-exclusive right of ingress to and egress from said property for the foregoing purposes.

The easement includes the following conditions and covenants which GRANTOR and GRANTEE hereby promise to faithfully and fully observe and perform:

1. COSTS AND EXPENSES

GRANTEE shall bear and promptly pay all costs and expenses of construction and maintenance of the residential septic system.

2. CONSTRUCTION AND MAINTENANCE

GRANTEE shall construct and maintain the residential septic system in accordance with all laws, regulations; and Thurston County Public Health and Social Services Department, Environmental Health Division regulations, conditions; or specifications as directed by the Thurston County Public Health and Social Services Department, Environmental Health Division.

3. PRIOR APPROVAL OF PLANS

Prior to the installation and/or alteration of any residential septic system by GRANTEE, plans for said construction and/or alteration shall be submitted to and approved by the Thurston County Public Health and Social Services Department, Environmental Health Division.

4. WORK STANDARDS

All work to be performed by GRANTEE shall be in accordance with plans approved by the Thurston County Public Health and Social Services Department, Environmental Health Division and shall be completed in a workman-like manner free of claims and liens. Upon completing construction or maintenance of the residential septic system, GRANTEE shall remove all debris and restore the surface of the property as nearly as possible to the condition in which it was at the commencement of such work, including restoration of any survey references or caps which were disturbed or destroyed.

5. PROTECTION OF RESIDENTIAL SEPTIC SYSTEM

GRANTOR shall insure that no encroachments shall be made on the easement area, including but not limited to the following, placement of water, power or utility lines in the easement area, including underground sprinkler systems; driving, parking or paving over the easement area; planning or construction of buildings, utility lines or improvements except as permitted by applicable laws or regulations; or using the drainfield area in any fashion which hinders, disrupts or interferes with the use or proper functioning of the residential septic system. GRANTOR shall at all times have the right to occupy the easement area, provided, that use of the easement area by GRANTOR does not in any fashion hinder, disrupt or interfere with the use or proper functioning of the residential septic system.



6. ACCESS BY GRANTEE

GRANTEE shall have right of ingress and egress as may from time to time be necessary to insure the proper functioning of the residential septic system. Ingress into the easement area by the GRANTEE for any purpose herein shall be made as provided in Section 9 of ARTICLE IV (effective date 10/15/95) or as the parties may otherwise agree. GRANTEE shall exercise its right under this section so as to minimize interference with GRANTOR's use of the property.

7. NOTICES

The GRANTEE shall give GRANTOR written notification of the original construction of the residential septic system at least 15 days prior to the commencement of construction. Notice for any inspection, repair or replacement shall be reasonable under the circumstances.

8. SUCCESSOR INTERESTS

This easement and the rights and obligations herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

Paul Cokely 12-30-05
GRANTOR DATE

Paul Cokely 12-30-05
GRANTEE DATE

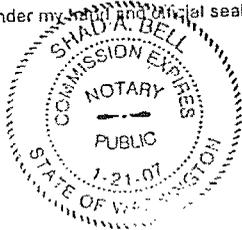
Dianna Cokely 12-30-05
GRANTOR DATE

Dianna Cokely 12-30-05
GRANTEE DATE

State of Washington)
County of Thurston) ss.

I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this _____ day of _____, 200____, personally appeared before me Paul Cokely and Dianna Cokely to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledge that he (they) signed and sealed the same as _____ free and voluntary act and deed, for the uses and purposes wherein mentioned.

GIVEN under my hand and official seal the day and year last above written.



Shaughn Bell
NOTARY PUBLIC in and for the State of Washington
residing at Thurston County

State of Washington)
County of _____) ss.

I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this _____ day of _____, 200____, personally appeared before me _____ to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledge that he (they) signed and sealed the same as _____ free and voluntary act and deed, for the uses and purposes wherein mentioned.

GIVEN under my hand and official seal the day and year last above written.

NOTARY PUBLIC in and for the State of Washington
residing at _____



EXHIBIT H
Drainfield Easement Agreement

(RETURN ADDRESS.)

Paul Cokley
2221 Schirm Ln NW
Olympia WA 98502

Thurston County Treasurer

Real Estate Excise Tax paid None
By 12/30/05 MA [Signature] Deputy

DRAINFIELD EASEMENT AGREEMENT

This Agreement is made this 30th day of December, 2005,
between Paul and Dianne Cokley, herein referred to as "GRANTOR"
and Paul and Dianne Cokley, herein referred to as "GRANTEE"

The easement described herein is for the sole use of the GRANTEE, its heirs and assigns, for the residence now or hereafter located upon the following described real estate situated in Thurston County, State of Washington, to wit:

(Tax Parcel #) 45800101100 (Legal Description) L11 Edgewater Beach Blk1

in consideration of one and no/100th Dollars (\$1.00), and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, GRANTOR hereby conveys and warrants to GRANTEE the following easements:

A non-exclusive perpetual easement across, along, in, upon, and under GRANTOR'S real estate situated in Thurston County, State of Washington, to wit:
(Tax Parcel #) 45800101100 (Legal Description) IRA of

BL 4980379C Edgewater Beach

And by this reference made apart hereof for the purpose of installing, constructing, operating, maintaining, inspecting, removing, repairing, replacing, and using a residential septic tank and soil absorption system (hereafter residential septic system); TOGETHER WITH the non-exclusive right of ingress to and egress from said property for the foregoing purposes.

The easement includes the following conditions and covenants which GRANTOR and GRANTEE hereby promise to faithfully and fully observe and perform:

1. COSTS AND EXPENSES

GRANTEE shall bear and promptly pay all costs and expenses of construction and maintenance of the residential septic system.

2. CONSTRUCTION AND MAINTENANCE

GRANTEE shall construct and maintain the residential septic system in accordance with all laws, regulations; and Thurston County Public Health and Social Services Department, Environmental Health Division regulations, conditions; or specifications as directed by the Thurston County Public Health and Social Services Department, Environmental Health Division.

3. PRIOR APPROVAL OF PLANS

Prior to the installation and/or alteration of any residential septic system by GRANTEE, plans for said construction and/or alteration shall be submitted to and approved by the Thurston County Public Health and Social Services Department, Environmental Health Division.

4. WORK STANDARDS

All work to be performed by GRANTEE shall be in accordance with plans approved by the Thurston County Public Health and Social Services Department, Environmental Health Division and shall be completed in a workman-like manner free of claims and liens. Upon completing construction or maintenance of the residential septic system, GRANTEE shall remove all debris and restore the surface of the property as nearly as possible to the condition in which it was at the commencement of such work, including restoration of any survey references or caps which were disturbed or destroyed.

5. PROTECTION OF RESIDENTIAL SEPTIC SYSTEM

GRANTOR shall insure that no encroachments shall be made on the easement area, including but not limited to the following: placement of water, power or utility lines in the easement area, including underground sprinkler systems, driving, parking or paving over the easement area, planning or construction of buildings, utility lines or improvements except as permitted by applicable laws or regulations or using the drainfield area in any fashion which hinders, disrupts or interferes with the use or proper functioning of the residential septic system. GRANTOR shall at all times have the right to occupy the easement area, provided, that use of the easement area by GRANTOR does not in any fashion hinder, disrupt or interfere with the use or proper functioning of the residential septic system.



6 ACCESS BY GRANTEE

GRANTEE shall have right of ingress and egress as may from time to time be necessary to insure the proper functioning of the residential septic system. Ingress into the easement area by the GRANTEE for any purpose herein shall be made as provided in Section 9 of ARTICLE IV (effective date 10/15/95) or as the parties may otherwise agree. GRANTEE shall exercise its right under this section so as to minimize interference with GRANTOR's use of the property.

7 NOTICES

The GRANTEE shall give GRANTOR written notification of the original construction of the residential septic system at least 15 days prior to the commencement of construction. Notice for any inspection, repair or replacement shall be reasonable under the circumstances.

8. SUCCESSOR INTERESTS

This easement and the rights and obligations herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

Paul Cokely 12-30-05
GRANTOR DATE

Paul Cokely 12-30-05
GRANTEE DATE

Dianne Cokely 12-30-05
GRANTOR DATE

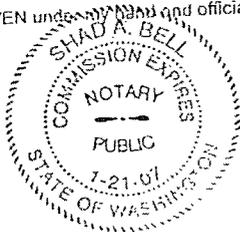
Dianne Cokely 12-30-05
GRANTEE DATE

State of Washington)

County of Thurston) ss.

I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this 12 day of December, 2005, personally appeared before me Paul Cokely and Dianne Cokely to me known to be the individuals described in and who executed the foregoing instrument, and acknowledge that he (they) signed and sealed the same as free and voluntary act and deed, for the uses and purposes wherein mentioned.

GIVEN under my hand and official seal the day and year last above written.



Shada A. Bell
NOTARY PUBLIC in and for the State of Washington
residing at Thurston County

State of Washington)

County of _____) ss.

I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this _____ day of _____, 200____, personally appeared before me _____ to me known to be the individual _____ described in and who executed the foregoing instrument, and acknowledge that he (they) signed and sealed the same as _____ free and voluntary act and deed, for the uses and purposes wherein mentioned.

GIVEN under my hand and official seal the day and year last above written.

NOTARY PUBLIC in and for the State of Washington
residing at _____



EXHIBIT I

Declaration of Matthew B. Edwards

E-FILED
SUPERIOR COURT
THURSTON COUNTY, WA
Jan 15, 2015 10:43 AM
LINDA MYHRE ENLOW
County Clerk

EXPEDITE
 Hearing is set:
Date: 1/23/2015
Time: 9:00am
Judge/Calendar: Hon. Carol Murphy
Civil Motions Calendar
 No Hearing is set

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

SANDY FAMILY FIVE, LLC, a Washington
Limited Liability Company,

Plaintiffs,

v.

CRAIG and DEBRA BROWN, husband and
wife, and other marital community

Defendants.

NO. 14-2-01934-1

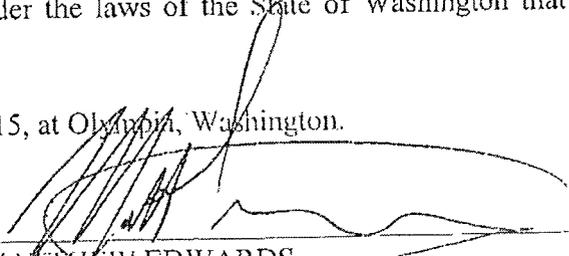
DECLARATION OF MATTHEW
EDWARDS

1. My name is Matthew Edwards. I am over 18 years of age and competent to testify as to all matters set forth herein. I am an attorney representing Sandy Family Five, LLC in this matter.

2. Attached to this Declaration as Exhibit A is a true copy of an "as-built" submitted to the Thurston County Building and Planning Department, and contained in its file with respect to Parcel 45800101100. The as-built shows that septic system improvements were first installed on this parcel in 2011.

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

DATED this 15th day of January, 2015, at Olympia, Washington.


MATTHEW EDWARDS

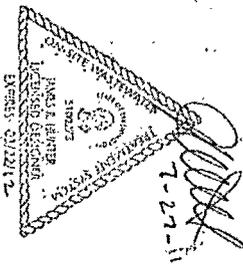
OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150

NOTE
 * ALL SLEEVING, GRADING AND PRESSURE TEST OF FOLDMAIN DONE BY INSTALLER PER APPROVED DESIGN

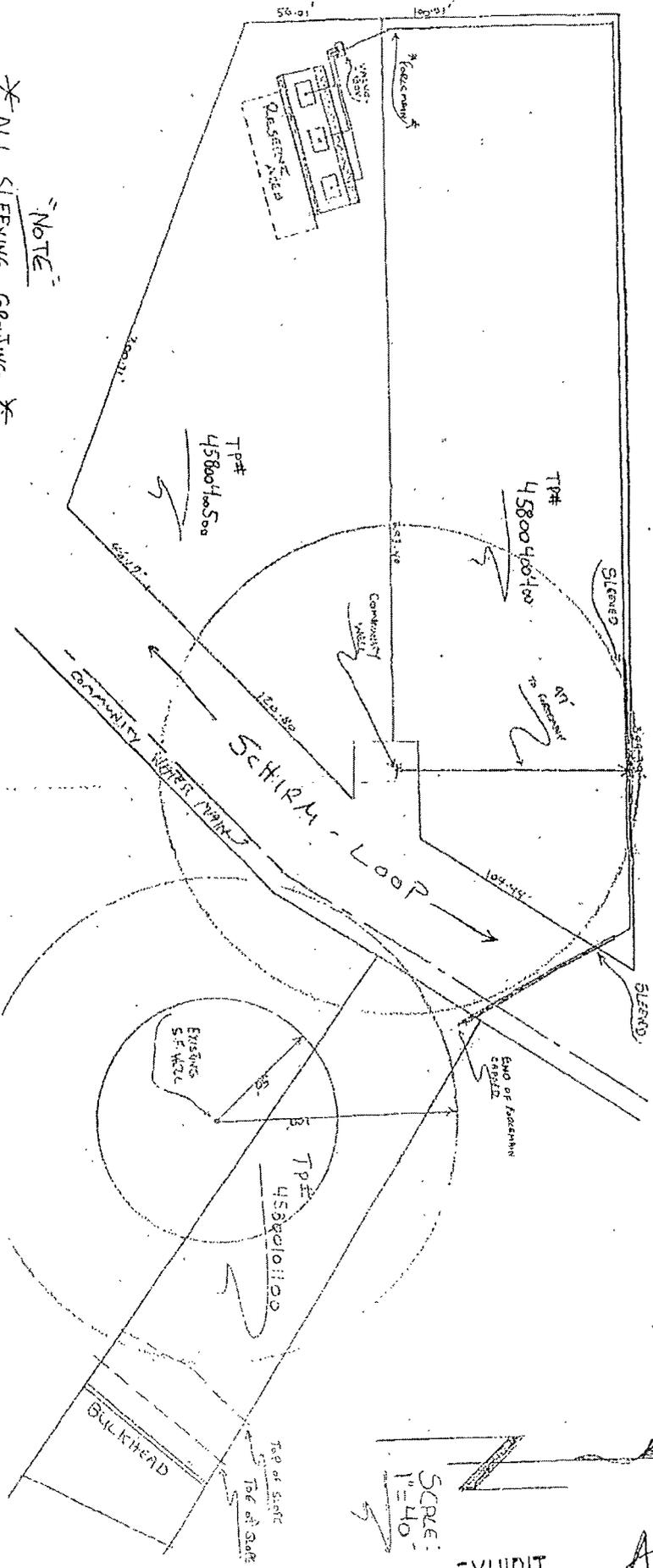
SEWERLINE CROSSER WITH 18" BELOW WATERLINE. SEWERLINE SLEEVES AND GRADES

PARTIAL REVISION DRAWING

THURSTON COUNTY RECEIVED JUL 27 2011 DEVELOPMENT SERVICES



JIM HUNTER & ASSOC. P.O. BOX 162 OLY, WA 98507 753-1226	CONTRACTOR A-Action INSTALL DATE
RECORD DRAWING OWNER - Paul Coffey	SITE ADDRESS/LEGAL 2313 Schirm Loop FINAL DATE
TP# 45800101100	SITE# 05112889



SCALE: 1"=40'

EXHIBIT **A**

EXHIBIT J

Drainfield Easement Agreement

Thurston County Treasurer

Real Estate Excise Tax Paid PAID

By [Signature] Deputy

DRAINFIELD EASEMENT AGREEMENT

This Agreement is made this 17th day of JULY, 2012, between PAUL AND DIANNE COKELEY, herein referred to as "GRANTOR" and PAUL AND DIANNE COKELEY, herein referred to as "GRANTEE".

The easement described herein is for the sole use of the GRANTEE, its heirs and assigns, for the residence now or hereafter located upon the following described real estate situated in Thurston County, State of Washington, to wit:

(Tax Parcel #) 4580010110 (Legal Description) LOT 11 BLOCK 1 EDENWATER BEACH

In consideration of one and no/100th Dollars (\$1.00), and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, GRANTOR hereby conveys and warrants to GRANTEE the following easements:

A non-exclusive perpetual easement across, along, in, upon, and under GRANTOR'S real estate situated in Thurston County, State of Washington, to wit:

(Tax Parcel #) 45800400400 (Legal Description) TRACT A
BLA 980379

SEE EXHIBIT A

And by this reference made apart hereof for the purpose of installing, constructing, operating, maintaining, inspecting, removing, repairing, replacing, and using a residential septic tank and soil absorption system (hereafter residential septic system); TOGETHER WITH the non-exclusive right of ingress to and egress from said property for the foregoing purposes.

The easement includes the following conditions and covenants which GRANTOR and GRANTEE hereby promise to faithfully and fully observe and perform:

1. COSTS AND EXPENSES

GRANTEE shall bear and promptly pay all costs and expenses of construction and maintenance of the residential septic system.

2. CONSTRUCTION AND MAINTENANCE

GRANTEE shall construct and maintain the residential septic system in accordance with all laws, regulations, and Thurston County Public Health and Social Services Department, Environmental Health Division regulations, conditions, or specifications as directed by the Thurston County Public Health and Social Services Department, Environmental Health Division.

3. PRIOR APPROVAL OF PLANS

Prior to the installation and/or alteration of any residential septic system by GRANTEE, plans for said construction and/or alteration shall be submitted to and approved by the Thurston County Public Health and Social Services Department, Environmental Health Division.

4. WORK STANDARDS

All work to be performed by GRANTEE shall be in accordance with plans approved by the Thurston County Public Health and Social Services Department, Environmental Health Division and shall be completed in a workman-like manner free of claims and liens. Upon completing construction or maintenance of the residential septic system, GRANTEE shall remove all debris and restore the surface of the property as nearly as possible to the condition in which it was at the commencement of such work, including restoration of any survey references or caps which were disturbed or destroyed.

5. PROTECTION OF RESIDENTIAL SEPTIC SYSTEM

GRANTOR shall insure that no encroachments shall be made on the easement area, including but not limited to the following: placement of water, power or utility lines in the easement area, including underground sprinkler systems; driving, parking or piling over the easement area; planting or construction of buildings, utility lines, or improvements except as permitted by applicable laws or regulations; or using the easement area in any fashion which blocks, obstructs or interferes with the use or proper functioning of the residential septic system. GRANTOR shall at all times have the right to occupy the easement area; provided, that use of the easement area by GRANTOR does not in any fashion block, disrupt or interfere with the use or proper functioning of the residential septic system.



6. ACCESS BY GRANTEE

GRANTEE shall have right of ingress and egress as may from time to time be necessary to insure the proper functioning of the residential septic system. Ingress into the easement area by the GRANTEE for any purpose herein shall be made as provided in Section 9 of ARTICLE IV (effective date 10/15/07) or as the parties may otherwise agree. GRANTEE shall exercise its right under this section so as to minimize interference with GRANTOR's use of the property.

7. NOTICES

The GRANTEE shall give GRANTOR written notification of the original construction of the residential septic system at least 15 days prior to the commencement of construction. Notice for any inspection, repair or replacement shall be reasonable under the circumstances.

8. SUCCESSOR INTERESTS

This easement and the rights and obligations herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

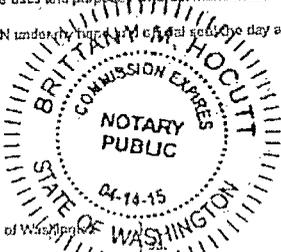
Dianna & Paul Cokerly 7-17-12
GRANTOR DATE
Paul Cokerly 7-17-2012
GRANTOR DATE

Dianna & Paul Cokerly 7-17-12
GRANTEE DATE
Paul Cokerly 7-17-2012
GRANTEE DATE

State of Washington

County of Thurston
I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this 17 day of July, 2012, personally appeared before me Paul and Dianna Cokerly to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledge that he (they) signed and sealed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.



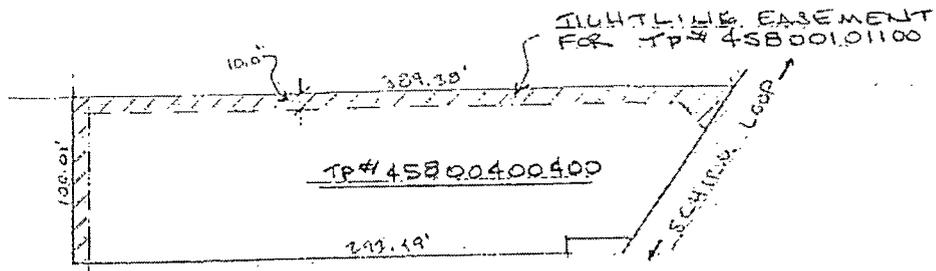
Brittany M. Howitt
NOTARY PUBLIC in and for the State of Washington
residing at Olympia

State of Washington

County of Thurston
I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this 17 day of July, 2012, personally appeared before me Paul and Dianna Cokerly to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledge that he (they) signed and sealed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Brittany M. Howitt
NOTARY PUBLIC in and for the State of Washington
residing at Olympia



SCALE - 1" = 100'-0"

EXHIBIT A

EXHIBIT K

Drainfield Easement Agreement

Thurston County Treasurer

Real Estate Excise Tax Paid in full

By Douglas J. 7/17/12 Deputy

DRAINFIELD EASEMENT AGREEMENT

This Agreement is made this 17 day of JULY, 2012, between PAUL AND DIANE COKELEY hereby referred to as "GRANTOR" and PAUL AND DIANE COKELEY hereby referred to as "GRANTEE".

The easement described herein is for the sole use of the GRANTEE, its heirs and assigns, for the residence now or hereafter located upon the following described real estate situated in Thurston County, State of Washington, to wit:

(Tax Parcel #) 45B0040500 (Legal Description) LOT 11 BLOCK 1 EDgewater Beach

In consideration of one and one-half (1.500) Dollars (\$1,500), and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, GRANTOR hereby conveys and warrants to GRANTEE the following easements:

A non-exclusive perpetual easement across, along, in, upon, and under GRANTOR'S real estate situated in Thurston County, State of Washington, to wit:
(Tax Parcel #) 45B0040500 (Legal Description) TRACT 4 BLA041053912

And by this reference made, easement for the purpose of installing, constructing, operating, maintaining, repairing, replacing, upgrading, and using a residential septic tank and soil absorption system (hereafter "residential septic system"); TOGETHER WITH the non-exclusive right of ingress to and egress from said property for the foregoing purposes.

The easement includes the following conditions and covenants which GRANTOR and GRANTEE hereby promise to faithfully and fully observe and perform:

1. COSTS AND EXPENSES

GRANTEE shall bear and promptly pay all costs and expenses of construction and maintenance of the residential septic system.

2. CONSTRUCTION AND MAINTENANCE

GRANTEE shall construct and maintain the residential septic system in accordance with all laws, regulations, and Thurston County Public Health and Social Services Department, Environmental Health Division regulations, conditions, or specifications as directed by the Thurston County Public Health and Social Services Department, Environmental Health Division.

3. PRIOR APPROVAL OF PLANS

Prior to the installation and/or alteration of any residential septic system by GRANTEE, plans for said construction and/or alteration shall be submitted to and approved by the Thurston County Public Health and Social Services Department, Environmental Health Division.

4. WORK STANDARDS

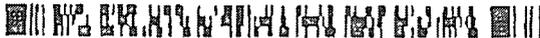
All work to be performed by GRANTEE shall be in accordance with plans approved by the Thurston County Public Health and Social Services Department, Environmental Health Division and shall be completed in a workman-like manner free of debris and dirt. Upon completing construction or maintenance of the residential septic system, GRANTEE shall remove all debris and restore the surface of the property as nearly as possible to the condition in which it was at the commencement of such work, including restoration of any survey monuments or traps which were disturbed or destroyed.

5. PROTECTION OF RESIDENTIAL SEPTIC SYSTEM

GRANTOR shall ensure that no encroachments shall be made on the easement area, including but not limited to the following: placement of water, power or utility lines in the easement area, including underground sprinkler systems; building, parking or paving over the easement area; planning or construction of buildings, utility lines or improvements except as permitted by applicable laws or regulations; or using the easement area in any fashion which hinders, disrupts or interferes with the use or proper functioning of the residential septic system. GRANTEE shall at all times have the right to occupy the easement area; provided, that use of the easement area by GRANTEE does not in any fashion hinder, disrupt or interfere with the use or proper functioning of the residential septic system.

4277399
07/17/2012 02:31 PM
Thurston County Washington
DIANE COKELEY

Pages: 3



c. ACCESS BY GRANTEE

GRANTEE shall have right of ingress and egress as may from time to time be necessary to insure the proper functioning of the residential water system. Access to the residential water system by the GRANTEE for any purpose herein shall be made as provided in SECTION 9 of ARTICLE IV (effective date 10/1/09) or as the parties may otherwise agree. GRANTEE shall exercise its right under this section so as to minimize interference with GRANATOR's use of the property.

7. NOTICES

The GRANTEE shall give GRANATOR written notification of the original construction of the residential water system at least 10 days prior to the commencement of construction. Notice for any inspection, repair or replacement shall be reasonable under the circumstances.

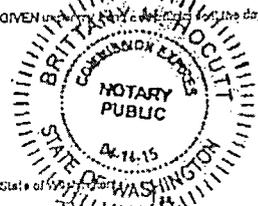
d. SUCCESSOR INTERESTS

This easement and the rights and obligations herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

7-17-12
Diann & Paul Cobley
GRANATOR DATE
Paul Cobley 7-17-12
GRANATOR DATE

Diann & Paul Cobley 7-17-12
GRANTEE DATE
Paul Cobley 7-17-12
GRANTEE DATE

State of Washington)
County of Thurston) ss.
I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this 17
day of July, 2012, personally appeared before me Paul and
Diann Cobley to me known to be the individual s described in and who executed the foregoing
instrument, and acknowledge that he (they) signed and sealed the same as free and voluntary act and deed,
for the uses and purposes therein mentioned.
GIVEN under my hand and official seal the day and year last above written.



Brittany M. Hocutt
NOTARY PUBLIC in and for the State of Washington
residing at Olympia

State of Washington)
County of Thurston) ss.
I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this 17
day of July, 2012, personally appeared before me Paul and
Diann Cobley to me known to be the individual s described in and who executed the foregoing
instrument, and acknowledge that he (they) signed and sealed the same as free and voluntary act and deed,
for the uses and purposes therein mentioned.
GIVEN under my hand and official seal the day and year last above written.

Brittany M. Hocutt
NOTARY PUBLIC in and for the State of Washington
residing at Olympia

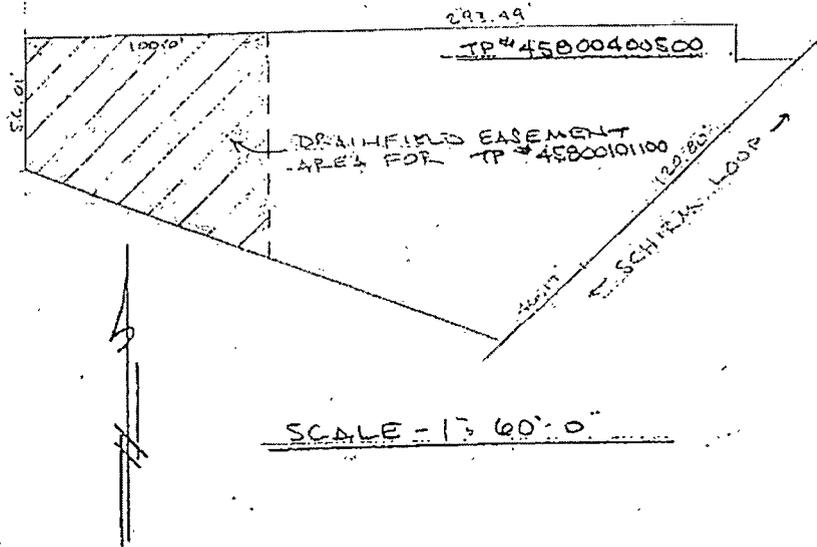


EXHIBIT "A"

EXHIBIT L

Statutory Warranty Deed from the Cokeleys to the Browns

AFTER RECORDING MAIL TO:

28 DEC '12 374054

Craig J. Brown and Debra A. Brown
2230 SE Bloomfield Road
Shelton, WA 98584-7250

Thurston County Treasurer

Real Estate Excise Tax Paid 2314.00

By [Signature] Deputy

Filed for Record at Request of:
First American Title Insurance Company

Space above this line for Recorder's use only

STATUTORY WARRANTY DEED

File No: **4291-1990129 (GR)** ⁸⁻¹⁷

Date: December 26, 2012

Grantor(s): **Paul L. Cokeley and Dianne L. Cokeley**

Grantee(s): **Craig J. Brown and Debra A. Brown**

Abbreviated Legal: **LOT 11 IN BLOCK 1 OF EDGEWATER BEACH, AS RECORDED IN VOLUME 11 OF PLATS, PAGE 30**

Additional Legal on page:

Assessor's Tax Parcel No(s): **45800101100**

THE GRANTOR(S) **Paul L. Cokeley and Dianne L. Cokeley, husband and wife** for and in consideration of **Ten Dollars and other Good and Valuable Consideration**, in hand paid, conveys, and warrants to **Craig J. Brown and Debra A. Brown, husband and wife**, the following described real estate, situated in the County of **Thurston**, State of **Washington**.

LEGAL DESCRIPTION: Real property in the County of Thurston, State of Washington, described as follows:

LOT 11 IN BLOCK 1 OF EDGEWATER BEACH, AS RECORDED IN VOLUME 11 OF PLATS, PAGE 30; IN THURSTON COUNTY WASHINGTON. TOGETHER WITH ALL TIDELANDS SUITABLE FOR THE CULTIVATION OF OYSTERS AS CONVEYED BY THE STATE OF WASHINGTON LYING IN FRONT OF, ADJACENT TO AND ABUTTING ON SAID LOT.

Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.



APN: 45800101100

Statutory Warranty Deed
- continued

File No.: 4291-1990129 (GR)

Paul L. Cokeley
Paul L. Cokeley

Dianne L. Cokeley
Dianne L. Cokeley

STATE OF Washington)
)-ss
COUNTY OF Thurston)

I certify that I know or have satisfactory evidence that Paul L. Cokeley and Dianne L. Cokeley, is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: 12/10/12

Gail K. Randall
Gail K. Randall
Notary Public in and for the State of Washington
Residing at: Quincy
My appointment expires: May 10, 2014

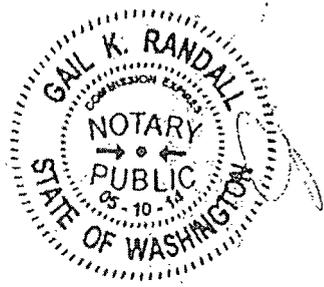


EXHIBIT M

Transcript of Summary Judgment hearing

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SANDY FAMILY FIVE, LLC, a)	
Washington Limited Liability)	
Company,)	NO. 14-2-01934-1
)	
vs.)	
)	
CRAIG J. BROWN and DEBRA A.)	
BROWN, husband and wife, and)	
and their marital community,)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on January 9, 2015,
the above-entitled and numbered cause came on for motions
for summary judgment before the HONORABLE CAROL MURPHY,
judge of Thurston County Superior Court, Olympia,
Washington.

Cheri L. Davidson
Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
(360)786-5570
davidsc@co.thurston.wa.us

A P P E A R A N C E S

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For the Plaintiff: MATTHEW B. EDWARDS
Attorney at Law
Owens Davies, P.S.
1115 West Bay Drive, Suite 302
Olympia, WA 98502

For the Defendants: C. SCOTT KEE
Attorney at Law
Rodgers Kee & Card, P.S.
324 West Bay Drive NW, Suite 201
Olympia, WA 98502

1 JANUARY 9, 2015

2 THE HONORABLE CAROL MURPHY, PRESIDING

3 * * * * *

4 THE COURT: The next matter I am going to hear
5 argument on is number 14, Sandy Family Five versus
6 Craig Brown.

7 Counsel, if we could begin with appearances on the
8 record, please.

9 MR. EDWARDS: Yes, Your Honor. Good morning.
10 Matt Edwards representing Sandy Family Five, LLC.

11 MR. KEE: Good morning, Your Honor. Scott Kee
12 representing Craig and Debra Brown.

13 THE COURT: Thank you.

14 Just as we begin, you have probably heard I have
15 been going through issues with regard to bench
16 copies.

17 Mr. Kee, I did not receive yours, but I did review
18 all of the pleadings that have been filed in this
19 case. I think everything that has been filed at
20 least I have reviewed, but for some reason I didn't
21 get bench copies. I don't know why because it
22 appears that everything that was filed has been
23 appropriate declarations of service and that sort of
24 thing.

25 MR. KEE: I'm not sure why, Your Honor. I

1 know they were stamped as filed.

2 THE COURT: They were filed.

3 MR. KEE: They were stamped because we had the
4 messenger stamp them because we e-filed them and then
5 we had the messenger conform them up here when he
6 delivered the bench copies to the Superior Court
7 file. But I'll check and see.

8 THE COURT: I don't know what the issue is.

9 At any rate, I understand that before the Court
10 today are competing motions for summary judgment that
11 were filed simultaneously, and so the parties have
12 briefed both their own motions and opposition to the
13 other side's motions. I would like to hear them all
14 at the same time obviously because they are
15 essentially the same legal arguments. It doesn't
16 necessarily matter to me either way who goes first,
17 but it seems to me it might make sense to hear from
18 plaintiff first and then defense and then go back and
19 forth, if that's okay.

20 MR. KEE: Fine, Your Honor.

21 THE COURT: Mr. Edwards.

22 MR. EDWARDS: Yes. Matt Edwards representing
23 Sandy Family Five, LLC.

24 I'd like to start this argument by asking this
25 Court to approach this matter from the perspective of

1 my client. From my client's perspective, what
2 happened here is pretty simple. They were approached
3 by the Cokeleys and asked to lend over \$150,000 to
4 them, and the Cokeleys put up this property to be
5 used to secure the payment of that, the repayment of
6 that indebtedness back to Sandy. This deed of trust
7 was recorded in 2006 at a time when it's completely
8 undisputed that the Cokeleys had the entire interest
9 in the property.

10 The Deed of Trust Act specifically provides that
11 when you sign a deed of trust, you're pledging the
12 entire interest that you have the power to convey in
13 the property at the time you pledge the property. So
14 when the Cokeleys signed the deed of trust in 2006,
15 they were pledging all the interest they had the
16 power to convey at that time, and because the
17 Cokeleys had all of the interest in the property,
18 they were pledging all the interest in the property.
19 Not only does the Deed of Trust Act say that, but the
20 very deed of trust that the Cokeleys signed contains
21 language that mirrors that Deed of Trust Act
22 provision.

23 THE COURT: Mr. Edwards, I just want to
24 interrupt here to say that isn't that the same for
25 the Browns? I mean, both of the parties here

1 essentially were given whatever the Cokeleys had.

2 MR. EDWARDS: That's correct. The difference
3 between my client and the Browns is that when my
4 client took its deed of trust in 2006, they neither
5 knew nor had any reason to know of any other interest
6 in the property. When the Browns took at the end of
7 2012, they had constructive notice of the recorded
8 deed of trust and of the fact that we'd recorded a
9 notice of foreclosure on that deed of trust and that
10 foreclosure was going to occur literally the week
11 after the property was sold. So that's the
12 difference.

13 My clients did everything it was supposed to do.
14 ~~They did not~~ ^[i.e., the Browns] look at the record and did not find the
15 deed of trust which pledged the Cokeleys' entire
16 interest in this property to Sandy. They have
17 constructive notice of that deed of trust, and that's
18 the difference between these two parties.

19 THE COURT: But at the time that the Cokeleys
20 granted the deed of trust to your client, at that
21 time the Cokeleys knew what their intention was about
22 the property.

23 MR. EDWARDS: Maybe. I mean, we don't have
24 any direct evidence of what the Cokeleys were
25 thinking at all here because nothing has been

1 submitted by them into the record.

2 THE COURT: Well, there is evidence in the
3 record with regard to the Cokeleys' work with the
4 County and that sort of thing.

5 MR. EDWARDS: Right, but matters that are
6 filed with the County are not recorded with the
7 auditor and they don't constitute constructive
8 notice. And even if we had some -- I don't believe
9 we had any notice of that at all. I don't think
10 there's a thing in the record that suggests that we
11 have any notice of anything to do with the drainfield
12 easement.

13 But even if we had that notice, under the Deed of
14 Trust Act, the Cokeleys conveyed all the interest in
15 the property that they had the power to convey and
16 because the Cokeleys -- I don't think these so-called
17 drainfield easement agreements have any validity at
18 all because you cannot have an easement in your own
19 property. But even if there was something to them,
20 the Cokeleys still, because they held both the
21 grantor and grantee interest, had the power to convey
22 their property free and clear of any drainfield, any
23 rights arising out this drainfield easement
24 agreement, and the Deed of Trust Act says that's what
25 they did. And when they signed a deed of trust that

1 does not contain an exception mentioning some kind of
2 drainfield easement agreement, that would be an
3 entirely different situation.

4 THE COURT: But the Cokeleys knew about the
5 drainfield easement at the time that they conveyed
6 the deed of trust.

7 MR. EDWARDS: Right, but what is important
8 here is what my clients knew when they took this
9 property as security for a debt, and unless they have
10 either actual knowledge -- their agreement was to
11 take it subject to this drainfield easement
12 agreement. If there was some evidence of that, that
13 would be one thing, but there's absolutely no
14 evidence of that. There's nothing in the Deed of
15 Trust Act.

16 My clients submitted a declaration that says
17 nobody said anything about the drainfield easement
18 agreement, and there was nothing recorded with the
19 Auditor's Office, the kind of thing that gives
20 constructive notice, to put my clients on notice of a
21 drainfield easement agreement, at least an effective
22 one that had been extended to somebody other than the
23 Cokeleys, one that the Cokeleys couldn't themselves
24 undo at any time.

25 So that's the difference between my client's

1 position and the Browns' position is that my clients
2 acted, took the entire interest in the property, and
3 they did it at a time when they had no -- I mean,
4 nothing had happened. It wasn't until 2012 that the
5 Cokeleys did something that might convert this kind
6 of inchoate thought that they have that there might
7 be a drainfield easement into an actuality when they
8 conveyed it to the Browns. They didn't have any
9 notice that that had happened.

10 As I've repeatedly said in the briefing, these
11 drainfield easement agreements that were recorded in
12 2005 -- one of them doesn't even list a grantor and a
13 grantee. I mean, on its face it's completely
14 defective. It doesn't give -- because there's no
15 grantor or grantee listed, it doesn't give any
16 constructive notice to anyone of anything. And
17 again, you cannot have an easement in your own
18 property, and there are numerous Washington court
19 cases that say that.

20 THE COURT: But you are not calling that
21 merger, so I am wondering --

22 MR. EDWARDS: I'm not calling that merger
23 because when you talk about merger, you're talking
24 about a situation where an easement is properly
25 created and then after it's created both the property

1 burdened and benefitted passes to the same ownership
2 and that's when the merger occurs, and then they pass
3 out of the same ownership. And then there's a
4 question in that fact pattern about merger, but that
5 isn't here because there was never an easement
6 properly created from the start so you don't get to
7 the question of merger. Merger assumes that there
8 was a valid easement, and there was no valid easement
9 here. So that's why we're not relying on merger.
10 The fact pattern that's necessary to talk about that
11 doctrine doesn't apply.

12 Again, in 2006 when they executed this deed of
13 trust, the Cokeleys retained the power to convey
14 their entire interest in their property free and
15 clear of any drainfield easement, and that's exactly
16 what they did when they pledged the property to my
17 client.

18 THE COURT: After that time, did they retain
19 the ability to grant the easement?

20 MR. EDWARDS: No, they did not, not without
21 satisfying my client's deed of trust. That's when --
22 there's also a question that was raised about an
23 implied easement. Well, you shouldn't even reach
24 that issue because it's not pled in the answer.
25 There's no affirmative defense about implied

1 easement. There's no counterclaim, so it hasn't been
2 properly pled.

3 But to have an implied easement, you to have a
4 unity of title and then a severance. That severance
5 occurred here in 2006. They granted my client a deed
6 of trust pledging their entire interest in the
7 property. That's when the severance occurred, and at
8 that time there wasn't a drainfield that existed on
9 this parcel. There's no evidence of that in this
10 record.

11 In fact, I checked at the permit assistance center
12 this morning and discovered that the as-built for
13 this drainfield was filed in 2011. And I can hand a
14 copy of that up so that it's included in the record.

15 THE COURT: Mr. Edwards, you have utilized
16 most of your time.

17 MR. EDWARDS: Yeah. Well, I've made the
18 argument I intend to make which is the key fact here,
19 again, in 2006, when my client took the deed of
20 trust, the Cokeleys had the ability to and did convey
21 their entire interest in this property.

22 THE COURT: Mr. Kee.

23 MR. KEE: Your Honor, the Sandy Family Five
24 keeps contending in its pleadings that it had no
25 knowledge of an easement or drainfield easement. The

1 original drainfield easements were recorded in 2005.
2 They're in the record. They're attached to Mr.
3 Edwards' declaration; actually in my declaration.
4 There was easements recorded by the Cokeleys in 2005.

5 And thinking about, you know, the equities in
6 this, what happened with the Cokeleys is they bought
7 three parcels of property or came into ownership of
8 three parcels of property. They realized immediately
9 that parcel number 1100 needed a drainfield easement
10 to have a septic system operable on its property
11 because you couldn't build on this property, so they
12 immediately granted back in '05 drainfield easements.
13 Now, there's this --

14 THE COURT: And recorded them.

15 MR. KEE: And recorded them.

16 Now, they were not taken to a lawyer or they're
17 not exactly how we would like to see them, but they
18 are part of the record. They were in the auditor's
19 files. A simple property search would have revealed
20 that they occurred and they were there. So for the
21 Sandys to say that they didn't have notice or at
22 least constructive notice of those easements when
23 they executed the deed, when they accepted the deed
24 of trust in 2006, is inaccurate. They knew about
25 them.

1 And what's more important about that is --

2 THE COURT: Or could have known.

3 MR. KEE: Well, the parties are obligated to
4 -- I mean, when someone buys a piece of property,
5 they buy it as is with whatever encumbrances are
6 there. This encumbrance was there. The way we track
7 encumbrances is through the Auditor's Office and the
8 recording of documents. The document was recorded.
9 So if the Cokeleys had gone through and checked out
10 this parcel number, 0500 and 0400 --

11 THE COURT: You mean the Sandys.

12 MR. KEE: I'm sorry. The Sandys had gone and
13 checked out the parcel number, the easements would
14 have popped up. And what's more important about that
15 is at that time they had the ability to control the
16 terms of that loan. They could have gone to Sandy
17 and said you need to destroy this easement or you
18 need to give us a security interest in parcel number
19 1100, but they opted not to do that for whatever
20 reason. Instead, they try and use the Deed of Trust
21 Act as a hammer to do something that apparently
22 nobody intended and the Cokeleys certainly weren't
23 aware of in that the Cokeleys didn't think they were
24 granting the entire interest to Sandy Family Five as
25 part of the deed of trust. They continued to develop

1 this property. They sought permits from the County,
2 went through that process, and actually installed a
3 drainfield on the property for the easement on 500.
4 For the easement. So there's no evidence that the
5 Cokeleys had any intention of conveying this easement
6 as part of this process.

7 In fact, the Deed of Trust Act -- as I've cited in
8 my brief, the courts are obligated to interpret the
9 Deed of Trust Act in favor of borrowers. So what the
10 plaintiff attempts to do is rely on this language
11 that's buried in the deed of trust that the Cokeleys
12 clearly did not intend and was inconsistent with what
13 they understood the transaction to be and develop the
14 property. And that's highlighted by the fact that
15 the Cokeleys got into a dispute with their neighbors
16 that ended up in the Washington State Supreme Court
17 that regarded development of 1100. Now, I dare to
18 say the Cokeleys would not have gone through that
19 process had they known that they had defaulted on a
20 loan where they would lose the ability to develop
21 this property. So this tie in that the plaintiffs
22 are trying to make that the deed of trust somehow
23 destroys this easement is just simply not accurate.

24 The easements were valid when they were created.
25 Taking the relief the plaintiff asks you to do,

1 saying that a person could never grant an easement on
2 property that it owns, is illogical. Think about a
3 developer who owns a 20-acre parcel and that
4 developer opts to develop a property and divide it
5 into smaller parcels and one or two of those parcels
6 needs some type of easement or something the
7 equivalent of an easement as part of that process.
8 The argument that the plaintiff makes is that that
9 could never occur. You could never grant easements
10 between parcels in the development process, and
11 that's simply illogical.

12 The Cokeleys knew exactly what they were doing.
13 They treated these parcels as independent,
14 stand-alone development properties, which is exactly
15 what they were, and they knew that 1100 needed a
16 drainfield easement. They created it and then they
17 followed through with that plan.

18 And then plaintiff says, hey, let's look at this
19 from the perspective of Sandy Family Five; look at it
20 in their shoes. I don't disagree that the Court
21 should do that, but it should also look at the
22 Browns' perspective of this case. They did
23 everything that they could do, and what they ended up
24 with is a lot with a recorded drainfield easement
25 that they knew was recorded before the Sandy family

1 deed of trust, and it was represented in their
2 purchase-and-sale documents, which are also attached
3 to the record, that they had an easement. It's in
4 the disclosure statement where the Cokeleys said we
5 have an easement; here is the easement. They paid
6 for that, paid \$130,000 for that property. If the
7 Court destroys that easement, then the Browns'
8 property, by everybody's estimation, is worthless
9 because they can't build on it. Worthless is
10 probably a little bit of a stretch, but it's
11 certainly not worth more than a few thousand dollars.

12 Alternatively, that is not the case with the
13 Sandys, right? These properties can be developed.
14 It's just a little bit more inconvenient for them.
15 So if the Court has to weigh equities in this kind of
16 scenario, which I would submit it doesn't, these are
17 valid easements. There is no need to go beyond the
18 recorded easements. The equities of this case
19 certainly favor the Browns because they're going to
20 be put in a position of having paid \$130,000 for a
21 worthless lot if the Court grants the plaintiff's
22 motion for summary judgment or denies our motion for
23 summary judgment in this instance. That's simply not
24 -- it's not consistent with the Deed of Trust Act.
25 It's not consistent with what the Cokeleys conveyed.

1 It's not consistent with the understanding of the
2 parties. It just doesn't make any sense to go down
3 that road when there are valid recorded easements
4 that are out there.

5 We would ask the Court to grant the Brown family's
6 motion for summary judgment.

7 THE COURT: Mr. Kee, would you agree that
8 assumptions were made on both sides with regard to
9 these easements, an assumption that the easements
10 were invalid, which was apparently an assumption that
11 could be argued was made by Sandy, as opposed to an
12 assumption by your clients that the easement was
13 valid?

14 MR. KEE: Well, we know that my clients
15 assumed the easement was valid because it is
16 expressly stated in the purchase-and-sale documents
17 and it was a recorded easement, so they looked at it
18 and said I've got an easement.

19 We don't know if the Sandy family assumed the
20 easement was invalid because there's nothing in the
21 record that says that. What we do know is that the
22 Sandy family controlled the terms of that deed of
23 trust. They could have gone to the Cokeleys and said
24 we're not loaning you the money unless you convey us
25 that easement or you destroy the easement or convey

1 us an interest in 1100.

2 So what's important about that distinction that
3 the Court makes is that the Sandy family controlled
4 it and it was a simple fix for them. My clients, on
5 the other hand, followed all the recorded documents
6 and ended up with what they thought was a property
7 with a recorded easement on it, which in fact was the
8 case, and now they're learning that someone is coming
9 back and saying wait, that easement got destroyed by
10 this other document.

11 THE COURT: Thank you.

12 Mr. Edwards.

13 MR. EDWARDS: Yes.

14 Counsel talked about what the Cokeleys believed at
15 the time they executed this deed of trust, and the
16 best evidence -- in fact, the only evidence in this
17 record of what the Cokeleys believed is what is in
18 the deed of trust itself. Just look --

19 THE COURT: What about what was recorded?

20 MR. EDWARDS: But you have to look at the deed
21 of trust. What does the deed of trust say? It says
22 on its face, we are granting -- we, the Cokeleys, are
23 granting Sandy all of our interest in this property,
24 all of it. It says it on the face of the deed of
25 trust.

1 THE COURT: But that doesn't really answer my
2 question. Like I said at the beginning of this
3 argument, all we know is that both your client and
4 Mr. Kee's client got what the Cokeleys had, so we
5 have to look further and know exactly what the
6 Cokeleys had at that time.

7 MR. EDWARDS: Right, and in 2006 the Cokeleys
8 had all of the interest in the property. They had
9 all of the interest. They conveyed all of the
10 interest as security to my client.

11 THE COURT: If you assume that the documents
12 that were recorded regarding the drainfield easement
13 in 2005 were invalid.

14 MR. EDWARDS: Whether they're invalid or not,
15 the deed of trust on its face says we're conveying
16 all of the interest in the property that we have the
17 power to convey. I don't believe those easements
18 were valid, but even if one assumed that there was
19 some validity to them, the Cokeleys held all interest
20 on both sides of that easement.

21 THE COURT: So doesn't that put your clients
22 on notice to go to the Auditor's Office and see what
23 the Cokeleys owned?

24 MR. EDWARDS: No. It puts my client -- it
25 gives my client the obligation to ensure that the

1 Cokeleys are conveying all the interest that they had
2 the ability to convey, and that's what the deed of
3 trust on its face says that the Cokeleys are doing.
4 In order for the deed of trust not to have conveyed
5 all the interest the Cokeleys had the power to convey
6 and since they had the power to convey to eliminate
7 this easement, because they were the only
8 beneficiaries of it, it was up to the Cokeleys to
9 specifically put something in this deed of trust
10 accepting this easement, saying Sandy, we're not
11 conveying our entire interest in this property; we
12 are accepting this deed of trust.

13 Counsel made an argument from plats. There is a
14 specific statute that governs plats, but the basic
15 point is just like here. When somebody files a plat,
16 until they sell a piece of the property in the plat
17 to someone they can go back and they can change the
18 easements in the plat as much as they want. Until
19 the Cokeleys sold or granted an interest in some of
20 these properties to someone, which they did in 2006
21 when they conveyed their entire interest to my
22 clients, they could do what they want with this
23 easement. So when they conveyed in 2005, they
24 conveyed the entire interest they had the power to
25 convey. That's what it says in the Deed of Trust

1 Act. That's what it says on the face of the deed of
2 trust. In fact, in 2006, they had the power to
3 convey free and clear of any claim arising on account
4 of these drainfield easements because they were the
5 only ones that had an interest in these easements.

6 Counsel also pointed out, you know -- again I
7 repeat, my clients did everything that they were
8 required to do to completely perfect an interest in
9 the fee simple, the fee simple interest in this
10 property. What the Browns didn't do is first, when
11 they bought this property, there's nothing in the
12 deed that says that they're taking an easement over
13 the Sandy property. It's not in the deed by which
14 the Cokeleys conveyed. And second, the Browns didn't
15 pay attention to what was filed of record because
16 when they took, they knew that my clients had a deed
17 of trust which on its face has the Cokeleys saying
18 we're conveying to you all the interest that we had
19 the power to convey in 2005 when we gave you this
20 deed of trust. So the Browns could look at that and
21 see that the Cokeleys had conveyed all of their
22 interest in the Sandy property. That's why the
23 Browns had record notes.

24 THE COURT: Thank you.

25 Anything else?

1 MR. KEE: Just real quickly, Your Honor, the
2 interpretation the plaintiff seeks to have the Court
3 apply to the Deed of Trust Act is totally
4 inconsistent with the Act itself which deems that the
5 interpretation should be granted in favor of the
6 borrowers. The Cokeleys didn't think that they
7 granted this easement to Sandy Family Five in 2006.
8 They spent countless hours and thousands of dollars
9 and went up to the Supreme Court in a case battling
10 that out and determining that. There's no evidence
11 that they granted that interest.

12 What is of evidence is they recorded easements,
13 they were expressed easements, they were for the
14 benefit of 1100, and nothing to date has been
15 recorded that would be contrary to that. So we ask
16 the Court to grant the motion for summary judgment.

17 THE COURT: Anything else, Mr. Edwards?

18 MR. EDWARDS: I think that it's not a fair
19 assumption that counsel just drew. I think the
20 Cokeleys could have assumed that they were going to
21 be able to pay off the Sandy deed of trust, which
22 would have solved this problem. So up until 2013
23 when the foreclosure occurred, that's the assumption
24 that they were operating under. There's certainly
25 nothing else in this record -- there's no direct

1 evidence of anything the Cokeleys believed in this
2 record other than the language in the deed of trust
3 itself.

4 THE COURT: Thank you.

5 The Court is prepared to issue rulings at this
6 time on the competing motions for summary judgment.

7 The parties in this case agree that this is a
8 legal question for the Court to resolve based upon
9 this particular record, and I agree with that as
10 well. I believe that this issue can be addressed as
11 a matter of law and that there are no factual issues
12 that need to be determined, and on the basis of this
13 record, the Court is denying the plaintiff's motion
14 for summary judgment and granting the defendant's
15 motion for summary judgment. The Court believes that
16 that ruling is appropriate as a matter of law based
17 upon this record.

18 I would appreciate it if the parties prepared an
19 order indicating the Court's ruling that states what
20 the Court considered in ruling on this motion,
21 including all of the briefing by both parties.

22 Do the parties require any further clarification?

23 MR. KEE: No, Your Honor.

24 MR. EDWARDS: I don't, Your Honor.

25 MR. KEE: I'll prepare a motion and submit it

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to Mr. Edwards and get it to the Court. Or an order.

Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings were concluded.)

EXHIBIT N

Transcript of follow-up hearing

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IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SANDY FAMILY FIVE, LLC, a)
Washington Limited Liability)
Company,) NO. 14-2-01934-1
)
vs.)
)
CRAIG J. BROWN and DEBRA A.)
BROWN, husband and wife, and)
and their marital community,)
)
Defendants.)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on January 30, 2015,
the above-entitled and numbered cause came on for motion
for reconsideration before the HONORABLE CAROL MURPHY,
judge of Thurston County Superior Court, Olympia,
Washington.

Cheri L. Davidson
Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
(360)786-5570
davidsc@co.thurston.wa.us

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A P P E A R A N C E S

For the Plaintiff: MATTHEW B. EDWARDS
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1115 West Bay Drive, Suite 302
Olympia, WA 98502

For the Defendants: C. SCOTT KEE
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JANUARY 30, 2015

THE HONORABLE CAROL MURPHY, PRESIDING

* * * * *

THE COURT: We will address number 13, Sandy Family Five, LLC vs. Brown.

MR. EDWARDS: Good morning, Your Honor.

THE COURT: We will begin with appearances on the record. Good morning.

MR. EDWARDS: Matt Edwards representing Sandy Family Five, LLC.

MR. KEE: Good morning, Your Honor. Scott Kee appearing for Craig and Debra Brown.

THE COURT: I understand there are two motions before the Court, a motion to set a bond and then a motion for reconsideration. Is that accurate?

MR. EDWARDS: That's correct, Your Honor.

THE COURT: Okay. Mr. Edwards, this is your motion, or two motions.

MR. EDWARDS: Yes. Thank you. I'll address the motion for reconsideration first.

I filed that for three reasons. The first is in rendering its decision, the Court seemed to suggest that we were stipulating that there was no material issue of fact. We moved for summary judgment because we thought we were entitled to it based on the plain

1 language in the deed of trust, but to the extent that
2 this case turns on the intent of the parties, there
3 is at a minimum in this record dispute as to what the
4 intent of Sandy and the Cokeleys was when they
5 executed that deed of trust, and I wanted to make
6 sure that it was clear on the record that we hadn't
7 stipulated to any facts.

8 The second thing I wanted to do is when the Court
9 announced its decision, it didn't explain the
10 reasoning behind it, and so I was hoping to have the
11 Court explain to me and my client -- because in
12 talking about this with my client, it was difficult
13 for me to explain to him why the Court had ruled this
14 way. So I'm asking the Court to explain exactly what
15 it is that my client needed to do to perfect its deed
16 of trust in a way that would prevail here and help
17 both me and my client understand the Court's ruling.

18 And then, finally, I wanted to ask the Court to
19 clarify whether it based its ruling at all on the
20 affirmative claim that was pled by the Browns of an
21 easement by implication. As I pointed out in our
22 materials, that claim is not -- it's an affirmative
23 claim, yet it was not pled by the Browns in their
24 answer, so the Court doesn't have jurisdiction over
25 that claim.

1 In any event, easement by implication requires
2 that there be a quasi-easement impressed on the
3 property at the time of the severance of title. In
4 this case, as the declaration I filed makes clear,
5 the severance occurred in 2006 when the deed of trust
6 was recorded, and no septic system improvements were
7 actually installed until five years later, in 2011.

8 So those are the three issues I'm raising in
9 connection with the motion for reconsideration.

10 And then as to the motion to set a supersedeas
11 amount, we ask the Court to require \$1,000 cash or
12 bond to supersede this judgment. Basically we're
13 talking about a septic system that has been installed
14 but there's no house that it connects to and they
15 aren't going to be building a house in the period of
16 time where this case might be going up on appeal
17 because I expect that appeal to proceed pretty
18 quickly. We haven't received any opposition to our
19 motion to have the Court set a bond in that amount.

20 THE COURT: Thank you.

21 Mr. Kee.

22 MR. KEE: Your Honor, I'll tackle the second
23 issue first. My client doesn't object to the terms
24 that Mr. Edwards is seeking regarding the supersedeas
25 bond.

1 I do want to clarify that my clients don't intend
2 to build on the property, but there are no orders in
3 place that preclude them from doing so. That has not
4 been addressed by this Court, for clarity's sake.

5 This issue was well briefed in the preliminary
6 brief. The motion for reconsideration was submitted,
7 and my client submitted a response. The issues
8 haven't changed, Your Honor. The facts haven't
9 changed. It appears today that Mr. Edwards is
10 seeking clarification regarding the Court's ruling
11 and the reconsideration aspect of it. I don't see
12 any basis for the Court to reconsider what it ruled
13 before.

14 Certainly if the Court has questions regarding our
15 original pleadings or briefs, I'll be happy to
16 address it. I believe the Court has spent enough
17 time on this matter to issue its ruling.

18 THE COURT: Mr. Edwards?

19 MR. EDWARDS: I don't have anything further to
20 add other than what's in my brief and what I've
21 already asked the Court about.

22 THE COURT: Thank you.

23 It is true that the Court has spent quite a bit of
24 time on this case, but I actually appreciated the
25 opportunity to look at it again in light of Mr.

1 Edwards' arguments and assertions with regards to the
2 Court's ruling. In doing so, the Court is denying
3 the motion for reconsideration.

4 I will offer this in terms of clarification,
5 although I doubt that it is going to satisfy Mr.
6 Edwards or his clients with regard to the
7 clarification being sought.

8 First of all, the Court began its oral ruling
9 indicating that there are no factual disputes or
10 something similar to that. That was based upon the
11 Court reviewing the briefs in the case that were
12 cross-motions for summary judgment on different
13 bases, but still each party in this litigation
14 believed that it was entitled to judgment as a matter
15 of law. That was the basis for the Court indicating
16 that in its oral ruling.

17 As the motion for reconsideration indicates, the
18 Court's oral ruling has not yet been placed into a
19 written order. At the end of my oral ruling, I
20 indicated to the parties that I expected that they
21 would prepare a written order for presentation. That
22 has not yet occurred.

23 MR. KEE: I have -- I think we each have
24 orders.

25 MR. EDWARDS: Yeah.

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MR. KEE: So there's one minor distinction between the orders we're asking the Court to consider.

THE COURT: Okay. And that wasn't noted for presentment today, but I want to finish my ruling on the motion for reconsideration, even though technically perhaps premature, but I think it is helpful to rule on these motions when they come up.

With regard to the Court's ruling on summary judgment, the Court denied the plaintiff's motion for summary judgment and granted the defendant's motion for summary judgment. As I stated earlier, I spent quite a bit of time looking over the record in this case and certainly understand that there may not be exact clarity in granting the defendant's motion as to whether the easement in place is the most recent easement in the records or the one that was filed with the Auditor's Office prior to the deed of trust, but that wasn't before the Court. The Court did not rule on that. The Court simply ruled on the motions that were before the Court at the time.

I do not believe that the Court's ruling turns on the intent of the parties. I did not make any findings with regard to the intent of the parties. My ruling on summary judgment was based solely on the

1 law and the argument that was provided in the
2 briefing and at oral argument.

3 That is the only clarification that the Court
4 deems necessary today. The motion for
5 reconsideration is denied.

6 The Court is also ordering the bond at \$1,000 as
7 requested without opposition.

8 I presume that the parties do have some orders.
9 If they are not agreed to, we can address that
10 further.

11 MR. KEE: I think they're relatively simple,
12 Your Honor. The only point -- Mr. Edwards hasn't
13 seen mine, but we submitted basically the same order
14 but there was language in there where Sandy Family
15 wanted the Court to find that it does not grant
16 summary judgment with respect to the Browns' claim of
17 an implied easement, and my order just says that the
18 plaintiff's motion has been denied and the
19 defendant's motion has been granted. I think that's
20 the distinction.

21 THE COURT: Correct. Of course I would have
22 preferred that the parties sought clarification on
23 the day that that motion was argued because in
24 looking back, I am trying to reconstruct what
25 happened on that date. The Court did grant summary

1 judgment.

2 I will just tell you, my focus was not on the
3 implied easement issue, and I don't think that that
4 was the basis for the Court's decision because I was
5 focused on the records and the other issues that were
6 presented. So I think it is accurate to say that the
7 implied easement issue was not the basis of the
8 Court's ruling.

9 MR. KEE: So did the Court review the proposed
10 order by Mr. Edwards? The language says that it does
11 not grant summary judgment with respect to the
12 Browns' claim of an implied easement.

13 THE COURT: As I said before, I have not been
14 presented with orders. In fact, it is not even up
15 for presentment today, so I didn't anticipate ruling
16 on objections to any proposed orders today.

17 MR. KEE: I don't have an objection to Mr.
18 Edwards' order. I would just ask that the Court
19 review that paragraph while we're here and clarify
20 whether or not that's the Court's ruling.

21 THE COURT: I think we'd better maybe sign
22 this a different day. It sounds like the parties are
23 not in agreement. Quite frankly, I spent my prep
24 time for this case on the reconsideration issue and
25 the issues that were noted for today. It may very

1 well be a significant clarification that the Court is
2 making, and I am not prepared to do that today.

3 MR. KEE: Well, let me -- I need to talk with
4 my client about it. If I contact the Court and -- we
5 both signed off on the order. If I contact the Court
6 and let the Court know that it's okay for the Court
7 to sign the order, is there any reason for us to come
8 back or would the Court be willing to sign the order
9 based on that representation?

10 THE COURT: There is a procedure for entry of
11 orders ex parte, and if they are agreed, I will sign
12 it using the ex parte procedure.

13 MR. KEE: So should we leave the order with
14 the clerk today signed or should we take it with us?

15 THE COURT: You better take it with you.

16 MR. KEE: Thank you, Your Honor.

17 MR. EDWARDS: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (Proceedings were concluded.)
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EXHIBIT O
Final Judgment

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FILED

FEB 13 2015

Superior Court
Linda Myhre Enlow
Thurston County Clerk

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY	
SANDY FAMILY FIVE, LLC, a Washington Limited Liability Company,	Plaintiffs,
v.	
CRAIG and DEBRA BROWN, husband and wife, and other marital community	Defendants.

NO. 14-2-01934-1

FINAL JUDGMENT

I. JUDGMENT SUMMARY

No monetary judgment.

II. JUDGMENT

This matter came on regularly for hearing on Friday, January 9, 2015 and again on Friday, January 30, 2015. The Plaintiff Sandy Family Five, LLC was represented by Matthew Edwards of Owens Davies, P.S. The Defendants Craig and Debra Brown, husband and wife, and their marital community, were represented by Scott Kee of Rodgers Kee & Card P.S.

The Court considered the following pleadings:

1. Motion for Summary Judgment;
2. Declaration of Matthew Edwards In Support of Motion for Summary Judgment;
3. Defendants' Motion for Summary Judgment Dismissing Plaintiff's Complaint;
4. Declaration of C. Scott Kee;
5. Declaration of Craig Brown;
6. Brief in Response to Defendants' Motion for Summary Judgment;

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Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150

- 1 7. Defendant's Response to Plaintiff's Motion for Summary Judgment;
- 2 8. Sandy Family Five's Reply Brief in Support of Motion for Summary Judgment,
- 3 and in Opposition to Browns' Motion for Summary Judgment;
- 4 9. Declaration of Larry Weaver;
- 5 10. Supplemental Declaration of Matthew Edwards in Opposition to Craig and Debra
- 6 Brown's Motion for Summary Judgment;
- 7 11. Defendant's Reply Brief in Support of Their Motion for Summary Judgment
- 8 Dismissing Plaintiff's Complaint;
- 9 12. Plaintiff's Motion for Reconsideration;
- 10 13. Declaration of Matthew Edwards; and
- 11 14. Defendants' Response to Plaintiff's Motion for Reconsideration.

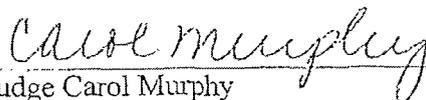
12 In addition, the Court considered the oral argument of counsel.

13 Based on the foregoing, the Court hereby DIRECTS THE CLERK TO ENTER, AND

14 ENTERS FINAL JUDGMENT as follows:

- 15 1. Sandy Family Five, LLC's Motion for Summary Judgment is DENIED;
- 16 2. Craig and Debra Brown's Motion for Summary Judgment is GRANTED, except
- 17 that the Court did not address, and does not grant summary judgment with respect to the Brown's
- 18 claim of an implied easement, which claim the Browns had not pled;
- 19 3. Plaintiff's Complaint is DISMISSED, WITH PREJUDICE, but without an award
- 20 of fees and costs to either party.
- 21 4. This constitutes the FINAL DECISION AND JUDGMENT of this Court.

22 DATED this 13th day of Feb., 2015.

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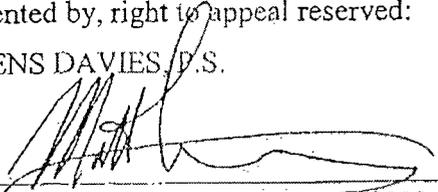
24 Judge Carol Murphy

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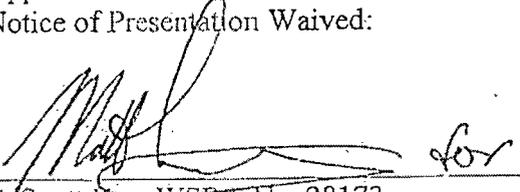
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1 Presented by, right to appeal reserved:

2 OWENS DAVIES, P.S.

3 
4 _____
5 Matthew B. Edwards, WSBA No. 18332
6 Attorneys for Plaintiffs, Sandy Family Five, LLC

7 Approved as to Form;
8 Notice of Presentation Waived:

9 
10 _____ for
11 C. Scott Kee, WSBA No. 28173
12 Attorneys for Defendants, Craig and Debra Brown

per attached e mail authorization

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EXHIBIT P
Notice of Appeal

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FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2015 FEB 13 AM 9:23

LINDA MYHRE ENLOW
THURSTON COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

SANDY FAMILY FIVE, LLC, a Washington Limited Liability Company, <div style="text-align: right;">Plaintiffs,</div> v. CRAIG and DEBRA BROWN, husband and wife, and other marital community <div style="text-align: right;">Defendants.</div>

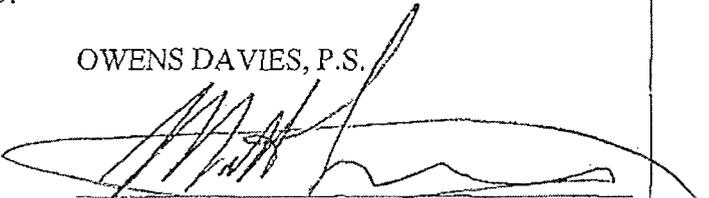
THURSTON COUNTY
CAUSE NO. 14-2-01934-1

NOTICE OF APPEAL

Petitioner, Sandy Family Five, LLC, seeks review by Division II of the Court of Appeals of the Final Judgment entered February 13, 2015. A copy of the Final Judgment is attached.

DATED this 13th day of February, 2015.

OWENS DAVIES, P.S.



Matthew B. Edwards, WSBA No. 18332
Attorney for Plaintiff

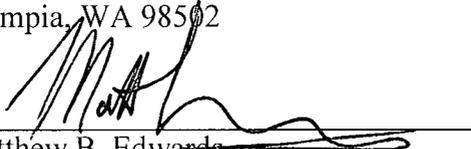
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CERTIFICATE OF SERVICE

I certify that on the 27 day of February, 2015, I caused a true and correct copy of this Appellant Sandy Family Five, LLC's Opening Brief to be served on the following in the manner indicated below:

Scott Kee
Pearson Kee & Card
324 West Bay Dr NW
Suite 201
Olympia, WA 98502

Via Hand Delivery

By: 
Matthew B. Edwards

FILED
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