

SKAMANIA COUNTY
REAL ESTATE EXCISE TAX

31220
MAY 11 2015

After Recording, Return To:

2642 BIRKENFELD HERITAGE LLC
c/o Mary Lee Birkenfeld
2642 Szydlo Road
Carson, WA 98610

PAID Exempt
Willie H. H. H. Deputy
SKAMANIA COUNTY TREASURER

Grantor: SKAMANIA COUNTY
Grantee: BIRKENFELD HERITAGE LLC
Assessor's Property Tax Parcel Account Number(s): 03060000190080
Abbreviated Legal: 40 ACRES LOCATED SOMEWHERE IN THE N ½ N ½ OF SEC. 25, T3N, R6E

QUIT CLAIM DEED

THE GRANTOR, SKAMANIA COUNTY, a political subdivision of the State of Washington, for and in consideration of Ten Dollars and Other Valuable Consideration, conveys and quit claims to BIRKENFELD HERITAGE LLC, a Washington limited liability company, the following described real estate, situated in the County of Skamania, State of Washington, together with all after acquired title of the grantor(s) therein:

AN UNDIVIDED 25% INTEREST IN THE NORTH HALF OF NORTH HALF OF SECTION 25, TOWNSHIP 3 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, SKAMANIA COUNTY, WASHINGTON, INCLUDING ANY INTEREST TRANSFERRED BY TREASURER'S DEED RECORDED APRIL 15, 1949 IN BOOK 32, PAGE 349, DEED RECORDS OF SKAMANIA COUNTY.

Dated May 5th 2015.

SKAMANIA COUNTY

Skamania County Assessor
Date 5-11-15 Parcel 3-6-1900-80


By Doug McKenzie, Chair
Board of Commissioners
Skamania County, Washington

STATE OF WASHINGTON

COUNTY OF SKAMANIA

} ss

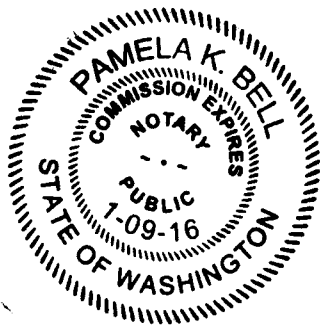
I certify that I know or have satisfactory evidence that DOUG MCKENZIE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the CHAIR OF THE BOARD

OF COUNTY COMMISSIONERS OF SKAMANIA COUNTY, to be the free and voluntary act of such entity for the uses and purposes mention in the instrument.

Dated ~~April~~ ^{May 5th}, 2015.

Pamela K. Bell

Notary Public in and for the State of Washington
Residing at Carson
My appointment expires: 1-09-2016



Unofficial Copy

RELEASE AND SETTLEMENT AGREEMENT

In consideration for the promises set forth below, Birkenfeld Heritage LLC, a Washington limited liability company ("Birkenfeld") enters into this *Release and Settlement Agreement* ("Agreement") with Skamania County, a political subdivision of the State of Washington (the "County"):

RECITALS

WHEREAS, Skamania County owns a disputed 25% interest in a 160 acre parcel of forest land within Skamania County, legally described as follows:

AN UNDIVIDED 25% INTEREST IN THE NORTH HALF OF NORTH HALF OF SECTION 25, TOWNSHIP 3 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, SKAMANIA COUNTY, WASHINGTON (the "Property"), and

WHEREAS, Birkenfeld Heritage, LLC owns 75% of the same parcel, and

WHEREAS, The ownership history of the parcel is clouded and for many years the 75% owner, Birkenfeld Heritage, LLC believed that they were 100% owners and paid property taxes accordingly, and

WHEREAS, Litigation regarding ownership and possible partition of the parcel could be costly to both Skamania County and Birkenfeld Heritage, LLC, with the outcome of such litigation uncertain, and

WHEREAS, Skamania County and Birkenfeld Heritage, LLC, in an effort to avoid the aforementioned cost and uncertainty of litigation, have engaged in extensive negotiations to settle the disputed ownership of the property that would allow Birkenfeld Heritage, LLC to harvest the timber on the property and for Skamania County to receive a fair and reasonable return for their ownership interest,

NOW, THEREFORE, Birkenfeld and the County agree as follows:

AGREEMENT

1. Birkenfeld and the County will execute, as soon as reasonably possible, a Vacant Land Purchase and Sale Agreement with Earnest Money Provision in a form substantially similar to that attached hereto as Exhibit "A."

2. The County agrees to execute, as soon as reasonably possible, a Quit Claim Deed, in a form substantially similar to the Deed attached hereto as Exhibit "B," deeding the disputed 25% interest in 160 acres to Birkenfeld.

3. Birkenfeld will execute, concurrently with the County's execution of the Quit Claim Deed, a Promissory Note and Deed of Trust, in forms substantially similar to those attached hereto as Exhibits "C" and "D," setting forth the obligation of Birkenfeld to cause the

County to be paid the proceeds of a timber harvest of the Property less certain costs associated with the harvest.

4. In return for the execution of such Purchase and Sale Agreement, Deed, Promissory Note, Deed of Trust, and this agreement, Birkenfeld and the County release, acquit, and forever discharge each other, individually and collectively, as well as their insurers, heirs, successors, executors, administrators, attorneys, assigns and agents, and all other persons, firms or corporations, liable or who might be claimed to be liable, none of whom admit any liability, but each of whom expressly denies any liability, of and from all claims for or arising out of the disputed ownership of the Property. Birkenfeld and the County agree that the only remedy to remain available to the County for an alleged breach or default under the terms of the Promissory Note shall be to demand a Deed-In-Lieu of foreclosure from Birkenfeld as to the forty (40) acres described in said Deed of Trust, or to foreclose said Deed of Trust judicially or non-judicially.

5. Birkenfeld and the County hereby declare that they have read this Agreement, which they fully understand and voluntarily accept for the purpose of making a full, final, and complete settlement, adjustment, and compromise of any and all of the existing or potential claims released above, arising out of the ownership dispute described above, in whatever legal form or theory they might assert, whether disputed or otherwise.

6. By signing below, each party approves this Agreement and agrees to be bound by it.

SIGNED this 5th day of May, 2015.

SKAMANIA COUNTY

BIRKENFELD HERITAGE LLC


By DOUG MCKENZIE, Chair
Skamania County Board of Commissioners


By Mary Lee Birkenfeld, Manager

STATE OF WASHINGTON }
COUNTY OF SKAMANIA } ss

I certify that I know or have satisfactory evidence that MARY LEE BIRKENFELD is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledged it as the

MANAGER of BIRKENFELD HERITAGE LLC, to be the free and voluntary act of such entity for the uses and purposes mention in the instrument.

Dated May 5th, 2015.



Pamela K. Bell
Notary Public in and for the State of Washington
Residing at Carson
My appointment expires: 1-09-2016

STATE OF WASHINGTON

} SS

COUNTY OF SKAMANIA

I certify that I know or have satisfactory evidence that DOUG MCKENZIE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the CHAIR of THE BOARD OF COMMISSIONERS OF SKAMANIA COUNTY, to be the free and voluntary act of such entity for the uses and purposes mention in the instrument.

Dated May 4th, 2015.



Pamela K. Bell
Notary Public in and for the State of Washington
Residing at Carson
My appointment expires: 1-09-2016

APPROVED AS TO FORM

Adam Kick
Skamania County Prosecuting Attorney

Dated: 5/4/15

VACANT LAND REAL ESTATE PURCHASE & SALE AGREEMENT WITH EARNEST MONEY PROVISION

Stevenson, Washington, *May 6* April 6, 2015

Received from, BIRKENFELD HERITAGE LLC, a Washington limited liability company, the sum of \$1,000.00 in the form of a check payable to Skamania County, a political subdivision of the State of Washington, to be negotiated by Skamania County as a portion of the first payment due under the Promissory Note attached hereto as Exhibit "A", as earnest money and as a credit to Purchaser against the purchase price of the following described real estate, which Purchaser agrees to buy and Seller agrees to sell, located in Skamania County, Washington:

AN UNDIVIDED 25% INTEREST IN THE NORTH HALF OF NORTH HALF OF SECTION 25, TOWNSHIP 3 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, SKAMANIA COUNTY, WASHINGTON, INCLUDING ANY INTEREST TRANSFERRED BY TREASURER'S DEED RECORDED APRIL 15, 1949 IN BOOK 32, PAGE 349, DEED RECORDS OF SKAMANIA COUNTY, WASHINGTON. (For reference purposes, Skamania County Assessor's Tax Parcel 03060000190080).

1. **PURCHASE PRICE:** The purchase price is a formula, set forth on the Promissory Note attached hereto as Exhibit "A," which Promissory Note is to be secured by a Deed of Trust attached hereto as Exhibit "B" that contains the legal description of the EAST 40 ACRES of the above-described NORTH HALF OF NORTH HALF OF SECTION 25, TOWNSHIP 3 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, SKAMANIA COUNTY, WASHINGTON. Both the Promissory Note and the Deed of Trust are to be executed as soon as reasonably possible by both Purchaser and Seller following approval by the Skamania County Board of Commissioners.
2. **TITLE:** The parties acknowledge that (a) title to the real property to be conveyed by Seller is disputed by Seller and Purchaser, (b) the property has been declared surplus by Seller, (c) Purchaser is the owner of, at minimum, an undivided 75% interest in the property, and is therefore the party most-likely to value acquisition of the Seller's minority interest, (d) Purchaser is accepting the condition of title without any warranty or representation regarding said condition of title by Seller, and (e) the terms of this Agreement have been negotiated accordingly.
3. **TITLE INSURANCE:** No title insurance is to be issued regarding this conveyance.
4. **CONVEYANCE:** Title shall be conveyed by the Quit Claim Deed attached hereto as Exhibit "C," to be executed as soon as reasonably possible by Seller following approval by the Skamania County Board of Commissioners. Seller agrees to accept a Note and Deed of Trust as part payment of the purchase price, and Seller and Purchaser agree to execute such Note and Deed of Trust documents in a form substantially similar to those attached hereto as Exhibits "A" and "B" as soon as reasonably possible following approval by the Skamania County Board of Commissioners.
5. **TIMBER HARVEST.** The parties acknowledge that the monies necessary to pay the Purchase Price are to be generated by the harvest of timber located on a portion of the subject property. Purchaser agrees to execute a Timber Harvest Contract as soon as reasonably possible and to cause the funds payable pursuant to the Promissory Note to be paid to Seller as soon as reasonably possible. Purchaser shall not be penalized for any delay in the harvesting of timber (nor for any delay in payments caused by such delays in harvesting) caused by circumstances outside Purchaser's control, except that Purchaser, shall be required to harvest said timber and make payment pursuant to the Promissory Note within two years or deed the property described in the attached Deed of Trust to Seller.
6. **CLOSING:** No Closing Agent shall be used to close this transaction. The Quit Claim Deed, Promissory Note and Deed of Trust shall become effective upon recordation of the Quit Claim Deed and Deed of Trust, and Purchaser shall cause the executed Quit Claim Deed and Deed of Trust to be recorded with the Skamania County Auditor as soon as reasonably possible after execution, while Seller shall retain the original, executed Promissory Note.
7. **CLOSING COSTS AND PRORATION:** Seller shall pay any real estate excise tax owing by reason of the sale. Purchaser shall pay for the recording fees. Purchaser to be responsible for real property taxes only from the date of recordation of the deed. The parties agree to execute such documents and cooperate as necessary to continue any tax deferred land use classification.
8. **POSSESSION:** Purchaser shall be entitled to possession on closing (The Possession Date).

9. **CASUALTY LOSS:** If prior to closing, improvements on the property are destroyed or materially damaged by fire or other casualty, Purchaser may elect to terminate this Agreement and the earnest money shall be refunded to Purchaser.

10. **ASSIGNMENT:** Purchaser's rights under this Agreement may not be assigned by Purchaser without Seller's prior written consent, which consent shall not be unreasonably withheld.

11. **NOTICES:** Unless otherwise specified in this Agreement, any and all notices required to be given under this Agreement must be given in writing and either hand delivered or sent by certified mail. Notices to Seller must be signed by at least one Purchaser and shall be deemed to be given when actually received by or at the address of Seller, as listed herein. Notices to Purchaser must be signed by at least one Seller and shall be deemed to be given when actually received by or at the address of Purchaser, as listed herein. Both parties must keep each other advised of their whereabouts and any changes in address and/or telephone numbers.

12. **COMPUTATION OF TIME:** Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 9:00 p.m. of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 9:00 p.m. of the next business day. Any specified period of seven (7) days or less shall include business days only.

13. **DEFAULT/TERMINATION:** If this Agreement is terminated for any reason, any costs authorized under this Agreement to be advanced from the earnest money deposit shall be deducted before the remaining earnest money is refunded to Purchaser or forfeited to Seller. If a dispute should arise regarding the disbursements of any earnest money, the party holding the earnest money may inter-plead the funds into court. Furthermore, if either Purchaser or Seller defaults, the non-defaulting party may seek specific performance or damages, and the Seller may, under some circumstances, retain the earnest money as liquidated damages.

However, the Seller's remedy shall be limited as follows, if the following paragraph has been initialed by both parties:

In the event the Purchaser fails, without legal excuse, to complete the purchase of the Property, the earnest money deposit made by Purchaser shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure. Furthermore, if the earnest money deposited exceeds five percent (5%) of the sale price, Seller may retain as liquidated damages and as Seller's sole remedy earnest money equaling 5% of the purchase price. Any additional earnest money shall be refunded to Purchaser.

Seller (*N*) () Purchaser (*MLL*) ()
(All Parties Must Initial to be Valid)

14. **GENERAL PROVISIONS:** Time is of the essence. There are no verbal agreements which modify this Agreement. This Agreement and any written addenda thereto constitute the full understanding between Seller and Purchaser. Purchaser has personally observed the property and has reached Purchaser's own conclusion as to the adequacy and acceptability of the property based upon such personal inspection. Unless otherwise expressly specified herein, square footage, dimensions, and/or boundaries used in marketing the property are understood to be approximations and are not intended to be relied upon to determine the fitness or value of the property.

15. **LEGAL AND TAX IMPLICATIONS:** This Agreement affects your legal rights and obligations and will have tax implications. If you have any questions regarding this Agreement and the addendums, attachments, or other related documents, you should consult an attorney or tax advisor. Further, if a dispute arises regarding this transaction, it is agreed the prevailing party(ies) are entitled to recover costs and reasonable attorney's fees, including those for appeals, from the party(ies) that do not substantially prevail in the action as determined by the Court.

PURCHASER:

BIRKENFELD HERITAGE LLC, a Washington limited liability company


 Mary Lee Birkenfeld Manager 5/7/2015 Date
By Mary Lee Birkenfeld, Manager

PURCHASER'S ADDRESS: ~~2641~~ Szydio Road, Carson, WA 98610

 2642

SELLER:

SKAMANIA COUNTY, a political subdivision of the State of Washington


By Doug McKenzie, Chair
Board of Commissioners
Skamania County, Washington

Date

May 5, 2015

SELLERS' ADDRESS: P.O. Box 790, Stevenson, WA 98648

TO BE ATTACHED:

Exhibit "A:" Promissory Note from Birkenfeld to Skamania County
Exhibit "B:" Deed of Trust from Birkenfeld to Skamania County
Exhibit "C:" Quit Claim Deed from Skamania County to Birkenfeld

PROMISSORY NOTE

Amount: Determined by Formula

May
April 6, 2015

Place signed: Stevenson, WA

Vacant Property, Skamania County, WA

(Property Address)

FOR VALUE RECEIVED, BIRKENFELD HERITAGE LLC, a Washington limited liability company, hereinafter "Maker" promises to pay to **SKAMANIA COUNTY**, a political subdivision of the State of Washington, hereinafter "Holder" at **P.O. Box 790, Stevenson, WA 98648**, such sums as shall be owed pursuant to a calculation using the following formula:

1. Skamania County shall receive all proceeds from the harvest of the timber located within the 40 acres described as:

THE EAST 40 ACRES OF THE NORTH HALF OF THE NORTH HALF OF SECTION 25, TOWNSHIP 3 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, SKAMANIA COUNTY, WASHINGTON, (hereinafter, "the County Harvest Area"), less:

- a. 9.75% of the costs of road building "to and through" the County Harvest Area including, but not limited to, grading, cutting, filling, surface and sub-surface materials, permits and surveying costs attributable to the roadway used to access the County Harvest Area, or associated with the main, through road within the County Harvest Area to be used to access the Overall Harvest Area as defined below, and less:
- b. 100% of the costs or attributable to surveying the boundaries of the County Harvest Area, and less:
- c. 50% of logging and hauling costs of all scale wood, and 100% of logging and hauling costs of all pulp wood (with the terms hereof identical to the terms of the timber harvest contract executed by Maker as to the Overall Harvest Area), and less:
- d. Timber excise tax and B & O Tax due only upon timber harvested within the County Harvest Area, and less:
- e. 4.25% interest on 9.75% of the monies advanced by Maker, as calculated from the date of each advance, for roadbuilding, permits and surveying costs as set forth in item "a" above, and 4.25% interest on 100% of the monies advanced by Maker, as calculated from the date of each advance, for surveying costs as set forth in item "b" above. No interest shall accrue upon any advances made after the date the harvest of the County Harvest Area is completed, which Maker shall cause to be completed, as much as is reasonably possible, prior to the the harvest of the remainder of the Overall Harvest Area, and less:
- f. The Overall Harvest Area is 480 acres (more or less) described as:

THE NORTH HALF AND THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 3 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, SKAMANIA COUNTY, WASHINGTON,

2. **DUE DATE:** The entire balance of this Note together with any and all interest accrued thereon shall be due and payable in full on the 31st day of May, 2017.
3. **DEFAULT INTEREST:** After maturity, or failure to make any payment, any unpaid principal shall accrue interest at the rate of 18 percent (Eighteen%) per annum (18% if not filled in) OR the maximum rate allowed by law, whichever is less, during such period of Maker's default under this Note.
4. **ALLOCATION OF PAYMENTS:** Each payment shall be credited first to any late charge due, second to interest, and the remainder to principal.
5. **CURRENCY:** All principal and interest payments shall be made in lawful money of the United States.

6. **LATE CHARGE:** If Holder receives any installment payment more than 15 days (15 days if not filled in) after its due date, then a late payment charge of \$n/a, OR Five percent (5%) of the installment payment (5% of the installment payment if neither is filled in) shall be added to the scheduled payment.
8. **DUE ON SALE:** If this Note is secured by a Deed of Trust or any other instrument securing repayment of this Note, the property described in such security instruments may not be sold or transferred without the Holder's consent. Upon breach of this provision, Holder may declare all sums due under this Note immediately due and payable, unless prohibited by applicable law.

mlh
Maker initials

Am
Holder initials

9. **ACCELERATION:** If Maker fails to make any payment owed under this Note, or if Maker defaults under any Deed of Trust or any other instruments securing repayment of this Note, and such default is not cured within 30 days (30 days if not filled in) after written notice of such default, then Holder may, at its option, declare all outstanding sums owed on this Note to be immediately due and payable, in addition to any other rights or remedies that Holder may have under the Deed of Trust or other instruments securing repayment of this Note.
10. **ATTORNEYS' FEES AND COSTS:** Maker shall pay all costs incurred by Holder in collecting sums due under this Note after a default, including reasonable attorneys' fees, whether or not suit is brought. If Maker or Holder sues to enforce this Note or obtain a declaration of its rights hereunder, the prevailing party in any such proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in the proceeding (including those incurred in any bankruptcy proceeding or appeal) from the non-prevailing party.
11. **WAIVER OF PRESENTMENTS:** Maker waives presentment for payment, notice of dishonor, protest and notice of protest.
12. **NON-WAIVER:** No failure or delay by Holder in exercising Holder's rights under this Note shall be a waiver of such rights.
13. **SEVERABILITY:** If any clause or any other portion of this Note shall be determined to be void or unenforceable for any reason, such determination shall not affect the validity or enforceability of any other clause or portion of this Note, all of which shall remain in full force and effect.
14. **INTEGRATION:** There are no verbal or other agreements which modify or affect the terms of this Note. This Note may not be modified or amended except by written agreement signed by Maker and Holder.
15. **CONFLICTING TERMS:** In the event of any conflict between the terms of this Note and the terms of any Deed of Trust or other instruments securing payment of this Note, the terms of this Note shall prevail.
16. **EXECUTION:** Each Maker executes this Note as a principal and not as a surety. If there is more than one Maker, each such Maker shall be jointly and severally liable under this Note.
17. **COMMERCIAL PROPERTY: OPTIONAL - Not applicable unless initialed by Maker to the Note)** Maker represents and warrants to Holder that the sums represented by this Note are being used for business, investment or commercial purposes, and not for personal, family or household purposes.

mlh
Maker initials

X Jo
Holder initials

18. **ORAL AGREEMENTS:** ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO

EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Maker initials mlh

X m
Holder initials

19. **DEFINITIONS:** The word **Maker** shall be construed interchangeably with the words **Borrower** or **Payer** and the word **Holder** shall be construed interchangeably with the words **Lender** or **Payee**. In this Note, singular and plural words shall be construed interchangeably as may be appropriate in the context and circumstances to which such words apply.
20. **ADDITIONAL TERMS AND CONDITIONS:** Upon request by the Skamania County Board of Commissioners, which request shall be made no more frequently than monthly, **Maker** shall provide **Holder** with an accounting of any or all line items of the payment formula set forth in Paragraph 1 hereof, including any revenues generated by, or expenses incurred within, the harvest of the County Harvest Area, and including interest accrued on advances. Should **Maker** not harvest the timber located within the County Harvest Area before the Due Date hereof, **Maker** will execute and record a Deed or Deed In Lieu of Foreclosure causing **Holder** to become the owner of the 40 acres referred to herein as the County Harvest Area, together with such access easement(s) as reasonable or necessary to access said County Harvest Area, with any Real Estate Excise Tax due as a result of such deed to be the responsibility of **Maker**. Payments made directly to **Holder** by any log-buyer shall be credited against sums due **Holder** by **Maker**, and **Holder** shall pay therefrom any outstanding items according to the formula set forth in Paragraph 1 hereof. Payments made to **Maker** by any log-buyer for monies due **Holder** under this Note shall be paid to **Holder**, according to the formula set forth in Paragraph 1 hereof, within 15 days of receipt of payment by **Maker**.
21. **THIS NOTE IS SECURED BY** ☒ **DEED OF TRUST,** ☐ **MORTGAGE,** ☐ **[** _____ **]** **OF EVEN DATE.**

Maker (signatures)

BIRKENFELD HERITAGE LLC

By Mary Lee Birkenfeld, Manager

Maker's address for all notices given by Holder under this Note:
2641 Szydlo Road, Carson, WA 98610

DO NOT DESTROY THIS NOTE
WHEN PAID this original Note together with the Deed of Trust securing the same, must be
surrendered to the Trustee for cancellation and retention before any reconveyance can be
processed.