

10 OCT 25 AM 10:17

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED

CASE NUMBER: 10-2-37317-9 SEA

IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTYSHANNON CALVIN O'NEIL, by and through  
his GUARDIAN AD LITEM, JON GILLIS and  
TYLER HOMES CORPORATION,

Plaintiffs,

v.

DENNIS SCHNABEL, CHERIE SCHNABEL,  
STERLING GRAY INVESTMENTS, LLC,  
COMMONWEALTH LAND TITLE  
COMPANY OF PUGET SOUND, LLC,  
FOUNDATION BANK, BANNER BANK  
COLUMBIA BANK and COLUMBIA  
BANKING SYSTEM, INC, Defendants

Case No.:

COMPLAINT FOR DECLARATORY  
JUDGMENT AND DAMAGES**I. JURISDICTION AND VENUE**

1. Plaintiff Tyler Homes Corporation (hereafter "Tyler Homes") is a Washington corporation with its principal place of business in King County, Washington. Tyler Homes is licensed to do business within the State of Washington, has paid all registration fees and taxes owed to the State of Washington and is doing business in Bellevue, within King County, Washington.

COMPLAINT FOR DECLARATORY JUDGMENT - 1

Advocates Law Group PLLC  
George O. Tamblyn, WSBA 15429  
8043 W. Mercer Way  
Mercer Island, WA 98040  
tamblyn3@comcast.net  
(206) 200-4119

1           2. Plaintiff, Shannon Calvin O'Neil (O'Neil) is the sole shareholder and sole officer of  
2 Tyler Homes and resides in Bellevue, King County, Washington. Jon Gillis has been duly  
3 appointed O'Neil's Guardian ad Litem by the Superior Court for Washington, King County.  
4

5           3. Defendant, Dennis Schnabel (hereafter "Schnabel") and Cherie Schnabel reside in  
6 Mercer Island, King County, Washington. Defendants Schnabel and Cherie Schnabel, on  
7 information and belief, are husband and wife.

8           4. Defendant Sterling Gray Investments LLC (hereafter "Sterling") is a Washington  
9 limited liability company with its principal place of business in Mercer Island, King County  
10 Washington.

11           5. Defendant Commonwealth Land Title Company of Puget Sound, LLC (hereafter  
12 "Commonwealth") has its principal place of business in Bellevue, King County, Washington.  
13 Commonwealth is operating as an escrow agent pursuant to the laws and regulations of the State  
14 of Washington.  
15

16           6. Defendant, Banner Bank, ("Banner") is a Washington Banking Corporation, doing  
17 business in Bellevue Washington, with its principal place of business in Walla Walla,  
18 Washington.

19           7. Defendant Foundation Bank ("Foundation") is a Washington Banking Corporation, with  
20 its principal place of businesses in Bellevue, Washington,  
21

22           8. Defendants Columbia Bank and Columbia Banking System, Inc. (collectively and  
23 individually, "Columbia") are Banking Corporations, organized under the laws of the State of  
24 Washington, with its principal place of business in the City of Tacoma, Pierce County,  
25 Washington. Columbia operates a branch in Seattle where the funds in dispute are on deposit.  
26

1 9. The court has jurisdiction of this matter under RCW 7.24 (Uniform Declaratory  
2 Judgments Act) as well as pursuant to RCW 2.08.010, and venue is proper in King County  
3 pursuant to RCW 4.12.010 and RCW 4.12.025.  
4  
5  
6

## 7 **II. BACKGROUND FACTS**

8 10. Tyler Homes recently sold a 5-acre property located in Bellevue, Washington (the  
9 "Property") to the City of Bellevue. Defendant Commonwealth was the escrow agent for said  
10 transaction (the "Property Sale"). Defendant Commonwealth intentionally or negligently placed  
11 exceptions on the title report for the Property based on claims made by the other defendants  
12 against title to the Property that are not supported by the real property records of King County.  
13 Defendant Commonwealth breached its duty under Washington law to properly disburse to Tyler  
14 Homes the proceeds of the Property Sale.  
15

16 11. Defendants Schnabel, Sterling, Banner and Foundation made false claims against the  
17 title to the Property, thereby causing damage to Plaintiffs in the amount to be proven at trial.

18 12. In order to facilitate closing of the Property Sale in light of the matters alleged in  
19 paragraphs 9 and 10 above, on or about March 29, 2010, the parties herein executed a document  
20 entitled "Escrow Holdback Agreement" (the "Agreement"). The Agreement is attached hereto  
21 and by this reference incorporated herein.  
22

23 13. The Agreement provides in part "[v]enue for any disputes as to the terms of this  
24 agreement shall be King County Superior Court, Seattle, Washington." Agreement, § 7(a).

25 14. The parties cannot agree as to the disbursement of the approximately \$890,000 held  
26 by Columbia pursuant to the Agreement.

### III. CLAIMS

15. Commonwealth owes Tyler Homes the funds that are the subject of the Agreement, plus Tyler Homes' attorneys' fees, prejudgment interest at 12% and costs. Defendant Columbia should be ordered to disburse to Tyler Homes all of the funds that are the subject of the Agreement.

16. The actions of Defendants Commonwealth, Schnabel, Sterling, Banner and Foundation alleged herein constitute slander of title.

17. The actions of Defendants Commonwealth, Schnabel, Sterling, Banner and Foundation alleged herein constitute violations of the Washington Consumer Protection Act. Consequently plaintiff is entitled to treble damages to a maximum amount of \$25,000 plus attorneys fees in an amount to be established after trial.

### IV. REQUEST FOR RELIEF

Plaintiff, Tyler Homes Corporation, requests that the Court grant the following relief:

1. Enter judgment in favor of Plaintiff declaring that Plaintiff is entitled to the funds currently being held by Defendant Columbia pursuant to the Agreement; and

2. Declare that the trust deed referred to in the Paragraph A of the Agreement is fully discharged, and that defendants Schnabel, Sterling, Banner and Foundation have no legal or beneficial interest in the Property or the funds being held by Columbia pursuant to the Agreement.

3. Award Plaintiff such other and further relief as is justified by law, including, if justified, treble damages against Commonwealth, Schnabel, Sterling, Banner and Foundation; and

1           4.     Award Plaintiff its attorneys' fees, prejudgment interest at 12% from and after  
2 March 12, 2010, and such costs as are allowed by law against defendants Commonwealth,  
3 Schnabel, Sterling, Banner and Foundation.  
4

5                     *October*  
6 DATED: ~~September~~ *14*, 2010

7 Advocates Law Group, PLLC  
8

9  
10 By: *George O. Tamblyn*  
11     George O. Tamblyn; WSBA #15429  
12     Dieter G. Struzyna; WSBA #12422  
13     Of Attorneys for Plaintiff  
14  
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### ESCROW HOLDBACK AGREEMENT

This Holdback Agreement ("Agreement") is entered into as of March 20th, 2010 by and among Columbia Bank as Depositary ("Columbia"), Invicta Law Group, LLC ("Invicta"), Tyler Homes Corp., a Washington corporation ("Tyler"), Foundation Bank ("Foundation"), Banner Bank ("Banner") and Dennis and Cherie Schnabel individually and on behalf of their wholly owned company, Sterling Gray Investments, LLC ("Schnabel") (Foundation, Banner and Schnabel are hereinafter collectively referred to as "Claimants") with respect to the following facts:

- A. On March 12, 2010 Tyler closed the sale of approximately five acres of property located in Bellevue Washington ("Property") to the City of Bellevue for a cash price of \$1,690,000.
- B. Schnabel, Foundation and Banner each claimed a security interest in the Property based, in part, on a single certain deed of trust recorded against the Property in favor of Schnabel on December 26, 2002 under recording number 2002122600266 ("Deed of Trust") the beneficial interest in which was subsequently assigned by Schnabel to Foundation by document recorded July 8, 2009 under recording number 20090708000869.
- C. City insisted on purchasing the Property free of the claims reflected by the above described documents.
- D. Tyler disputes the amounts Schnabel claims to be owed by Tyler, the validity of the Deed of Trust which Schnabel has in turn pledged as security for his personal liability to Foundation and Banner, and disputes that Tyler has any knowledge regarding the claims of Foundation and Banner against Schnabel.
- E. In order to allow the sale to proceed and the City to acquire clear title, the parties agreed to instruct Commonwealth Land Title of Puget Sound, LLC ("Commonwealth"), the company closing the sale of the Property to City, to disburse \$890,663.96 ("Holdback Funds") to Invicta to be held in its IOLTA trust account, and also instructed Invicta to transfer said Holdback Funds into one or more FDIC insured interest bearing account(s) at a local bank or banks pending resolution of the dispute between Schnabel and Tyler as to the amounts due Schnabel. The parties have agreed that the Claimants' liens have attached to the Holdback Funds only to the extent such funds are owed and payable to Schnabel by Tyler with the same effect such claims had against the Property. Otherwise, the Claimants have agreed that they have no other current interest in the Holdback Funds.
- F. The parties desire to establish the terms and conditions pursuant to which the Holdback Funds will be deposited to, held by, and disbursed by Columbia.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Escrow.

(a) Deposit of Holdback Funds. Within three days of execution of this Agreement by all parties Invicta shall deposit the Holdback Funds with Columbia.

(b) Retention of Holdback Funds. The Holdback Funds will be held by Columbia in one or more FDIC insured interest bearing account(s) until such Holdback Funds are to be released pursuant to the terms of this Agreement. Columbia agrees to accept delivery of the Holdback Funds and to hold them subject to the terms and conditions of this Agreement. The parties agree to use Tyler's EIN in the establishment of the Columbia account(s).

2. Conditions to Disbursement. When and only when any one of the following conditions has occurred and is fully satisfied, may Columbia disburse any of the Holdback Funds: (i) Columbia has received a fully executed agreement signed by Tyler and all of the Claimants authorizing disbursement of any or all of the Holdback Funds; or (ii) Columbia is presented with a Final Order authorizing and directing disbursement of all or any of the Holdback Funds. For purposes of this Agreement, "Final Order" shall mean (i) the final binding decision of a duly appointed arbitrator acceptable to all parties, or (ii) a court order for which the time for appeal has expired without an appeal having been taken or, if taken, no supercedas bond having been posted. In the event the disbursement is to be based on a Final Order, the party presenting the Final Order must have given the other parties at least five (5) business days notice of the intent to present it to Columbia and present Columbia with a sworn affidavit or declaration confirming such notice.

3. No Encumbrance. No interest in the Holdback Funds or any beneficial interest therein may be pledged, sold, assigned or transferred, other than by operation of law, by any party to this Agreement or be taken or reached by any legal or equitable process in satisfaction of any debt or other liability of any party to this Agreement. The Holdback Funds will not be deemed the property of any party until such time as they are disbursed from Columbia pursuant to the terms of this Agreement. The Holdback Funds will nonetheless be held subject to the claims of the parties with the same force and effect as the claims of the parties had on the Property. Without limiting the generality of the foregoing the Claimants expressly declare that Foundation's and Banner's security interests in the Holdback Funds shall have the same priorities as those established in the Deed of Trust and the Agreement to Share Collateral between them.

4. Representations and Warranties of the Claimants. The Claimants make the following representations and warranties to Tyler:

(a) Except for the Deed of Trust referenced above, which has been reconveyed, and the Claimants' lien rights thereunder, if any, which have transferred to the Holdback Funds, none of the Claimants claim any lien (statutory or other), mortgage, pledge, hypothecation, encumbrance or security agreement of any kind or nature whatsoever with respect to the Property or Holdback Funds.

(b) Foundation and Banner acknowledge and agree they only claim the amount of funds, if any, obtained by or awarded to Schnabel pursuant to written agreement or Final Order, and hereby release any other claim they may have against the Holdback Funds awarded to Tyler. In other words, in the event Schnabel is awarded \$100,000, that and only that amount shall be the extent of Foundation and Banner's claim against the Holdback Funds. The remainder of the Holdback Funds shall be thereafter released to Tyler free and clear of any claim by Foundation and Banner.

(c) Except for the substitution of Holdback Funds as collateral for repayment of Foundation's and Banner's loans to Schnabel, and except as otherwise expressly modified herein, all other agreements between Schnabel and Banner and between Schnabel and Foundation shall remain unaffected and in full force and effect.

5. Limitation of the Columbia's Liability.

(a) Columbia shall be obligated only for the performance of such duties as are specifically set forth in this Agreement and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed to be genuine and to have been signed or presented by the proper party or parties. Columbia shall not be liable or responsible for any act done or omitted hereunder while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of counsel knowledgeable as to such matters shall be conclusive evidence of such good faith.

(b) Columbia is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person, excepting the instructions specified herein and orders or process of courts of law, and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case Columbia obeys or complies with any such order, judgment or decree of any court, Columbia shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(c) Columbia shall not be liable in any respect on account of any claim made by the parties hereto (except with respect to Columbia) that this Agreement was not properly executed and delivered by such party.

(d) Columbia shall not be liable for any rights under any statute of limitations with respect to this Agreement or any documents deposited with Columbia.

(e) Columbia is hereby expressly authorized to engage legal counsel as it may deem necessary or advisable.

(f) In the event conflicting demands are made or notices are served upon Columbia with respect to the Holdback Funds, Columbia will have the absolute right, at its election, to file a suit in interpleader and obtain an order from a court of competent jurisdiction requiring the parties to interplead and litigate in such court or arbitration their several claims and rights among themselves. In the event such interpleader suit is brought, Columbia will thereby



be fully released and discharged from all further obligations imposed upon it under this Agreement, and the parties hereto shall equally pay Columbia all costs, expenses and reasonable attorney's fees expended or incurred by it pursuant to the exercise of Columbia's rights under this Section. This Section is intended to include benefits for Columbia.

6. Notices. Any notice provided for or permitted under this Agreement will be treated as having been given when (i) delivered personally, (ii) sent by commercial overnight courier with written verification of receipt, or (iii) mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this Section 6.

Invicta: Invicta Law Group, PLLC  
1000 Second Avenue, Suite 3310  
Seattle, WA 98104-1019  
Attention: Mr. Mark V. Jordan

Tyler: Tyler Homes Corporation  
11560 SE 60th St.  
Bellevue, WA 98006  
Attention: Mr. Shannon O'Neil

Copies to: Invicta Law Group, PLLC  
1000 Second Avenue, Suite 3310  
Seattle, WA 98104-1019  
Attention: Mr. Mark V. Jordan

Foundation: Foundation Bank  
1110 112th Avenue NE, Suite 100  
Bellevue, WA 98104  
Attention: Mr. Tim Baer

Copies to: Hanson Baker Ludlow Drumheller  
2229 - 112th Avenue NE, Suite 200  
Bellevue, WA 98004-2036  
Attention: Mr. John T. Ludlow

Schnabel: Dennis & Cherie Schnabel &  
Sterling Gray Investments, LLC  
3852 76th Avenue SE  
Mercer Island, WA 98040

Copies to: Williams Kastner  
601 Union Street, Suite 4100  
Seattle, WA 98101  
Attention: Ms. Sheena R. Aebig

Banner:

Banner Bank  
3005 112<sup>th</sup> Ave. N.E. #100  
Bellevue, WA 98008  
Attention: Mr. David Beuthel

Copies to:

Hacker & Willig  
1501 - 4<sup>th</sup> Ave. #2150  
Seattle, WA 98101  
Attention: Mr. Arnie Willig

Columbia:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copies to:

Graham & Dunn PC  
Pier 70  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1128  
Attention: Mr. John T. John

7. General.

(a) Governing Law and Venue. It is the intention of the parties hereto that the internal laws of the State of Washington (without regard to its choice of law principles) shall govern the validity of this Agreement, the construction of its terms and the interpretation and enforcement of the rights and duties of the parties hereto. Venue for any dispute as to the terms of this Agreement or the subject matter thereof shall be King County Superior Court, Seattle, Washington.

(b) Binding upon Successors and Assigns. Subject to, and unless otherwise provided in, this Agreement, each and all of the covenants, terms, provisions, and agreements contained herein shall be binding upon, and inure to the benefit of, the permitted successors, executors, heirs, representatives, administrators and assigns of the parties hereto. This Agreement shall not be construed so as to confer any right or benefit upon any Person, other than the parties hereto and their respective successors and permitted assigns.

(c) Headings. The headings used in this Agreement are for convenience of reference only and shall not be deemed to limit, characterize or in any way affect the interpretation of any provision of this Agreement.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Agreement

shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories.

(e) Entire Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and no other representations, promises, agreements or understandings regarding the subject matter hereof shall be of any force or effect unless in writing, executed by the party to be bound thereby and dated on or after the date hereof.

(f) Waivers. No waiver by any party hereto of any condition or of any breach of any provision of this Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained herein.


(g) Amendment. This Agreement may be amended with the written consent of the parties, provided that if Columbia does not agree to an amendment agreed upon by Claimants and Tyler, Columbia may file a suit in interpleader.

(h) Severability. In case any one or more of the provisions contained herein for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

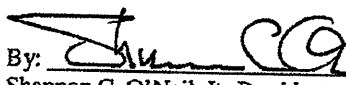
(i) Additional Agreements; Reasonable Efforts. Each of the parties agrees to use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

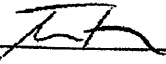
INVICTA LAW GROUP, PLLC

By:   
Mark V. Jordan, Its Member

TYLER HOMES CORP.

By:   
Shannon C. O'Neil, Its President

FOUNDATION BANK

By:   
Name: Tim Bae

Title: SVP

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

INVICTA LAW GROUP, PLLC

By: \_\_\_\_\_  
Mark V. Jordan, Its Member

TYLER HOMES CORP.

By: \_\_\_\_\_  
Shannon C. O'Neil, Its President

FOUNDATION BANK

By: TH  
Name: Tim Baer  
Title: SVP

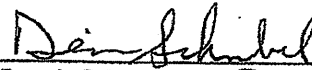
BANNER BANK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SCHNABELS

 \_\_\_\_\_

Dennis Schnabel

 \_\_\_\_\_


Cherie Schnabel

STERLING GRAY INVESTMENTS, LLC

By:  \_\_\_\_\_

Dennis Schnabel, Its Manager

COLUMBIA BANK

By:  \_\_\_\_\_

Its: Vice President

1.071 jc220303

BANNER BANK

By: 

Name:

David Beuthel

Title:

Vice President

SCHNABELS

Dennis Schnabel

Cherie Schnabel

STERLING GRAY INVESTMENTS, LLC

By:

Dennis Schnabel, Its Manager

COLUMBIA BANK

By: 

Its:

Vice President