COUNTY CLERKS OFFICE
FILED

APR 23 2004

MARY JEAN CAHAIL
SAN JUAN COUNTY WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR SAN JUAN COUNTY

Bradley F Henke and Judith M Henke,

Plaintiffs,

vs

Oly Rose, LLC and Rockresorts International, LLC

Defendants

NO 02-2-05188-1

SUPPLEMENTAL COMPLAINT

In supplementation of plaintiffs' complaint herein, pursuant to CR 15, plaintiffs state the following further allegations and alternative prayer for relief

1 Subsequent to the complaint in this case and extensive discovery, the defendants made an agreement with the plaintiffs in compromise of the parties' claims and defenses (the "settlement agreement") which is to provide for certain payments to plaintiffs and to establish rights and obligations as set out below of the plaintiffs and defendants, as well as the successors of defendant Oly Rose, LLC, and of present and future owners of lots within the plat of Rosario Estates, recorded at vol 3, p 3, of the records of this county, and of lots within surrounding plats made by Gilbert H Geiser, et ux (collectively, the "Geiser plats")

2 The settlement agreement is a good faith compromise of a genuine

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dispute concerning the rights of defendant Oly Rose, LLC, as owner of the land known as Rosario Resort described in Ex A, and of rights claimed by plaintiffs to belong to all lot owners within the plat of Rosario Estates and the Geiser plats to the use of a part of that land depicted on the plat of Rosario Estates with the label, "RECREATION AREA," bounded on the north, south and west by the concrete driveways and seawall labelled as such on the plat, as extended by the pathway shown on the plat south to the driveway forming the south boundary, and on the east by the west wall of the building shown labelled "SHOP," as extended north to the driveway and south to the seawall, as shown on Ex B

3 The recreation area includes an existing swimming pool facility composed of a heated outdoor pool, a surrounding patio and adjacent changing room, which plaintiffs claimed was subject to a right of use and access by all lot owners within the plat of Rosario Estates and the Geiser plats, and by the lot owners' family members and guests, as well as by guests and employees of the owners of Rosario Resort

4 Evidence discovered by both parties by the date scheduled for trial, January 27, 2004, indicated that Mr Geiser had contracted to receive a fee in the amount, generally, of $4 00, from both lot owners within the plat of Rosario Estates and the Geiser plats to defray part of the cost of maintenance of the recreation area, including the swimming pool facility

5 As part of the settlement agreement, the parties agreed that certain land, including the existing dumbell shaped shallow pond mislabelled "swimming pool" on the diagram of the plat of Rosario Estates, constituting part of the recreation area and adjoining tideland and other land seaward of it northerly and easterly of the line between lots 6 and 6A as projected seaward

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and fully described in Ex C, will be maintained by Oly Rose and its successors as part of a private park easement for the use of the owners and families and guests of owners of lots in Rosario Estates and the Geiser plats as well as guests and employees of the Resort owners

6 Also agreed to be included as part of the private park easement is an existing outdoor swimming pool facility within the claimed recreation area south and west of the area described in Ex C, as well as access to it, provided that the Resort owner shall have the right to relocate the swimming pool facility within the recreation area, so long as the construction of a new pool facility and destruction of the old facility is timed so as to assure that lot owners have the use of a pool facility and access to it during each normal summer and fall season

7 The parties further agreed that the Resort owners may require of the lot owners, as a condition to the exercise of their rights described in paragraphs 5 and 6 above, payment of the amount of $4 00 per month to partially defray the costs of maintenance of the agreed private park easement (hereafter, "recreation maintenance fees"), including the existing or relocated swimming pool facility, such that the rights of any lot owner, and his family and guests, described in paragraphs 5 and 6 shall be suspended during any period in which he has failed to pay recreation maintenance fees which have properly been invoiced to him by the Resort owners

8 The defendants further agreed to pay to plaintiffs the amount of $15,000 and the witness fees of plaintiffs' surveyor witnesses who were present to testify at trial, Al Hebrank and Jeff Iverson, which fees have been paid by plaintiffs and are reflected in statements attached hereto as Ex D

9 On the date on which this case was earlier called for trial, January

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27, 2004, defendants and plaintiffs through their counsel of record memorialized the terms of their settlement agreement upon the record, a true copy of the transcript of which statement is attached as Ex E, in consideration of which plaintiffs relinquished their opportunity to try this cause at that time and the trial date was stricken

WHEREFORE, plaintiffs request the court to grant the following relief, as an alternative to the relief claimed in their original complaint herein

a judgment creating and defining a private park easement to benefit and run with the plaintiffs' lots and other lots within the plat of Rosario Estates and the surrounding plats created by Gilbert H Geiser in this county and to burden the land described in Ex A, as set out in paragraphs 5, 6 and 7, above,

b a mandatory injunction requiring defendants to perform their obligations pursuant to the settlement agreement set out above, and

c judgment against defendants for the amount of $15,000, together with interest from January 27, 2004, plus $2770 07, and awarding plaintiffs their costs and such other relief as may be just

Henke and Richter

by _____
Eric Richter,
Attorneys for Plaintiffs

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Exhibit "A"

PARCEL 1A (160621001) (Mansion)

That portion of Government Lot 3, Section 6, Township 36 North, Range 1 West, W M , and that portion of Government Lots 4 and 5 Section 31, Township 37 North, Range 1 West, W M , described as follow

Beginning at the southeast corner of Lot 18 as shown in the Plat of Rosario Estates recorded at Volume 2 of Plats at page 3, records of said county, thence along the easterly boundary of said Lot 18 and continuing along the easterly boundaries of Lots 19, 20E and 21E to the southeast corner of Lot 22E, thence along the easterly boundary of Lot 22E North 6°10' West 38 7 feet, thence northwesterly 45 feet, more or less, to the most southerly corner of Lot 10 of said plat, thence continuing northeasterly along the southeasterly boundaries of Lots 1 through 10 to the southeast corner of said Lot 1, thence along the northeasterly boundary of said Lot 1, 75 1 feet, more or less to a point on a line parallel with and 75 0 feet northerly of the north margin of a 40-foot wide easement road as shown on the face of "Sucia" as described at Volume 1 of Condominiums at page 1, said records, thence leaving said boundary and along said parallel line North 82°30' East 130 38 feet, thence North 87°57'40" East 90 38 feet, thence perpendicular to said north margin South 2°02'20" East 115 0 feet to the southerly margin of said 40-foot wide easement, thence along said southerly margin North 87°57'40" East 258 78 feet to the northwest corner of that parcel of land described at Auditor's File No 51101, thence along the westerly boundary of said parcel described at Auditor's File No 51101 southeasterly to a point on the line of ordinary high tide, thence southwesterly along said line of ordinary high tide to a point on the northerly boundary of Lot 18B of said Plat of Rosario Estates, that bears South 66°09' East from said true point of beginning; thence leaving said line of ordinary high tide and along said northerly lot boundary North 66°09' West to said point of beginning

EXCEPTING THEREFROM that portion described as follows

A part of Government Lot 6, Section 31, Township 37 North, Range 1 West, W M , described as follows

Beginning at a stake at the west corner of the tract, which is 171 6 feet north and 25 feet east of the meander corner common to fractional Sections 6 and 31 on the west side of Cascade Bay (said M C being on a fir stump 7 3 feet east of a concrete monument), thence north 65°28' east 72 8 feet to a stake, thence South 38°00' East 58.5 feet to a stake and on in the same direction 30 feet, more or less, to the line of ordinary high water, thence with same southwesterly to a point South 30°34' East of the beginning stake, thence North 30°34' West 30 feet, more or less, to a stake on top of the bank and on in the same direction 58 2 feet more to beginning stake at west corner known as "Round House"

TOGETHER WITH the Tidelands of the Second Class situate in front of, adjacent to, abutting upon that portion of the U S Government Meander Line of Government Lot 5 as conveyed by the State of Washington by Tideland Deed, recorded January 20, 1906, in Volume 10 of Deeds, at page 130 records of San Juan County, Washington

TOGETHER WITH the Tidelands of the Second Class situate in front of, adjacent to, abutting upon Government Lot 5 lying between the line of mean low tide and the line of extreme low tide as conveyed by the State of Washington by Deed, recorded February 3, 1912, in Volume 12 of Deeds, at page 615, under Auditor's File No 12709, records of San Juan County, Washington

Situate in San Juan County, Washington.

---shows claimed recreation area

Exhibit "B"

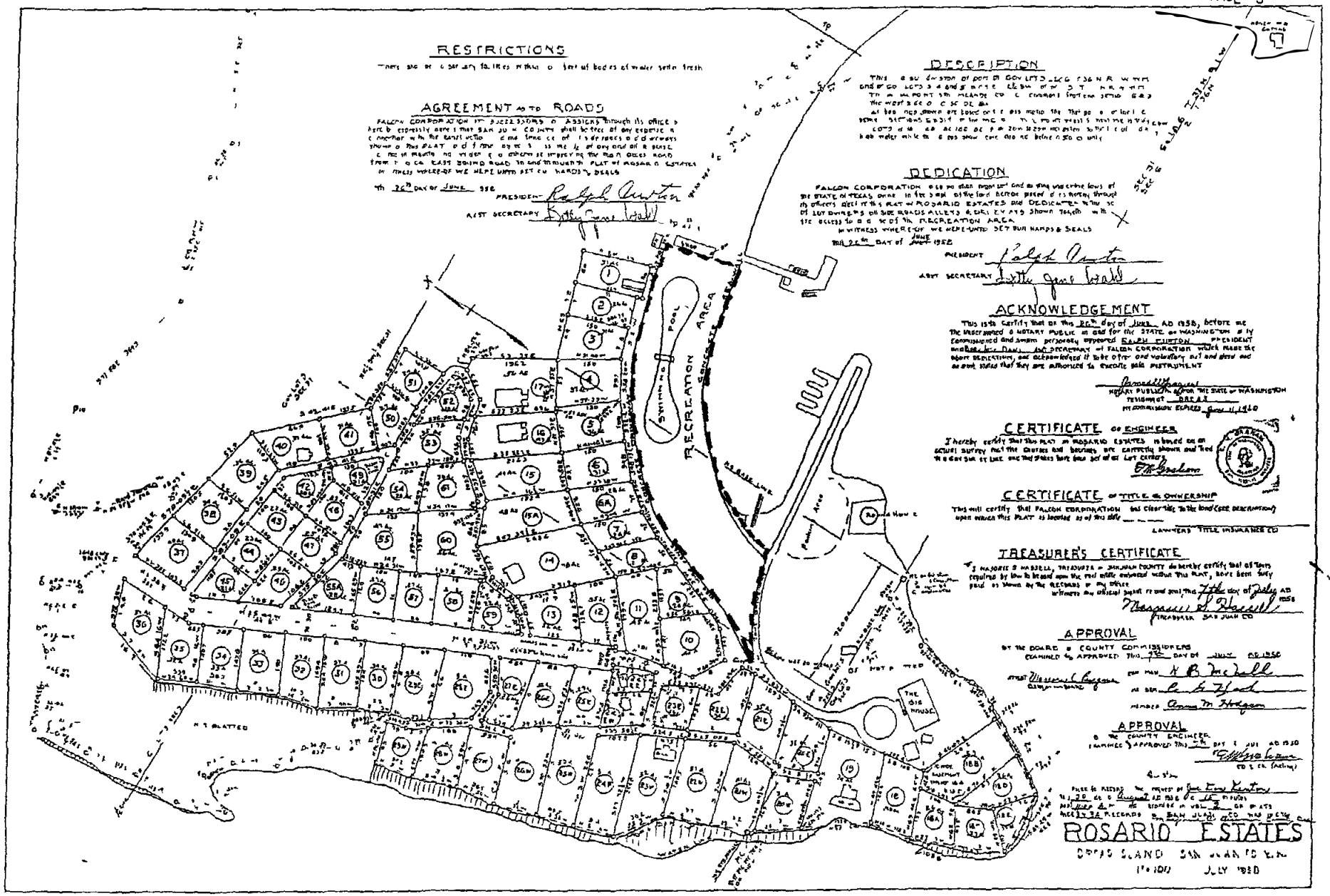


Exhibit "C"

LAND DESCRIPTION
FOR
RECREATION AREA AT ROSARIO RESORT

That portion of Government Lot 5 and Tidelands of the Second Class Abutting Section 31, Township 37 North, Range 1 West, W M., in San Juan County, Washington, described as follows

Beginning at a point where the Southeasterly extension of the boundary common to Lot 6 and Lot 6A of the Plat of Rosario Estates, as recorded at Volume 2 of Plats, Pages 3 and 3A, records of San Juan County, Washington, intersects the Southerly face of a concrete curb wall forming the Southerly margin of the concrete driveway abutting said Lots 6 and 6A, as shown on said plat; thence Easterly along said Southerly face 600 feet, more or less, to the intersection of said Southerly face with a line which is parallel with and 10 feet Westerly of the Westerly wall of that building shown as "shop" on said Plat of Rosario Estates, thence leaving said Southerly face and along said parallel line Southerly to the line of mean low tide, thence Westerly along said line of mean low tide to a point on the extension of said line common to Lots 6 and 6A, thence leaving said line of mean low tide Northwesterly along said extension of said common line to the Point of Beginning.



MPD, Incorporated, PS

February 17, 2004

OR-7235

EX. U P1

Albert J. Hebrank, P.L.S.
Land Information Services
3517 South 291st Street
Auburn, WA 98001
(253) 940-0212

28 January 2004

Mr Eric Richter
HENKE & RICHTER - ATTORNEYS
221 First Avenue West, Suite 215
Seattle, WA 98119

Re Rosario Resort Recreation Area

Invoice for services by Albert J Hebrank, PLS from 20 January to 28 January 2004

Date	Task Performed	Hours	Charge
20 Jan 04	Met with Eric Richter @ my place and discussed problem	1 5	$ 127 50
21 Jan 04	Researched "property line extensions", "definitions of monuments" and "control of intent"and copied and faxed info to Eric	5 0	$ 425 00
23 Jan 04	Finished up document research and assembled for presentation – again spoke with Eric by phone	3 0	$ 255 00
26 Jan 04	Travel to Friday Harbor(4 5), Met with Eric & Jeff Iverson(3 0)	7 5	$ 637 50
	110mi @ 0 34 = $ 37 95, ferry fare @ $ 30 50, breakfast @ $ 20 44, Lunch @ $ 17 00, Dinner paid for by Mr Henke, Room by Mr Richter		$ 105 89
27 Jan 04	On call in Courthouse awaiting outcome of settlement conference (9-11)	2 0	$ 170 00
	Breakfast		$ 14 60
28 Jan 04	Return to Auburn	3 5	$ 297 50
	110 mi @ $0 34 = $ 37 95, Lunch @ $ 20 38		$ 58 33
TOTAL BALANCE DUE		**22.5**	**$ 2,091 32**

NOTE Charges include meal expenses for my wife who acts both as my driver and caregiver since I have suffered five strokes and can no longer drive

Thank you for your patronage

Exhibit

Albert J. Hebrank, P.L.S.
Land Information Services
3517 South 291st Street
Auburn, WA 98001
(253) 940-0212

Pd 2/27

28 January 2004

Mr Eric Richter
HENKE & RICHTER - ATTORNEYS
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23 Jan 04	Finished up document research and assembled for presentation – again spoke with Eric by phone	3 0	$ 255 00
26 Jan 04	Travel to Friday Harbor(4 5), Met with Eric & Jeff Iverson(3 0)	7 5	$ 637 50
	110mi @ 0 34 = $ 37 95, ferry fare @ $ 30 50, breakfast @ $ 20 44, Lunch @ $ 17 00, Dinner paid for by Mr Henke, Room by Mr Richter		$ 105 89
27 Jan 04	On call in Courthouse awaiting outcome of settlement conference (9-11)	2 0	$ 170 00
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	110 mi @ $0 34 = $ 37 95, Lunch @ $ 20 38		$ 58 33
TOTAL BALANCE DUE		**22.5**	**$ 2,091 32**

NOTE Charges include meal expenses for my wife who acts both as my driver and caregiver since I have suffered five strokes and can no longer drive

REMITTANCE ADVICE

HENKE AND RICHTER
ATTORNEYS AT LAW
221 FIRST AVE W SUITE 215
SEATTLE WA 98119

15483

19 57 1250

PAY AMOUNT OF Two Thousand Ninety One and 32/100 DOLLARS

DATE	TO THE ORDER OF			CHECK AMOUNT
1/27/04	Albert J Hebrank	15483	Heller Clg Rcvd	$ 2,091 32

KeyBank National Association
Seattle Washington 98104
1 800 KEY2YOU

HENKE AND RICHTER
GENERAL ACCOUNT

⑈015483⑈ ⑆125000574⑆ 47250101456 8⑈

Ex D, p 5

IVERSON LAND SURVEYING
P O Box 842 / 470 Spring Street
Friday Harbor. Wa 98250

Invoice

INVOICE #
6401

BILL TO
RICHTER ERIC ATTNY BY FAX 206 282 3022

DATE
1/30/2004

TERMS	PROJECT
NET 15	

QUANTITY	DESCRIPTION	RATE	AMOUNT
6 75	Licensed Surveyor Research. Analy, Consult	85 00	573 75
1 75	Office Technician	60 00	105 00
	ROSARIO RECREATION AREA COURT CASE - CONSULT, RESEARCH. COURT PREPARATION		
	THIS BILL IS FOR ALL WORK PERFORMED UP TO SETTLEMENT - THANK YOU		
		Total	$678 75

Jeffrey A Iverson Registered Land Surveyor PS - a Professional Services Corporation

Phone #	360 378 4981	Fax #	360 378 6000

Ex 0,p 4

pd 2/27

IVERSON LAND SURVEYING
P O Box 842 / 470 Spring Street
Friday Harbor, Wa 98250

Invoice

INVOICE #
6401

BILL TO
RICHTER ERIC ATTNY BY FAX 206 282 3022

DATE
1/30/2004

TERMS	PROJECT
NET 15	

QUANTITY	DESCRIPTION	RATE	AMOUNT
6 75	Licensed Surveyor Research, Analy, Consult	85 00	573 75
1 75	Office Technician	60 00	105 00
	ROSARIO RECREATION AREA COURT CASE - CONSULT, RESEARCH COURT PREPARATION		

HENKE AND RICHTER
ATTORNEYS AT LAW
221 FIRST AVE W SUITE 215
SEATTLE WA 98119

REMITTANCE ADVICE

15482

19 57 1250

AY
MOUNT
IF Six Hundred Seventy Eight Dol 75/100 DOLLARS

DATE	TO THE ORDER OF			CHECK AMOUNT
2/27/04	Iverson Land Surveying	15482	Karen Lyn Rose	$ 678.75

:1011

KeyBank National Association
Seattle Washington 98104
1-800 KEY2YOU

HENKE AND RICHTER
GENERAL ACCOUNT

Karen Lyn Rose

Judith Crane MP

⑈015482⑈ ⑆125000574⑆ 47250 10 14568⑈

Total	$678 75

Jeffrey A Iverson Registered Land Surveyor PS - a Professional Services Corporation

Phone #	360 378 4981	Fax #	360 378 6000

Ex. E

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SAN JUAN

BRADLEY F. HENKE and JUDITH M. HENKE,

Plaintiffs,

vs

OLY ROSE, LLC and ROCKRESORTS INTERNATIONAL, LLC

Defendants.

Cause No 02-2-05188-1

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on Tuesday, January 27, 2004, the above-named and numbered cause came on regularly for hearing before the HONORABLE VICKIE I. CHURCHILL, Superior Court Judge, at the San Juan County Courthouse, in the town of Friday Harbor, state of Washington.

The Plaintiffs appeared through their attorney, Mr Eric Richter;

The Defendants appeared through their attorney, Mr John Linde

WHEREUPON, the following proceedings were had, to-wit

THE COURT Please be seated I'm calling Henke vs. Oly Rose, 02-2-05188-1.

MR RICHTER. Your Honor, we have -- this is Eric Richter, plaintiff's counsel We have a settlement to put on the record and that should be sufficient.

THE COURT Good.

MR LINDE Your Honor, John Linde on behalf of Oly Rose, LLC And with me in court is a representative of the company who is currently an employee at Rosario Resort, Christine Vierthaler. This matter has been crying out for settlement and Mr Richter and I have been using our best effort to accomplish that. It is a complicated matter and we apologize for the late date of the settlement, but it has been an ongoing effort and it actually took getting all the parties together to kind of work through things to come to that settlement. Part of the reason is we're dealing with rights created by individuals who have long since passed.

The plat that Mr. Henke and his family purchased in was developed in 1958 by Mr. Curtain operating Falcon Corporation. A plat was placed of record, the plat defined lots, it indicated on the face of the plat a reference to a recreation area, covenants and conditions were filed that made no reference to the recreation area or to any rights created thereby The recreation area shown on the face of

the plat is not included within the defined plat, it is not included within a parcel of land that's legally described and we had been taking the position that under RCW 64.04 010 and 020 that there was no right created, no grant, because the easement had to have a specific burden property.

There were arguments, however, made by counsel for plaintiff that there were equitable rights and those equitable rights were supported in some ways by a series of conveyances made by the successor to Falcon Corporation, Mr. Gilbert Geiser and his wife, who created a series of other plats, Rosario Estates 2, Rosario 3, Rosario Palisades, Rosario Shores, and perhaps others. And some of those, although not all of those conveyances, there was a reference to a fee for $4 for either dues or maintenance to a recreational area. And none of those plats showed a recreational area and still there was no defined recreation area of record.

So in an effort to try to provide something for those people who have perhaps expectations and who plaintiff in this case has indicated he is representing them in a way as well, we've come to an agreement to create for the first time what we're going to call a recreational park easement And that easement -- and I'm going to just point to the map and describe it as best I can and we will provide a correct

legal description for that for a document that will be placed of record by Oly Rose, LLC

And again, the area that I'm showing to the Court is volume 2, page 3 of plat San Juan County. And on that document we have a series of lots and an area between the lots which are defined as ending at the concrete driveway. The plat legal description actually refers to a chain link fence along that line and that is a legally defined line that we can come up with.

The area we're dealing with lies south and easterly of that, and we'll just call it southerly of that line. And the boundaries now will be on the east side .10 feet west of the building that is described on the face of the plat as shop It's also referred to in various correspondences as the boatel, like a hotel for boaters, a boatel That line will be extended from the chain link fence line, or the southerly line of the concrete driveway 10 feet east of the shop line to the shoreline and will include whatever interest Oly Rose has in tidelands, so we we're really creating a recreation area that provides access for these people to the beach as well as this area that's denominated swimming pool, but everyone agrees it's a lagoon pool It's a shallow pond that was decorative created by the Mr. Moran years ago

The seaward boundary, then, would be the line of

ordinary high tide and would run to a point --

MR. RICHTER: Seaward boundary is the shore including the tideland, as I understand.

MR LINDE That's correct, Your Honor. The westerly boundary, then, will begin at a point that is extended and it would be south 37 degrees, 38 minutes south from the --

MR. RICHTER: 30 -- pardon me. 37, 38 west

MR. LINDE: Except we're going in the opposite direction We're going south and east

MR. RICHTER Well, in any event, it's taking the westerly line of lot 6 and projecting it to the water --

MR LINDE: Correct.

MR RICHTER: -- boundary.

MR LINDE And again, we'll have one of the many surveyors who have helped us in this case help us to make sure we have that specified correctly, Your Honor, but Mr. Richter has stated correctly it will be the line common between 6 and 6A extended to shoreline including the beach and the tidelands and that will be the recreational park. It will be maintained by Oly Rose, LLC. The --

MR RICHTER And its successors.

MR. LINDE: And its successors. The document that will be placed of record will run with the land, obviously. It will include a right of access to and use of and it's been called a family swimming pool. And Your Honor, the

current family swimming pool is located south of the line and west of the line that I have described for the Court. So there will continue to be free access to and use of that pool

We, being Oly Rose, are reserving the right to relocate that pool. The resort is currently engaged in a master planning effort and will be conducting some construction in this area and has plans to relocate the pool and we've discussed that it's a seasonal pool and we will make every effort to keep the construction period such that it will not interfere with the seasonal swimming season at the resort, so the owners of the upland properties will continue to have that In other words, we're not going to extend the construction period so that the pool is actually closed for seasonal use

MR RICHTER In other words, the pool shall remain open during each normal summer and fall season.

MR LINDE And that's correct, Your Honor The important part is that the owner of the land, Oly Rose, and its successors, reserves the right to develop in the area lying west of the extended line between 6 and 6A They reserve the right to relocate the pool At such time as they relocate the pool there will be definition of that area and the owners within the plats will have the rights of access to and use of the pool facility, if a new

facility is built. If it's not, they'll continue to have rights of access to and use of the old family pool facility.

That describes the area, Your Honor It will be a right that is granted in perpetuity, it will run for the benefit of all of the lot owners, it will be Oly Rose's compliance with any contractual obligations that Mr Curtain and Mr. Geiser or predecessors have entered into with regard to providing that area, and the owners will, pursuant to their contractual obligations, pay the $4 per month maintenance use charge; and again, that's the only charge that would be assessed for their accesses to the family pool that exists, or the pool that replaces the family pool, assuming that the master plan goes forward

The defendants have agreed to pay to the plaintiffs a contribution toward fees and costs that they have incurred in this matter, fees totalling $15,000 and costs which are to be limited to travel expenses and witness fees for Mr. Hebrank.

MR. RICHTER Hebrank.

MR. LINDE: Hebrank, excuse me, and also consultation fees of Mr Jeff Iverson of Iverson Surveying

MR. RICHTER I have a few more remarks. Counsel for the plaintiff suggested that plaintiff in some way represented all lot owners. Plaintiff does not purport to

represent or bind any other lot owner than himself to this settlement, this having not been a class action or anything like that. So there may -- if there are other plaintiffs, other lot owners, this does not foreclose the possibility of them claiming whatever rights they may have under the original plats and contracts

As to the $4 fee obligation, it is just a -- it is a -- an obligation of plaintiffs to pay the $4 fees per month when invoiced. Their right to use the pool will not, however, be forfeitable and other lot owners' rights will not be forfeitable, but Oly Rose shall have a right to collect that $4 fee. Am I correct?

MR. LINDE That's correct, Your Honor I think we discussed that if someone does not pay the fee, their rights could be suspended, but they would have the right to reinstate their rights by payment of delinquent fees, so that they would not automatically lose or have terminated those rights, just suspended.

And Your Honor, I did not mean to imply to the Court or to counsel that this was a class action, I'd argue that it wasn't, but in some of the pleadings, the early pleadings, I think Mr Henke indicated that he wanted the result to be to the benefit of other persons and I was just indicating that he's kind of carried the torch for a lot of people in bringing this action before the Court. And even

though we don't have those other people to make it binding on them, we think this is an appropriate solution for all parties and Mr Henke has fostered that

THE COURT. Anything further?

MR RICHTER I think we're in agreement with that.

THE COURT Congratulations, gentlemen I think you've chosen wisely here and that's of the record. I assume that you will try as quickly as possible to have the final documents prepared.

MR LINDE We will, Your Honor

THE COURT Okay Thank you

MR. LINDE. Thank you, Your Honor

CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF SAN JUAN)

I, JESSICA SANFORD, do certify that the foregoing verbatim report of proceedings were taken by me and completed on Tuesday, January 27, 2004, and thereafter, transcribed by me by means of computer-aided transcription,

That I am not a relative, employee, attorney or counsel of any such party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof,

That I am herewith mailing the sealed original and e-mailing a copy of the transcript to Mr. Eric Richter and Mr. John Linde.

JESSICA SANFORD, RPR
CCR # 2371