

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 97599-0

No. ~~XXXX~~
~~946337~~

SUPREME COURT
OF THE STATE OF WASHINGTON

OLYMPIC VIEW WATER AND SEWER DISTRICT, a
Washington municipal corporation; and TOWN OF
WOODWAY, a Washington municipal corporation,,

Appellants,

v.

RONALD WASTEWATER DISTRICT, a Washington
municipal corporation,,

Respondent.

And

SNOHOMISH COUNTY, a Washington municipal corporation; KING
COUNTY, a Washington municipal corporation; CITY OF SHORELINE,
a Washington municipal corporation,

Defendants.

TOWN OF WOODWAY'S
BRIEF OF APPELLANT

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 2. Ordering, adjudging and decreeing that the geographic extent of the territory annexed as the “Point Wells Service Area” is legally described in Addendum A to the 1985 Transfer Agreement attached thereto as Exhibit B and that this transfer was pursuant to express statutory authority.5

 3. Ordering, adjudging and decreeing that as of January 1, 1986, the 1985 Transfer Order lawfully annexed the “Point Wells Service Area” to Ronald’s corporate boundary and that the arguments of the Snohomish County Defendants challenging the validity of the 1985 Transfer Order are without merit.5

 4. Ordering, adjudging, and decreeing that as of January 1, 1986, the 1985 Transfer Order was a final judgment (CR 54(a)(1)) “in rem” that was binding “against the world,” including the Snohomish County Defendants, therefore, barring the Snohomish County Defendants by principles of res judicata from challenging the validity of the 1985 Transfer Order.5

 5. Ordering, adjudging, and decreeing that as of July 1, 1997, RCW 57.02.001 had the effect of validating and ratifying Ronald’s annexation of the “Point Wells Service Area”, rendering any defect in the 1985 Transfer Order.6

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A. INTRODUCTION

The Town of Woodway (“Woodway”) and the other Snohomish County Defendants (“SCDs”) identified in the Opening Brief filed by Olympic View Water and Sewer District (“Olympic View”) are entitled to relief from the operation of the 1985 King County Transfer Order in so far as it approves the annexation of the “Point Wells Area” to the boundaries of the Ronald Wastewater District (“Ronald”). The Opening Brief by Appellant Olympic View together with this Opening Brief by Appellant Woodway explain why such relief should be granted.

The King County Superior Court was presented with a proposed order for signature in November, 1985 (“Transfer Order”). The proposed order misrepresented the legality of a Transfer Agreement providing for the transfer of a system of sewerage from King County to the Ronald Wastewater District and for Ronald’s annexation of the area served by the King County system of sewerage that included the “Point Wells Service Area.” In its text, the Transfer Agreement incorporated by reference an attached legal description purporting to describe the “area served by the system.” The area described included substantial acreage of undeveloped area within Snohomish County in which King County had no infrastructure for service, no service connections and no customers but for a single

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industrial customer serviced under a terminable outside the county service contract. The legal description further included a small area within the corporate boundaries of the Town of Woodway where the county provided service to a single residential customer by means of an interim service agreement unapproved by the Town of Woodway. The Transfer Agreement provided that the attached legal description of “service area” was to be “deemed annexed to and part of the District upon completion of the transfer”. The King County superior court judge reviewing the proposed order would have no way of knowing of these facts concerning the legal description unless told by the presenters of the order. There is no record the court was alerted to these facts concerning the legal description of the area served.

Argument was made by the SCDs to the trial court that Ronald’s claim to have annexed the “Point Wells Service Area” was based upon this factually inaccurate legal description and in reliance upon absurd, unjust, strained and the unlikely consequences of the construction of the Washington statutes described by Olympic View in its Opening Brief. In reality, RCW 36.94.440 required the Transfer Agreement be approved by the superior court only if legally correct. The Transfer Order was approved by the superior court on representations from Ronald and King County that

the Transfer Agreement, including the legal description of service area in Appendix A to the Transfer Agreement was legally correct. The legal description however, was not legally correct. Not only was the legal description factually inaccurate but was also in conflict with the statutory authority for the transfer by including area in another county and in the Town of Woodway in which King County provided sewer service to two specific customers under terminable ultra vires contracts . The “Point Wells Service Area” as explained herein and in Olympic View’s Opening Brief, was not legally part of the King County system of sewerage.

The Transfer Order works a substantial injustice against the SCDs and is supported only by the absurd, unjust, strained, or unlikely consequences of Ronald’s construction of multiple statutes¹. These statutes were enacted without any evidence of legislative intent to allow for a cross-county annexation of territory to a water/sewer district without compliance with the boundary review board statutes in Chapter 36.93 RCW. The determination by the trial court not to entertain an independent action to relieve Woodway and the other SCDs from the 1985 Transfer Order approving as legally correct the Transfer Agreement and the annexation by

¹ See the table of statutes in the Appendix.
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Ronald of the “Point Wells Service Area” is fundamentally wrong on multiple accounts.

There is no statutory authority for the inclusion of the “Point Wells Service Area” in the area legally described in Addendum A to the 1985 Transfer Agreement. The 1985 Transfer Order did not lawfully annex the “Point Wells Service Area” to Ronald’s corporate boundary. The order was *void ab initio* and as argued by Olympic View in its Opening Brief not an “in rem” order binding against the world and barring the SCDs from challenging its validity by principles of *res judicata*. The trial court also wrongfully determined that RCW 57.02.001 was intended to validate or even could validate and ratify the void ab initio provisions of the 1985 Transfer Order purporting to annex the “Point Wells Service Area” to Ronald’s corporate boundary. For these reasons this court should overrule the trial court’s order granting summary judgment to Ronald and Declaring Ronald’s annexation of the Point Wells Service Area and reverse the denial of Woodway and Snohomish County’s motions for summary judgment.

B. ASSIGNMENTS OF ERROR

Assignments of Error

The trial court erred in entering its May 9, 2017 order and judgment

by:

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1. Granting Ronald's motion for partial summary judgment and declaratory judgment and denying Snohomish County's and Woodway's motions for summary judgment in paragraphs numbered 1 and 7.
2. Ordering, adjudging and decreeing that the geographic extent of the territory annexed as the "Point Wells Service Area" is legally described in Addendum A to the 1985 Transfer Agreement attached thereto as Exhibit B and that this transfer was pursuant to express statutory authority.
3. Ordering, adjudging and decreeing that as of January 1, 1986, the 1985 Transfer Order lawfully annexed the "Point Wells Service Area" to Ronald's corporate boundary and that the arguments of the Snohomish County Defendants challenging the validity of the 1985 Transfer Order are without merit.
4. Ordering, adjudging, and decreeing that as of January 1, 1986, the 1985 Transfer Order was a final judgment (CR 54(a)(1)) "in rem" that was binding "against the world," including the Snohomish County Defendants, therefore, barring the Snohomish County Defendants by principles of

res judicata from challenging the validity of the 1985 Transfer Order.

5. Ordering, adjudging, and decreeing that as of July 1, 1997, RCW 57.02.001 had the effect of validating and ratifying Ronald's annexation of the "Point Wells Service Area", rendering any defect in the 1985 Transfer Order.

Issues Pertaining to Assignments of Error

Woodway incorporates by this reference the issues set forth by in the Brief of Appellant Olympic View. Additionally, Woodway states the following additional issues:

- a. Is the inclusion of the "Point Wells Service Area" in the 1985 Transfer Agreement void and unenforceable notwithstanding the 1985 Transfer Order?

- b. Is the 1985 Transfer Order void as to the approval of the annexation by Ronald of the “Point Wells Service Area”?
- c. May the challenge to the void judgment be brought at any time?
- d. Did RCW 57.02.001 have the effect of validating and ratifying Ronald’s annexation of the “Point Wells Service Area” rendering moot any defect in the 1985 Transfer Order?

C. STATEMENT OF THE CASE

Woodway adopts and incorporates by this reference the “Statement of the Case” made by Olympic View in its Opening Brief.

D. SUMMARY OF ARGUMENT

Woodway adopts and incorporates by this reference the “Summary of Argument” made by Olympic View in its Opening Brief, supplemented by the following:

The Transfer Order, in so far as it determined the Transfer Agreement and inclusion of the “Point Wells Service Area” in the legal description of the area served by the King County system of sewerage to be

legally correct and approves the annexation by Ronald of the “Point Wells Service Area is void and unenforceable. RCW 57.02.001 effective July 1, 1977 did not render moot the defects in the 1985 Transfer Order or validate and rectify Ronald’s annexation of the “Point Wells Service Area. ”The SCDs have the right to challenge the enforceability of the Transfer Order and the trial court had the authority to entertain that challenge by the SCDs.

E. ARGUMENT

Woodway adopts and incorporates by this reference the “Argument made by Olympic View in its “Opening Brief.” Woodway supplements the argument of Olympic View as follows:

- I. The inclusion of the “Point Wells Service Area” in the 1985 Transfer Agreement is void and unenforceable notwithstanding the 1985 Transfer Order.

The trial court erred in determining that the existence of the Transfer Order, a statutorily required order finding that the Transfer Agreement is legally correct, was determinative of “[t]he geographic extent of the territory annexed to Ronald’s corporate boundary, which is legally described in Addendum A, is referred to as the “Point Wells Service Area.” If the annexation of service area in Snohomish County and in the Town of

Woodway was not statutorily authorized, the annexation is void, and the provision of the Transfer Agreement asserting the annexation is void despite the court order. See *Muller v. Miller*, 82 Wn. App. 236, 917 P.2d (1996), at 250-251:

Essentially, Muller’s quiet title action is a collateral attack on the sheriff’s sale and subsequent order confirming the sale. Relief from a final judgment, order, or proceeding may be obtained pursuant to CR 60. A collateral attack may be maintained only against a final order or judgment which is absolutely void, not merely erroneous or voidable.” *State v. Peterson*, 16 Wn. App. 77, 79, 553 P.2d 1110 (1976))(citing *Bresolin v. Morris* 86 Wn.2d 241, 543 P.2d 325 (1975), *opinion supplemented on other grounds*, 88 Wn.2d 167, 558 P.2d 1350 (1977); *Peyton v. Peyton*, 28 Wash. 278, 68 P. 757 (1902)), “and then only on the basis of fraud going to the very jurisdiction of the court.” *Petersen*, 16 Wn. App. At 79 (citing *Anderson v. Anderson*, 52 Wn.2d 757, 328 P.2d 888 (1958)).

A judgment is void when the court does not have personal or subject matter jurisdiction, or “lacks the inherent power to enter the order involved.” *Petersen*, 16 Wn. App. at 79 (citing *Bresolin*, 86 Wn.2d at 245; *Anderson*, 52 Wn. 2d at 761)(additional citation omitted). **A trial court must vacate the judgment “whenever the lack of jurisdiction comes to light.”** *Mitchell v. Kitsap County*, 59 Wn. App. 177, 180-81, 797 P.2d 516 (1990)(collateral challenge to

jurisdiction of pro tem judge granting summary judgment properly raised on appeal)(citing *Allied Fidelity Ins. Co. v. Ruth*, 57 Wn. App. 783, 790, 790 P.2d 206 (1990)). **As discussed above, since the judgment is void, this collateral attack through the quiet title action was proper.** (Bold emphasis added)

RCW 36.94.440 permits a superior court to approve a transfer agreement only if “legally correct.” The statute states:

If the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and the interests of the owners of related indebtedness are protected, then the court by decree shall direct the transfer be accomplished in accordance with the agreement.

Here, as argued by Olympic View in its opening brief, RCW 36.94.020 limited King County’s authority to operate a system of sewerage to area(s) within the county. RCW 36.94.410-440 requires a proposed transfer from the County to a District to be compliant with the requirements of RCW 36.94.310, which in turn and for consistency with RCW 36.94.020 allows the transfer of a system of sewerage existing only within the county. King County could not legally transfer as an “area served by the system” that is outside the county for annexation by a water-sewer district acquiring the system under the statutory scheme in Ch. 36.94 RCW.

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It is a stretch of reason and logic to conclude that the two outside service contracts King County had with Chevron Oil for service to its petroleum plant and with Mr. Briggs to his residence in Woodway was “area served by the system” as that term is used in RCW 36.94.420. The site-specific service contracts did not provide service to an area, but only to two specific service locations. The remainder of the “Point Wells Service Area” was unserved by King County and it lacked the infrastructure to do so.

The contracts were themselves were also ultra-vires the authority of the county. RCW 36.94.190 provides:

Every county in furtherance of the powers granted by this chapter shall be authorized to contract with the federal government, the state of Washington, **or any city or town, within or without the county**, and with any other county, and with any municipal corporation as defined herein or with any other municipal corporation created under the laws of the state of Washington and not limited as defined in RCW 36.94.010, or political subdivision, **and with any person, firm or corporation in and for the establishment, maintenance and operation of all or a portion of a system or systems of sewerage and/or water supply.** (Bold emphasis added)

The state and such city, town, person, firm, corporation, municipal corporation and any other municipal corporation created under the laws of the state of Washington and not

limited as defined in RCW 36.94.010, and political subdivision, is authorized to contract with a county or counties for such purposes.

The record is absent of any contract between King County and Snohomish County, or between King County and Woodway for the outside service extensions to the two locations. Absent the words “within or without the county” associated with “any person, firm or corporation” in the statute, King County had no legal authority to contract with Chevron Oil or with Mr. Briggs for service in Snohomish County and the Town of Woodway. The contracts were ultra vires contracts. The only appellate decision addressing RCW 36.94.190 is the unreported decision from Division I in *Lakehaven Utility Dist. V. Pierce County*, 145 Wn. App. 1019 (2008). In that case a sewer service contract allowed Pierce County to provide sewer service within the City of Milton. Milton’s corporate boundaries were within both Pierce and King Counties. The contract between Pierce County and Milton was upheld because RCW 36.94.190 specifically allowed for a contract for sewer service between a county and a city, “within or without”, the county. Such specific language does not exist in the statute for a contract between a county and a person or corporation.

The superior court judge in *Muller v. Miller*, supra at 247-248 had no statutory authority to confirm the sheriff’s sale since the judgement lien

had expired. Even though confirmation was required by RCW 6.21.110 the order of confirmation was void and unenforceable. Here, the superior court in 1985 had no statutory authority to approve as legally correct a Transfer Order that contained a legal description purporting to describe service area to include area outside King County not actually served, but only served only at two specific locations under ultra-vires outside service contracts.

The inclusion of the “Point Wells Service Area” within the legal description for annexation by Ronald is void and unenforceable. “Generally a contract that is contrary to the terms and policy of a statute is illegal and unenforceable.” *Smith v. Skone & Connors Produce, Inc.*, 107 Wn. App. 199, 208, 26 P.3d 981 (2001) (citing *Vedder v. Spellman*, 78 Wn.2d. 834, 837, 480 P.2d 207 (1971), *Haberman v. Elledge*, 42 Wn. App. 744, 750, 713 P.2d 746 (1986).

The trial court erred in entering its Order granting summary judgment in favor of Ronald and dismissing the counter-claims for summary judgement for dismissal of Ronald’s claims brought by Snohomish County and Woodway.

2. The challenge to the void Transfer Order may be brought at any time.

A challenge to a void judgment may be brought at any time *Muller v. Miller* at 251. CR 60 (Appendix II) does not limit the time for bringing a motion or an independent action to entertain a request for relief from a judgment or order entered as a result of a fraud or misrepresentation, or when the order or judgment is void.

It is of significance to note here that the since entry of the 1985 Transfer Order Ronald has not constructed infrastructure in the “Point Wells Service Area” or added any new customers for sewer service. The upper bluff area of the “Point Wells Service Area” has been annexed by Woodway as noted by Olympic View in its Opening Brief. In fact, the entire Point Wells Service Area” is designated by Snohomish County as Woodway’s municipal urban growth area under RCW 36.70A.110(7) which states:

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

The ongoing efforts by the King County City of Shoreline to assume the “Point Wells Service Area” from Ronald as described by Olympic View in its Opening Brief interfere with Woodway’s growth management act

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comprehensive planning with Snohomish County. Timing is of the essence. The Transfer Order's approval of the annexation by Ronald of the "Point Wells Service Area needs to be declared void and unenforceable to stop Shoreline's interference with comprehensive planning in Snohomish County under Ch. 36.70A. RCW.

3. RCW 57.02.001 did not validate or rectify Ronald's annexation of the "Point Wells Area" , or render moot the defect in the 1985 Transfer Order.

The trial court mistakenly determined that RCW 57.02.001 effective July 1, 1997 "...had the effect of validating and ratifying Ronald's annexation of the "Point Wells Area", rendering moot any defect in the 1985 Transfer Order." The statute, included in legislation having the effect of consolidating the statutes regulating water and sewer districts into a single chapter of the Revised Code of Washington, states as follows:

Every sewer district and every water district previously created shall be reclassified and shall become a water-sewer district, and shall be known as the ". . . . Water-Sewer District," or "Water-Sewer District No." or shall continue to be known as a "sewer district" or a "water district," with the existing name or number inserted, as appropriate. As used in this title, "district" means a water-sewer district, a sewer district, or a water district. **All debts, contracts, and**

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obligations previously made or incurred by or in favor of any water district or sewer district, and all bonds or other obligations issued or executed by those districts, and all assessments or levies, and all other things and proceedings done or taken by those districts or by their respective officers, are declared legal and valid and of full force and effect. (Bold emphasis added)

The King County Superior Court, not Ronald, was required by statute to review the Transfer Agreement and approve it only if “legally correct.” This statute does not render moot the legal deficiencies of the description of the area served by the King County system of sewerage in the Transfer Agreement, cure the legal incorrectness of the description of the King County service area, or render moot the effect of the void Transfer Order. The legislation does not attempt to cure a void order entered by a Superior Court, assuming the legislature has the authority to do so. There is nothing in the record to evidence the legislature in enacting the legislation was attempting to address the ultra vires activities of a county, allow a county to transfer to a district area outside its area served for annexation to the District.

Prior legislation suggests a district’s annexation of territory or service area was not intended to be the subject of RCW 57.0201. HB 1145 (1982) was Legislation enacted in 1982 addressing “Multicounty Districts”
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is helpful in understanding the intent of the legislature. Although not applicable to the 1985 King County-Ronald transfer, this earlier legislation did, like RCW 57.02.001, contain language approving and ratifying prior actions of a sewer district. In HB 1145 however, the legislature specifically used the following language:

All actions taken in regard to the formation, **annexation**, consolidation, or merger of sewer districts prior to the effective date of this act but consistent with this title, as amended, are hereby approved and ratified and shall be legal for all purposes. (emphasis added)

The use of the above language by the legislature demonstrates that had the legislature intended in RCW 57.02.001 to ratify and make legal and effective all prior actions taken with respect to boundary issues such as an annexation, it knew how to say it and could have said it if that is what was intended. *State v. Larson*, 184 Wn.2d 843, 365 P.3d 740 (2015). The legislature did not make this statement of intent in RCW 57.02.001. The legislature was not attempting to address boundary issues in adopting RCW 57.02.001 as it when adopting HB 1145 some years earlier.

The construction given by the KCPs and by the trial court in its order to RCW 57.02.001 as well as the other statutes addressed in the table of statutes attached in the Appendix hereto are absurd, unjust, strained, or

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unlikely consequences of the legislation. That such construction of statutes is to be avoided has been repeated by the appellate courts in numerous decisions. See for example, *State v. W.S.*, 176 Wn. App. 231, 309 P.3d 589 (2013); *Thurston County ex rel. Bd of County Com'rs v. City of Olympia*, 151 Wn.2d 171, 86 P.3d 151 (2004); and *Bowles v. Washington Dept. of Retirement Systems*, 121 Wn.2d 52, reconsideration denied, 847 P.2d 440 (1993).

F. CONCLUSION

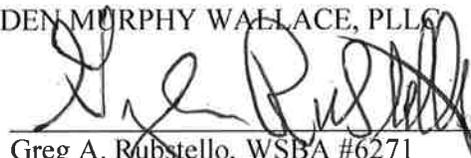
This Court should reverse the order of partial summary judgment and declaratory relief in favor of Ronald and direct the entry of judgment in favor of Woodway Snohomish County on their motions for summary judgment. The Transfer Order is void, invalid and unenforceable against the SCDs.

RESPECTFULLY SUBMITTED this 22 day of November,
2017.

Respectfully submitted,

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By



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WOODWAY

APPENDIX

Table of Statutes

The Legislation	Statutory Construction as argued by the Ronald Wastewater District in support of its Motion for Summary Judgment for Declaratory Judgment and Opposition to SCD's Motion for Summary Judgment	The absurd, unjust, strained, or unlikely consequences of the Ronald Wastewater District's Statutory Construction
RCW 36.94.190	Authorizes counties to contract with any person or entity "within or without the county" for sewerage.	The Ronald Wastewater District ignores that the words "within or without the county" modifies only "or any city or town" the words immediately preceding "within or without the county" to assert that RCW 36.94.190 authorized King County and the King County Sewer District #3 to contract for sewer services to the petroleum plant in unincorporated Snohomish County and the residential property owner in the Town of Woodway.

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<p>SHB 1127; Ch. ___, Laws of 1984; codified in RCW 36.94.410-.440.</p> <p>The transfer by a County to a water/sewer district of all or a portion of its system of sewerage authorized in same manner as a transfer by municipal corporation to a county of all or a portion of its system of sewerage within the county.</p>	<p>The Legislature created a statutory framework in RCW Ch. 36.94 for boundary changes to sewer districts that expressly authorized Ronald's 1985 cross-county annexation of the Point Wells Service Area without required notice to the Boundary Review Board of the affected county, through a court approved transfer agreement from King County.</p>	<p>Ronald Wastewater District is able to annex vast undeveloped acreage in southwest Snohomish County owned by a petroleum plant owner in which area King County's sewer service at the time was limited to a petroleum plant under terms of service set out in an ultra vires sewer service contract (without statutory authorization) and to a single-family residence located within the corporate limits of the Town of Woodway (also by ultra vires contract).</p>
<p>SSB 6091; Ch. ___, Laws of 1996; codified at RCW 57.02.001</p>	<p>The legislation (regulating water and sewer districts in a single chapter) which states in part that all prior acts of water-sewer districts (not Counties or County Sewer Districts) were "legal and valid and of full force and effect" cured any legal defects in the 1985 transfer agreement between King County and Ronald Wastewater</p>	<p>The void Transfer Order entered by the King County Superior Court finding the Transfer Agreement to be legally correct cannot be challenged, invalidated, or declared unenforceable against the SCDs.</p>

	District, including the legal description of the <i>service area</i> transferred approved by the 1985 King County Court Order.	
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DECLARATION OF SERVICE

On the date below I e-filed this document in the Supreme Court of the State of Washington, and e-served copies to the following:

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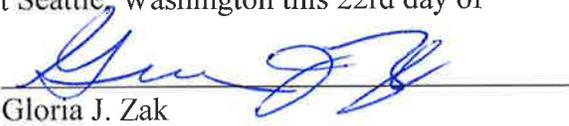
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 22rd day of November, 2017.



Gloria J. Zak
Legal Assistant

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November 22, 2017 - 2:43 PM

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